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STATUTORY INSTRUMENTS

2004 No. 3305

COUNTRYSIDE, ENGLAND

The Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004

<i>Made</i>	- - - -	<i>9th December 2004</i>
<i>Laid before Parliament</i>		<i>13th December 2004</i>
<i>Coming into force</i>	- -	<i>6th January 2005</i>

The Secretary of State, in exercise of the powers conferred upon her by sections 38(6), 44(2) and 45(1)(1) of the Countryside and Rights of Way Act 2000(2), hereby makes the following Regulations:

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004 and shall come into force on 6th January 2005.

(2) These Regulations apply in relation to England only(3).

Interpretation

2. In these Regulations —

“the Act” means the Countryside and Rights of Way Act 2000;

“appeal land” means the land which is the subject of the appeal;

“the appellant” means the person giving notice of appeal to the Secretary of State under regulation 4;

(1) See the definition of “regulations”.

(2) 2000 c. 37.

(3) Regulations may only be made by the Secretary of State as respects England. Regulations as respects Wales may only be made by the National Assembly for Wales: see section 45(1) of the Act for the meaning of “regulations”.

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“appointed person” means a person appointed by the Secretary of State under section 8 of the Act to determine an appeal or any matter involved in such an appeal and having the powers conferred by paragraphs 3 and 4 of Schedule 3 to the Act⁽⁴⁾;

“assessor” means a person appointed by the Secretary of State under paragraph 4(3) of Schedule 3 to the Act to sit with an inspector at a hearing or inquiry and advise the inspector on any matter arising;

“document” includes a photograph, map or plan;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000⁽⁵⁾;

“hearing” means a hearing in relation to which these Regulations apply;

“inquiry” means a local inquiry in relation to which these Regulations apply;

“inspector” means –

- (a) an appointed person; or
- (b) a person holding a hearing or inquiry and making a report to the Secretary of State in order for her to determine the appeal;

“interested person” means–

- (a) a person who has made representations to the access authority as mentioned in regulation 6(b) unless that person has notified the Secretary of State under regulation 7(1)(j) that he wishes his representations to be disregarded;
- (b) a person who has made further representations to the Secretary of State under regulation 7(1)(k); or
- (c) a person who has made representations to the Secretary of State under regulation 7(1)(l);

“local access forum” means the local access forum for the area in which the appeal land is situated;

“pre-inquiry meeting” means a meeting held before an inquiry to consider what may be done to ensure that the inquiry is conducted efficiently and expeditiously and, where two or more such meetings are held, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

“start date” means, in relation to any given appeal, the date specified by the Secretary of State under regulation 7(1)(a);

“statement of case” means a written statement containing full particulars of the case which a person proposes to put forward, at a hearing or inquiry or by written representations, in relation to the appeal, and includes copies of any supporting documents which that person intends to refer to or put in evidence;

“transferred appeal” means an appeal or any matter involved in an appeal, in respect of which the Secretary of State has exercised her power under section 8 of the Act to appoint a person to determine the appeal or the matter (as the case may be) on her behalf; and

“written representations” includes supporting documents.

Use of electronic communications

3.—(1) Any requirement imposed under these Regulations as to the giving or sending by one person to another of a notice or other document may be met by means of an electronic communication if–

⁽⁴⁾ Section 8 of, and Schedule 3 to, the Act are applied to appeals under section 38(1) of the Act by section 38(5) of the Act.

⁽⁵⁾ 2000 c. 7.

- (a) the use of such a communication results in the information contained in that notice or document being available to the other person in all material respects as it would appear in a notice or document given or sent in printed form; and
 - (b) the other person has consented to the information being made available to him by such means.
- (2) Where, under paragraph (1), an electronic communication is used for the purposes of giving or sending a document –
- (a) any requirement for the notice or document to be given or sent by a particular time shall be met in respect of an electronic communication only if the conditions mentioned in paragraph (1) are met by that time; and
 - (b) any requirement for more than one copy to be sent on any single occasion may be complied with by a single such communication.
- (3) For the purposes of paragraph (1)(a), “in all material respects” means in all respects material to an exact reproduction of the content of the information as it would appear in a notice given or sent in printed form.

PART 2

INITIAL STAGES OF APPEAL

Manner and period for appeal

4.—(1) An owner or occupier who wishes to appeal to the Secretary of State under section 38(1) of the Act (appeals against notices under section 36(3) or section 37(1) of the Act concerning works with respect to means of access) shall give notice of appeal to the Secretary of State, by–

- (a) serving on her, within the period specified in paragraph (2), a notice of appeal on a form obtained from her; and
 - (b) serving on the access authority a copy of that notice of appeal at the same time as that notice is served on the Secretary of State under sub-paragraph (a).
- (2) The period mentioned in paragraph (1) is–
- (a) where the appeal is against a notice under section 36(3) of the Act, the period specified in that notice within which the works specified in that notice are required to be carried out;
 - (b) where the appeal is against a notice under section 37(1) of the Act, the period specified in that notice after which the access authority intend to carry out the works specified in that notice.

(3) Where the access authority give notice under section 36(3) of the Act to any person as the owner or occupier of any land, the access authority shall give a copy of that notice to every other owner or occupier of the land.

(4) An appellant may withdraw his appeal at any time before it is determined by giving notice in writing to the Secretary of State, and the Secretary of State shall, as soon as practicable, send a copy of that notice to–

- (a) the access authority;
- (b) every other owner or occupier of the appeal land whose address is known to the Secretary of State; and
- (c) where the address of the local access forum is known to the Secretary of State, the local access forum.

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Notification of receipt of documents

5.—(1) The Secretary of State shall, as soon as practicable after she has received all the information required to enable her to entertain the appeal, notify the appellant and the access authority of this in writing.

(2) The notice to the access authority under paragraph (1) shall be accompanied by a questionnaire in respect of the information required by the Secretary of State concerning the appeal.

Preliminary information to be supplied by the access authority.

6. The access authority shall ensure that, within two weeks of the receipt by them of the notification in accordance with regulation 5, the following have been received by the Secretary of State and a copy has been received by the appellant—

- (a) the completed questionnaire (which shall also state the date on which it is sent to the Secretary of State) together with a copy of each document referred to in it;
- (b) the name and address of any person who made representations to the access authority in respect of the notice given under sections 36(3) or 37(1) of the Act (as the case may be);
- (c) the address of the local access forum; and
- (d) details of the time and place at which the access authority intend to make documents available for the purpose of regulation 39 (inspection and copying of documents).

Notification of start of appeal etc.

7.—(1) The Secretary of State shall, as soon as practicable after receipt of the information to be supplied to her in accordance with regulation 6, give notice in writing to the appellant, the access authority, any person who has made representations as mentioned in regulation 6(b) and the local access forum stating –

- (a) the start date;
- (b) whether the appeal will take the form of a hearing or inquiry or will be determined on the basis of written representations;
- (c) whether the appeal will be determined by the Secretary of State or an inspector;
- (d) the reference number allocated to the appeal;
- (e) the address (including an e-mail address) to which written communications to the Secretary of State about the appeal are to be sent;
- (f) the time and place where documents relating to the appeal are to be made available by the access authority under regulation 39;
- (g) the name of the appellant and the location of the appeal land in sufficient detail to enable it to be identified;
- (h) that, as the case may be—
 - (i) the appeal is in respect of a notice given under section 36(3) of the Act concerning works which the owner or occupier is required to carry out for the purpose of remedying the failure to observe a restriction in an agreement under section 35 of the Act with respect to means of access, or
 - (ii) the appeal is in respect of a notice given under section 37(1) of the Act that the access authority intend to take all necessary steps for carrying out the works specified in that notice with respect to means of access,

and in either case the notice given by the Secretary of State shall provide a brief description of those works;

- (i) that the access authority –
 - (i) have sent to the Secretary of State and to the appellant the name and address of any person, other than the appellant, who has made representations to the authority with respect to the notice given under sections 36(3) or 37(1) of the Act, as the case may be, and
 - (ii) are required to send a copy of those representations to the Secretary of State and to the appellant;
- (j) that if any such person wishes his representations to be disregarded by the Secretary of State for the purposes of the appeal, he should notify the Secretary of State in writing of this within six weeks of the start date;
- (k) that any person who has made such representations may make further representations in writing to the Secretary of State in respect of the appeal by ensuring that they are received by the Secretary of State within six weeks of the start date;
- (l) that any other person may also make representations to the Secretary of State in respect of the appeal by ensuring that they are received within 6 weeks of the start date; and
- (m) that, if there is to be a hearing or an inquiry–
 - (i) the appellant and the access authority shall be entitled to appear, and
 - (ii) the inspector may permit any other person to appear and that such permission shall not to be unreasonably withheld.

(2) The Secretary of State shall ensure that a copy of the notice given by her under paragraph (1) is available for inspection on a website maintained by the Planning Inspectorate Executive Agency until the appeal is determined.

Supply of further information by the access authority

8. The access authority shall ensure that, within two weeks of the start date, the Secretary of State and the appellant have received copies of–

- (a) any representations made to them as mentioned in regulation 7(1)(i); and
- (b) any correspondence between the appellant and the access authority relating to the issue of the notice under sections 36(3) or 37(1) of the Act (as the case may be).

Submission of statements of case etc.

9. Within six weeks of the start date –

- (a) the access authority shall ensure that the Secretary of State has received two copies of their statement of case;
- (b) the appellant shall ensure that the Secretary of State has received two copies of his statement of case; and
- (c) any other person who wishes to make representations to the Secretary of State in respect of the appeal shall ensure that the Secretary of State has received three copies of such representations.

Copies of documents

10. The Secretary of State shall, as soon as practicable after receipt of copies of the documents referred to in regulation 9 –

- (a) send to the appellant a copy of the statement of case submitted by the access authority;
- (b) send to the access authority a copy of the statement of case submitted by the appellant; and

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- (c) send to the appellant and the access authority a copy of any representations submitted by any interested person as mentioned in regulation 9(c).

Comments on statements of case

11.—(1) Within nine weeks of the start date –

- (a) the appellant shall ensure that the Secretary of State has received any comments which he may wish to make on –
 - (i) the statement of case of the access authority; and
 - (ii) any representations made by any interested person; and
- (b) the access authority shall ensure that the Secretary of State has received any comments which they may wish to make on the statement of case of the appellant or on any such representations.

(2) The Secretary of State shall, as soon as practicable after receipt of the comments referred to in paragraph (1), send–

- (a) to the access authority a copy of the comments received from the appellant under paragraph (1)(a), and
- (b) to the appellant a copy of the comments received from the access authority under paragraph(1)(b).

Provision of further information

12.—(1) The Secretary of State or the inspector may require such further information as she may specify from –

- (a) the appellant;
- (b) the access authority; or
- (c) any interested person;

and all such information shall be provided in writing within such period as the Secretary of State or the inspector may reasonably require.

(2) The Secretary of State shall, as soon as practicable after receipt of any further information required under paragraph (1), send a copy of the documents received–

- (a) in the case of information received from the appellant or the access authority, to the other party; and
- (b) in the case of information received from any interested person, to the appellant and the access authority.

PART 3

DETERMINATION OF APPEALS

CHAPTER I

Appeals to be determined on the basis of written representations

Site inspections

13.—(1) Where it appears to the Secretary of State necessary or expedient to do so she may arrange for an inspection of the appeal land to be made by an inspector; and the Secretary of State shall arrange for such an inspection to be made if so requested by the appellant or the access authority.

(2) Where the inspector intends to make an inspection under paragraph (1), the Secretary of State shall ask the appellant and the access authority whether they wish to be present or be represented.

(3) Where the appellant or the access authority have indicated that he or they wish to be present or be represented, the inspector shall give the appellant and the authority reasonable notice of the date and time of the inspection and shall afford the appellant and the authority, or their representatives, the opportunity of being present during the inspection.

(4) The inspector shall not be bound to defer an inspection if the appellant or the authority, or their representative, is not present at the appointed time.

Decision on appeal

14. The Secretary of State or, as the case may be, the inspector may proceed to a decision on an appeal taking into account only such statements of case, representations and comments as have been provided within the time limits prescribed by or under these Regulations.

Notification of decision

15. The Secretary of State or, as the case may be, the inspector shall notify her decision on an appeal, and her reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum;

and the Secretary of State shall ensure that, as soon as practicable after such decision has been made, a copy of the decision is made available for inspection on a website maintained by the Planning Inspectorate Executive Agency for a period of three months starting with the date of the decision.

CHAPTER II

Appeals to be determined by way of a hearing

Date and notification of hearing

16.—(1) The date fixed by the Secretary of State for the holding of a hearing shall be–

- (a) not later than 22 weeks after the start date, unless she considers such a date is not practicable; or

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(b) the earliest date after that period which she considers to be practicable.

(2) In considering whether a date is practicable for the purposes of paragraph (1), the Secretary of State shall have regard to the desirability of arranging consecutive or concurrent hearings as mentioned in regulation 17.

(3) Unless the Secretary of State agrees a lesser period of notice with the appellant and the access authority, she shall give the appellant, the authority and every interested person not less than four weeks' written notice of the date, time and place fixed by her for the holding of a hearing.

(4) The Secretary of State may at any time change the date fixed for the holding of a hearing (whether or not the new date is within the period mentioned in paragraph (1)(a)) and paragraph (3) shall apply to the new date.

(5) The Secretary of State may at any time change the time or place for the holding of a hearing and shall give such notice of any change to the persons mentioned in paragraph (3) as appears to her to be reasonable.

(6) The Secretary of State—

- (a) may require the access authority to publish, not less than two weeks before the date fixed for the hearing, a notice of the hearing in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the access authority to affix a notice of the hearing firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and the access authority shall not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify; and
- (c) shall ensure that the Planning Inspectorate Executive Agency makes a notice of the hearing available for inspection on a website which it maintains until the appeal is determined.

(7) Every notice of a hearing referred to in paragraph (6) shall contain –

- (a) a statement of the date, time and place of the hearing and of the powers enabling the Secretary of State to determine the appeal in question; and
- (b) a brief description of the appeal land and of the grounds of appeal.

(8) A notice referred to in paragraph (6) may relate to more than one hearing.

Consecutive and concurrent hearings

17. The Secretary of State may arrange for two or more appeals to be heard consecutively or concurrently where they relate to the same area of land or to areas of land which she considers to be in such proximity as to make it expedient for the hearings to be held consecutively or concurrently.

Appearances at hearing and notification of name of inspector

18.—(1) The persons entitled to appear at the hearing are –

- (a) the appellant; and
- (b) the access authority;

but the inspector may permit any other person to appear at a hearing, and such permission shall not be unreasonably withheld.

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

(3) The inspector shall, at the commencement of the hearing, announce his name and the fact of his appointment.

Procedure at hearing

19.—(1) Except as otherwise provided in these Regulations, the inspector shall determine the procedure at a hearing.

(2) A hearing shall take the form of a discussion led by an inspector, and cross-examination shall not be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues.

(3) Where the inspector considers that cross-examination is required under paragraph (2), he shall consider, after consulting the appellant and the access authority, whether the hearing should be closed and an inquiry held instead.

(4) At the start of the hearing the inspector shall identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person appearing at the hearing; but this shall not preclude the addition in the course of the hearing of other issues for consideration or any persons appearing at the hearing from referring to issues which they consider relevant to the consideration of the appeal but which were not issues so identified by the inspector.

(5) The appellant and the access authority shall be entitled to give, or to call another person to give, oral evidence, and any other person may give, or call another person to give, oral evidence if so permitted by an inspector at his discretion, but notwithstanding any such entitlement or permission, the inspector may, at any stage in the proceedings, refuse to permit the giving of evidence or presentation of any other matter which he considers to be irrelevant or repetitious.

(6) Where the inspector refuses to permit the giving of oral evidence, the person wishing to give, or call any other person to give, evidence may submit to him any evidence or other matter in writing before the close of the hearing.

(7) The inspector may require any person appearing or present at a hearing who, in his opinion, is behaving in a disruptive manner to leave the hearing; and the inspector may then refuse to permit that person to return or permit him to return only on such conditions as he may specify, but any such person may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(8) The inspector may allow the appellant or the access authority to alter or make any addition to a statement of case submitted under regulation 9 (a) or (b) so far as may be necessary for the purposes of the hearing.

(9) The inspector may –

- (a) proceed with a hearing in the absence of any person entitled to appear at it;
- (b) take into account any written representations or evidence or any other document received by him from any person before a hearing opens or during the hearing provided he discloses it at the hearing; and
- (c) 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.

Site inspections

20.—(1) Where it appears to an inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the site of the appeal land he may adjourn the hearing to that site and conclude the hearing there provided he is satisfied that –

- (a) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;

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- (b) all parties present at the hearing would have the opportunity to attend the adjourned hearing; and
- (c) neither the appellant nor the access authority have raised any reasonable objections to the hearing being continued at the site of the appeal land.

(2) Unless the hearing is to be adjourned to the appeal land pursuant to paragraph (1), the inspector may, where it appears to him necessary or expedient to do so, arrange to make an inspection of the appeal land in the company of the appellant and the access authority or their representatives; and the inspector shall arrange to make such an inspection if requested to do so by the appellant or the authority at any time before or during the hearing in relation to an appeal.

(3) In all cases where the inspector intends to make a site inspection he shall announce during the hearing the date and time at which he proposes to make it.

(4) The inspector shall not be bound to defer an inspection if the appellant or the access authority are not present at the appointed time.

Procedure after hearing – appeals determined by the Secretary of State

21.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) After the close of the hearing, the inspector shall make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(3) When making her determination the Secretary of State may disregard any written representations, evidence or other document received after the hearing is closed.

(4) If, after the close of the hearing, the Secretary of State –

- (a) differs from the inspector on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by the inspector, 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 inspector, she shall not come to a decision which is at variance with that recommendation without first notifying the appellant, the access authority and any other person who appeared at the hearing of her disagreement and the reasons for it, and affording them an opportunity of making written representations to her or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, of asking for the re-opening of the hearing.

(5) Those persons making written representations or requesting the re-opening of the hearing pursuant to paragraph (4) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under that paragraph.

(6) The Secretary of State may, if she thinks fit, cause a hearing to be re-opened, and she shall do so if asked by the appellant or the access authority in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5); and where a hearing is re-opened (whether by the same or a different inspector) –

- (a) the Secretary of State shall send to the appellant, the access authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 16 shall apply as if the references to a hearing were references to a re-opened hearing.

Procedure after hearing – transferred appeals

22.—(1) This regulation applies where a hearing has been held for the purposes of a transferred appeal.

(2) Where an assessor has been appointed he shall, after the close of the hearing, make a report in writing to the inspector of the matters on which he was appointed to advise, and the inspector shall state in the notification of his decision pursuant to regulation 24 that such a report was made.

(3) When making his decision the inspector may disregard any written representations, or evidence or any other document received after the hearing has closed.

(4) If, after the close of the hearing, an inspector proposes to take into account any new evidence or matter of fact which was not raised at the hearing and which he considers to be material to his decision, he shall not come to a decision without first –

- (a) notifying the appellant and the access authority and any other person who appeared at the hearing; and
- (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the hearing,

and they shall ensure that such written representations or request to re-open the hearing are received by the Secretary of State within three weeks of the date of notification.

(5) An inspector may, if he thinks fit, cause a hearing to be re-opened and he shall do so if asked by the appellant or the access authority in the circumstances and within the period mentioned in paragraph (4); and where a hearing is re-opened –

- (a) the inspector shall send to the appellant, the access authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 16 shall apply as if the references to a hearing were references to a re-opened hearing.

Notification of decision – appeals determined by the Secretary of State

23.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) The Secretary of State shall, as soon as practicable, notify her decision on an appeal, and her reasons for reaching it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Where a copy of the inspector’s report is not sent with the notification of the decision, the notification shall be accompanied by a statement of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he shall be supplied with a copy of it on written application made to the Secretary of State within four weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(4) In this regulation, “report” does not include any documents appended to the inspector’s report; but any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him that opportunity.

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(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

Notification of decision – transferred appeals

24.—(1) This regulation applies where a hearing has been held for the purposes of a transferred appeal.

(2) An inspector shall notify his decision on an appeal, and his reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector’s decision under paragraph (2) may apply in writing to the Secretary of State for an opportunity of inspecting any documents referred to in the notification and the Secretary of State shall afford him that opportunity.

(4) Any person making an application under paragraph (3) shall ensure that it is received by the Secretary of State within six weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a website maintained by the Planning Inspectorate Executive Agency for a period of three months.

CHAPTER III

Appeals to be determined by way of an inquiry

Procedure where the Secretary of State or inspector causes a pre-inquiry meeting to be held

25.—(1) The Secretary of State or the inspector shall hold a pre-inquiry meeting if it appears to her to be necessary, and any such meeting (or, where there is more than one, the first such meeting) shall be held within sixteen weeks of the start date or at the earliest practicable time thereafter.

(2) Where the Secretary of State or the inspector decides to hold such a meeting she shall notify in writing the appellant and the access authority of her intention to hold such a meeting.

(3) The Secretary of State or the inspector shall give not less than two weeks' written notice of the pre-inquiry meeting to –

- (a) the appellant and the access authority; and
- (b) any other person whose presence at the pre-inquiry meeting she considers desirable.

(4) The inspector –

- (a) shall preside at the pre-inquiry meeting;
- (b) shall determine the matters to be discussed and the procedure to be followed;
- (c) may require any person present at the pre-inquiry meeting who he considers is behaving in a disruptive manner to leave; and
- (d) may refuse to permit that person to return or to attend any further pre-inquiry meeting or may permit him to return or attend only on such conditions as he may specify.

(5) Where a pre-inquiry meeting is held pursuant to paragraph (1), the inspector may hold a further pre-inquiry meeting and he shall arrange for such notice to be given of a further pre-inquiry meeting as appears to him necessary; and paragraph (4) shall apply to such a pre-inquiry meeting.

(6) If the Secretary of State or the inspector requests any further information at the pre-inquiry meeting from the appellant, the access authority or any other person present at that meeting, the person required to provide the information shall ensure that two copies of it have been received by the Secretary of State or the inspector, as the case may be, within four weeks of the conclusion of the pre-inquiry meeting; and the Secretary of State shall, as soon as practicable after receipt of any such information, send a copy of it to the other parties entitled to appear at the inquiry.

Inquiry timetable

26.—(1) Where a pre-inquiry meeting is held pursuant to regulation 25, the inspector shall arrange a timetable for the proceedings.

(2) The inspector shall specify in the timetable arranged pursuant to this regulation a date by which any proof of evidence as mentioned in regulation 28 shall be sent to the Secretary of State.

Date and notification of inquiry

27.—(1) The date fixed by the Secretary of State for the holding of an inquiry shall, unless she considers such a date to be impracticable, be not later than –

- (a) subject to sub-paragraph (b), twenty-two weeks after the start date; or
- (b) where a pre-inquiry meeting is held pursuant to regulation 25, eight weeks after the conclusion of that meeting.

(2) Where the Secretary of State considers it impracticable to fix a date in accordance with paragraph (1), the date fixed shall be the earliest date which she considers to be practicable after the expiry of the relevant period mentioned in that paragraph.

(3) Unless the Secretary of State agrees a lesser period of notice with the appellant and the access authority, she shall give to the appellant, the access authority and every interested person not less than four weeks' written notice of the date, time and place fixed by her for the holding of an inquiry.

(4) The Secretary of State may –

- (a) change the date fixed for the holding of an inquiry (whether or not the date as changed is within the relevant period mentioned in paragraph (1)); or
- (b) change the time or place for the holding of an inquiry.

(5) Where, under paragraph (4)(a), the Secretary of State changes the date for the holding of an inquiry, paragraph (3) shall apply to the new date as it applied to the date originally fixed, and where, under paragraph (4)(b), she changes the time or place for the holding of an inquiry, she shall give such notice of such change as appears to her to be reasonable.

(6) The Secretary of State–

- (a) may require the access authority to publish, not less than two weeks before the date fixed for the inquiry, a notice of the inquiry in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the access authority to affix a notice of the inquiry firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and the access authority shall not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify; and
- (c) shall ensure that the Planning Inspectorate Executive Agency makes a notice of the inquiry available for inspection on a website which it maintains until the appeal is determined.

Status: Point in time view as at 06/01/2005.

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- (7) Every notice of an inquiry referred to in paragraph (6) shall contain –
 - (a) a statement of the date, time and place of the inquiry and of the powers enabling the Secretary of State to determine the appeal in question; and
 - (b) a brief description of the appeal land and of the grounds of appeal.
- (8) A notice referred to in paragraph (6) may relate to more than one inquiry.

Proofs of evidence

28.—(1) Subject to paragraph (2), where the appellant or the access authority propose to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence he or they shall send two copies of the proof of evidence, together with any written summary accompanying it, to the Secretary of State; and the Secretary of State shall, as soon as practicable after receipt, send to the appellant or the authority, as appropriate, a copy of the other's proof of evidence together with any written summary accompanying it.

(2) A written summary shall be required where the proof of evidence in question exceeds one thousand five hundred words.

(3) The appellant and the access authority shall ensure that the proof of evidence and any summary shall be received by the Secretary of State no later than –

- (a) four weeks before the date fixed for the holding of the inquiry; or
- (b) where a timetable has been arranged pursuant to regulation 26 which specifies a date by which the proof of evidence and any summary shall be received by the Secretary of State, that date.

(4) Where a written summary is provided in accordance with paragraph (1), only that summary shall be read at the inquiry, unless the inspector permits or requires otherwise.

(5) Any person required by this regulation to send copies of a proof of evidence to the Secretary of State shall send with them the same number of copies of the whole (or the relevant part) of any document referred to in the proof of evidence.

Statement of common ground

29. The appellant and the access authority shall together prepare a statement of common ground and the authority shall ensure that the Secretary of State receives it not less than four weeks before the date fixed for the holding of the inquiry.

Appearances at inquiry and notification of the name of inspector

30.—(1) The persons entitled to appear at an inquiry are –

- (a) the appellant; and
- (b) the access authority;

but the inspector may permit any other person to appear at an inquiry, and such permission shall not be unreasonably withheld.

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

(3) The inspector shall, at the commencement of the inquiry, announce his name and the fact of his appointment.

Procedure at inquiry

31.—(1) Except as otherwise provided in these Regulations, the inspector shall determine the procedure at an inquiry.

(2) At the start of the inquiry the inspector shall identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from any person appearing at the inquiry.

(3) Nothing in paragraph (2) shall 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 pursuant to that paragraph.

(4) Unless in a particular case the inspector otherwise determines, the access authority shall begin and the appellant shall have the right of final reply; and any other persons appearing at the inquiry shall be heard in such order as the inspector shall determine.

(5) Subject to paragraphs (6) to (8), a person appearing at an inquiry shall be entitled to give, or call any other person to give, oral evidence; and the appellant, the access authority, and any other person if so permitted by the inspector, may cross-examine any person giving evidence.

(6) The inspector may at any stage in the proceedings refuse to permit –

- (a) the giving or production of evidence;
- (b) the cross-examination of persons giving evidence; or
- (c) the presentation of any matter,

which he considers to be irrelevant or repetitious.

(7) Where under paragraph (6) the inspector refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry.

(8) Where a person gives evidence at an inquiry by reading a summary of his proof of evidence –

- (a) the proof of evidence referred to in regulation 28(1) shall be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone; and
- (b) the person whose evidence the proof of evidence contains shall then be subject to cross-examination on it to the same extent as if it were evidence he had given orally.

(9) The inspector may –

- (a) require any person appearing at an inquiry who, in his opinion, is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return or permit him to return only on such conditions as he may specify;

but any such person may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(10) The inspector may allow any person to alter or add to a statement of case received by the Secretary of State under regulation 9 or a proof of evidence or summary sent to the Secretary of State under regulation 28(1) so far as may be necessary for the purposes of the inquiry; but he shall (if necessary by adjourning the inquiry) give every other person appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

(11) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

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(12) The inspector may take into account any written representations, or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided he discloses it at the inquiry.

(13) The inspector may from time to time adjourn an inquiry, and if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice shall be required.

Site inspections

32.—(1) During an inquiry or after its close, the inspector may, where it appears to him necessary or expedient to do so, arrange to make an inspection of the appeal land; and the inspector shall arrange to make such an inspection if so requested by the appellant or the access authority before or during the inquiry in relation to an appeal.

(2) Where the inspector intends to make an inspection under paragraph (1), he shall ask the appellant and the access authority whether they wish to be present or be represented.

(3) Where the appellant or the access authority have indicated that they wish to be present, or be represented, the inspector shall give the appellant and the authority reasonable notice of the date and time of the inspection and shall afford the appellant and the authority, or their representatives, the opportunity of being present during the inspection.

(4) The inspector shall not be bound to defer an inspection if the appellant or the access authority (or their representatives) are not present at the appointed time.

Procedure after inquiry – appeals to be determined by the Secretary of State

33.—(1) This regulation applies where an inquiry has been held for the purposes of any appeal determined by the Secretary of State.

(2) After the close of an inquiry the inspector shall make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(3) When making her determination the Secretary of State may disregard any written representations, evidence or other document received after the close of the inquiry.

(4) If, after the close of the inquiry, the Secretary of State –

(a) differs from the inspector on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by the inspector, 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 inspector, she shall not come to a decision which is at variance with that recommendation without first notifying the appellant and the access authority and any other person who appeared at the inquiry of her disagreement and the reasons for it, and affording them an opportunity of making written representations to her or of asking for the re-opening of the inquiry.

(5) Those persons making written representations or requesting that the inquiry be re-opened under paragraph (4) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under that paragraph.

(6) The Secretary of State may, if she thinks fit, cause an inquiry to be re-opened, and she shall do so if asked by the appellant or the access authority in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5); and where an inquiry is re-opened (whether by the same or a different inspector) –

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- (a) the Secretary of State shall send to the appellant, the access authority and any other person who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 27 shall apply as if the references to an inquiry were references to a re-opened inquiry.

Procedure after inquiry – transferred appeals

34.—(1) This regulation applies where an inquiry has been held for the purposes of a transferred appeal.

(2) Where an assessor has been appointed he shall, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise, and the inspector shall state in the notification of his decision pursuant to regulation 36 that such a report was made.

(3) When making his decision the inspector may disregard any written representations or evidence or other document received after the close of the inquiry.

(4) If, after the close of the inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact which was not raised at the inquiry, and which he considers to be material to his decision, he shall not come to a decision without first –

- (a) notifying the appellant and the access authority and any other person who appeared at the inquiry; and
- (b) affording them an opportunity of making written representations to him or of asking for the inquiry to be re-opened;

and they shall ensure that such written representations or request to re-open the inquiry are received by the Secretary of State within three weeks of the date of the notification.

(5) An inspector may, if he thinks fit, cause an inquiry to be re-opened, and he shall do so if asked by the appellant or the access authority in the circumstances and within the period mentioned in paragraph (4); and where an inquiry is re-opened –

- (a) the inspector shall send to the appellant, the access authority and any other person who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 27 shall apply as if the references to an inquiry were references to a re-opened inquiry.

Notification of decision – appeals determined by the Secretary of State

35.—(1) This regulation applies where an inquiry has been held for the purposes of any appeal to be determined by the Secretary of State.

(2) The Secretary of State shall, as soon as practicable, notify her decision on an appeal, and her reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

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(3) Where a copy of the inspector's report is not sent with the notification of the decision, the notification shall be accompanied by a statement of the inspector's conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he shall be supplied with a copy of it on written application made to the Secretary of State within four weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(4) In this regulation, "report" does not include any documents appended to the inspector's report; but any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him that opportunity.

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

Notification of decision – transferred appeals

36.—(1) This regulation applies where an inquiry has been held for the purposes of a transferred appeal.

(2) The inspector shall, as soon as practicable, notify his decision on an appeal, and his reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector's decision under paragraph (2) may apply to the Secretary of State in writing for an opportunity to inspect any documents referred to in the notification and the Secretary of State shall afford him that opportunity.

(4) Any person making an application pursuant to paragraph (3) shall ensure that it is received by the Secretary of State within six weeks of the date of the inspector's decision.

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

CHAPTER IV

General

Notification of appointment of assessor

37. Where the Secretary of State has appointed an assessor in respect of a hearing or inquiry, the inspector shall, at the commencement of the hearing or inquiry, announce the name of the assessor and the fact of his appointment.

Further time and additional copies

38.—(1) The Secretary of State may, at any time and in any particular case, give directions setting later time limits than those prescribed in these Regulations for the taking of any step or the doing of any thing which is required or enabled to be taken or done by virtue of these Regulations; and

references in these Regulations to a period within which any step or thing is required or enabled to be taken or done shall be construed accordingly.

(2) The Secretary of State or an inspector may, at any time before the notification of her decision in the case of an appeal to be determined by way of written representations or, in the case of a hearing or inquiry, before the close of that hearing or inquiry, request from any person making written representations or appearing at the hearing or inquiry (as the case may be) copies of—

- (a) a statement of case or comments sent in accordance with regulations 9 or 11;
- (b) a proof of evidence sent in accordance with regulation 28; or
- (c) any other document or information sent to the Secretary of State or inspector before or during a hearing or inquiry;

and may specify a reasonable time within which such copies should be received by her, and any person so requested shall ensure that the copies are received within the period specified.

Inspection and copying of documents

39. The access authority shall afford any person who so requests, an opportunity, at such time and place as the access authority may reasonably determine, to inspect and, where practicable, take copies of—

- (a) the notice of appeal submitted by the appellant pursuant to regulation 4(1);
- (b) the questionnaire completed by the authority pursuant to regulation 6(a) together with any documents referred to in it;
- (c) any representations made to the authority as mentioned in regulation 6(b);
- (d) the notice given by the Secretary of State pursuant to regulation 7;
- (e) all documents submitted by the authority pursuant to regulations 8, 9(a) and 11(b);
- (f) the statement of case submitted by the appellant pursuant to regulation 9(b), the comments submitted by the appellant pursuant to regulation 11(a) and the further information provided by the appellant, the authority or an interested person pursuant to regulation 12;
- (g) any representations made to the Secretary of State in respect of the appeal under regulation 9(c);
- (h) any proof of evidence (together with any written summary) sent by or to the authority pursuant to regulation 28; or
- (i) any statement of common ground prepared by the appellant and the authority pursuant to regulation 29.

Changes of procedure

40.—(1) If, at any time before the Secretary of State or the inspector notifies under regulation 15 her decision on an appeal, the appellant, the access authority or the Secretary of State wishes the appeal to be determined no longer by way of written representations but instead by way of a hearing or inquiry, the Secretary of State shall arrange for the appeal to proceed by way of a hearing or inquiry.

(2) Paragraphs (3) and (4) below apply at any time before the Secretary of State, under regulation 23 or 35, or an inspector, under regulation 24 or 36, notifies her decision on an appeal.

(3) If the appellant or the access authority wish an appeal to be determined no longer by way of a hearing or inquiry but instead by way of written representations, the Secretary of State shall consult the other party, and, if both that party 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.

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(4) If the appellant, the access authority 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 shall, after consulting the other party or, where the Secretary of State wishes the appeal procedure to be changed, both the parties, decide whether the hearing or inquiry (as the case may be) should be no longer proceed and an inquiry or hearing (as appropriate) be held instead.

(5) Where the appeal procedure is changed by the Secretary of State under this regulation –

- (a) the Secretary of State shall –
 - (i) notify the appellant, the access authority, the local access forum and any interested person of such change, and
 - (ii) ensure that a copy of such notice is available for inspection on a website maintained by the Planning Inspectorate Executive Agency until the appeal is determined;
- (b) any step taken or thing done under these Regulations in relation to the former appeal procedure which could have been taken done under any corresponding provision of these Regulations 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 any consequential directions as to the procedure to be applied in relation to the appeal as she may consider necessary.

Recovery of jurisdiction

41. Where the appointment of an appointed person is revoked under paragraph 2(c) of Schedule 3 to the Act and no new appointment is made at the time of such revocation, the appeal shall proceed as an appeal which falls to be determined by the Secretary of State instead of as a transferred appeal, and any step taken or thing done under these Regulations in relation to the transferred appeal which could have been taken or done in relation to an appeal which falls to be determined by the Secretary of State shall have effect as if it had been taken or done in relation to such an appeal.

Procedure following quashing of a decision

42.—(1) Where the decision of the Secretary of State or an inspector in respect of an appeal is quashed in proceedings before any court, the Secretary of State –

- (a) shall send to the appellant, the access authority and any interested person a written statement of the matters with respect to which further representations are invited for the purposes of her further consideration of the appeal;
- (b) shall afford to those persons the opportunity of making written representations to her in respect of those matters or of asking for the re-opening of the hearing or the inquiry, and
- (c) may, as she thinks fit, cause the hearing or inquiry to be re-opened and, if she re-opens the hearing or inquiry, paragraphs (3) to (8) of regulation 16 and paragraphs (3) to (8) of regulation 27 shall apply as if the references to a hearing or inquiry were references to a re-opened hearing or inquiry respectively.

(2) Those persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the written statement sent under paragraph (1)(a).

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9th December 2004

Alun Michael
Minister of State,
Department for Environment, Food and Rural
Affairs

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EXPLANATORY NOTE

(This note is not part of the Regulations)

Part I (sections 1-46) of the Countryside and Rights of Way Act 2000 (“the Act”) makes provision for access to the countryside.

Section 35 of the Act relates to agreements between access authorities and owners and occupiers of land with respect to the means of access to access land.

Section 36(3) of the Act provides that, if an owner or occupier fails to observe any restriction in an agreement under section 35 of the Act, the access authority may give him notice to carry out works to remedy the breach of the restriction.

Section 37 of the Act enables an access authority to carry out works to provide means of access to access land where the authority are satisfied that they are unable to conclude on reasonable terms an agreement under section 35 of the Act. Before carrying out those works the access authority must, under section 37(1) of the Act, give notice to the owner and occupier that the authority intend to carry out the works specified in the notice.

Section 38(1) of the Act gives the owner and occupier the right to appeal against a notice under section 36(3) or 37(1).

These Regulations provide for the period within which, and the manner in which, appeals under section 38(1) of the Act are to be brought and also make provision for the advertising of these appeals and for the appeal procedures. In particular—

- (a) Part 2 (regulations 4-12) of these Regulations relate to the initial stages of an appeal and include provision that—
 - (i) appeals are to be made by notice on a form obtained from the Secretary of State (regulation 4(1));
 - (ii) an appeal against a notice under section 36(3) of the Act shall be made within the period specified in that notice within which the works specified in that notice are to be carried out (regulation 4(2)(a)); and
 - (iii) an appeal against a notice under section 37(1) of the Act shall be made within the period specified in that notice after which the access authority intend to carry out the works specified in that notice (regulation 4(2)(b));
- (b) Part 3, Chapters I to III (regulations 13-36) of these Regulations relate to the determination of these appeals and set out the procedures for—
 - (i) appeals to be determined on the basis of written representations (Chapter I, regulations 13-15);
 - (ii) appeals to be determined by way of a hearing (Chapter II, regulations 16-24); and
 - (iii) appeals to be determined by way of an inquiry (Chapter III, regulations 25-36).
- (c) Part 3, Chapter IV (regulations 37-42) of these Regulations contains general provisions, including provision for allowing further time for taking any step required by these Regulations (regulation 38) and provision for the inspection and copying of documents (regulation 39).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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