

2007 No. 571

TRANSPORT AND WORKS

TRANSPORT

CANALS AND INLAND WATERWAYS

**The Transport and Works (Scotland) Act 2007 (Inquiries and
Hearings Procedure) Rules 2007**

Made - - - - - *18th December 2007*

Coming into force - - - - - *28th December 2007*

ARRANGEMENT OF RULES

PART 1

INTRODUCTORY

1. Citation and commencement
2. Interpretation
3. Application of Rules
4. Allowing further time

PART 2

INQUIRIES

5. Preliminary action to be taken by the Scottish Ministers
6. Preliminary action where an official representation has been made
7. Service of statements of case, etc
8. Pre-inquiry meetings
9. Inquiry timetable
10. Notification of appointment of assessor
11. Date and notification of inquiry
12. Appearances at inquiry
13. Representation of Scottish Administration at inquiry
14. Precognitions
15. Statement of common ground
16. Procedure at inquiry
17. Site inspections
18. Procedure after inquiry

19. Notification of decision
20. Procedure following quashing of decision

PART 3 HEARINGS

21. Preliminary action to be taken by the Scottish Ministers
22. Preliminary action where an official representation has been made
23. Service of hearing statements, etc
24. Notification of appointment of assessor
25. Date and notification of hearing
26. Appearances at hearing
27. Representation of Scottish Administration at hearing
28. Procedure at hearing
29. Site inspections
30. Procedure after hearing
31. Notification of decision
32. Procedure following quashing of decision

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 10(1) and (2) and 28(6) of the Transport and Works (Scotland) Act 2007^(a) and all other powers enabling them to do so.

In accordance with section 10(5) of that Act, they have consulted with the Council on Tribunals and that Council has consulted its Scottish Committee.

In accordance with section 28(4) and (5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1 INTRODUCTORY

Citation and commencement

1. These Rules may be cited as the Transport and Works (Scotland) Act 2007 (Inquiries and Hearings Procedure) Rules 2007 and come into force on 28th December 2007.

Interpretation

2.—(1) In these Rules—

“the Act” means the Transport and Works (Scotland) Act 2007;

“applicant” means any person who has submitted an application to the Scottish Ministers in accordance with rules made under section 4 of the Act or, in the case where the Scottish Ministers have made a proposal for an order by virtue of section 6 of the Act, the Scottish Ministers;

“application” means an application made under section 4 of the Act for an order or the publication of a notice by the Scottish Ministers of a proposal to make an order by virtue of section 6 of the Act;

(a) 2007 asp 8.

“assessor” means a person appointed by the Scottish Ministers to sit with a reporter at an inquiry or re-opened inquiry, or a hearing or re-opened hearing (as the case may require), to advise the reporter on such matters arising as the Scottish Ministers may specify;

“by local advertisement” means, in relation to the publication of a notice, by publication of the notice in at least one newspaper circulating in the locality, or each of the localities, in which the land to which an application relates is situated;

“document” includes a photograph, map or plan;

“hearing” means any hearing to which these Rules apply by virtue of rule 3(2);

“hearing statement” means a written statement containing full particulars of the case which a person proposes to put forward at a hearing (including, where that person is the applicant, the reasons for submitting the application), together with a list of any documents which that person intends to refer to or put in evidence;

“inquiry” means a public local inquiry to which these Rules apply by virtue of rule 3(1);

“national development” has the same meaning as in section 13(2) of the Act;

“official case” means a written statement by any part of the Scottish Administration setting out full particulars of its evidence in regard to an application;

“official representation” means a written objection or representations made by any part of the Scottish Administration in regard to an application;

“order” means an order under section 1 of the Act;

“precognition” means a written statement of the evidence which it is proposed that a person will give to an inquiry;

“pre-inquiry meeting” means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where more than one such meeting is held references to the conclusion of the pre-inquiry meeting are references to the conclusion of the final meeting;

“re-opened hearing” means a hearing which is re-opened in accordance with rules 30 or 32 (as the case may require);

“re-opened inquiry” means an inquiry which is re-opened in accordance with rules 18 or 20 (as the case may require);

“reporter” means a person appointed by the Scottish Ministers to hold an inquiry or a re-opened inquiry or a hearing or a re-opened hearing (as the case may require);

“starting date” means—

- (a) in rules 6, 7 and 11, the date of the Scottish Ministers’ written notice under rule 5 that an inquiry is to be held; and
- (b) in rules 22, 23 and 25, the date of the Scottish Ministers’ written notice under rule 21 that a hearing is to be held;

“statement of case” means a written statement containing full particulars of the case which a person proposes to put forward at an inquiry (including, where that person is the applicant, the reasons for submitting the application), together with a list of any documents which that person intends to refer to or put in evidence;

“statement of common ground” means a written statement prepared jointly by the applicant and any other party who wishes to participate in the inquiry, which contains factual information agreed between those persons about any proposal which is the subject of the application in question;

“statement of matters” means a statement by the Scottish Ministers of the matters about which they particularly wish to be informed for the purposes of their consideration of the order in question;

“statutory body” means a body, not being part of the Scottish Administration, which has been given by a public general Act of Parliament, or a public general Act of the Scottish Parliament, functions relevant to the subject matter of the application; and

“statutory objector” means a person within section 9(4) of the Act who has made an objection in regard to an application which, in accordance with section 9(3) of the Act, must be referred to an inquiry or dealt with at a hearing.

(2) Where the Scottish Ministers are the applicant these Rules shall be construed so as not to require that—

- (a) the Scottish Ministers shall serve a document upon themselves; or
- (b) they shall consult or agree with themselves upon any matter; or
- (c) any other person shall serve a document upon the Scottish Ministers more than once.

Application of Rules

3.—(1) Part 2 of these Rules shall apply in relation to any inquiry which is caused to be held pursuant to section 9 of the Act by the Scottish Ministers.

(2) Part 3 of these Rules shall apply in relation to any hearing which is caused to be held under section 9(2) of the Act.

Allowing further time

4. The Scottish Ministers may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Rules (including any step which they are required or enabled to take themselves), and references in these Rules to a day by which, or a period within which, any step is required or enabled to be taken shall be construed accordingly.

PART 2 INQUIRIES

Preliminary action to be taken by the Scottish Ministers

5.—(1) Where the Scottish Ministers intend to cause an inquiry to be held, they shall, not later than 3 weeks after the date specified in paragraph (2), give written notice of that intention to the applicant, to each statutory objector, to any statutory body which has submitted an objection (unless such objection has been withdrawn) and to any part of the Scottish Administration which has made an official representation.

(2) The date referred to in paragraph (1) is the date of expiry of the period within which an objection to the application may be made.

Preliminary action where an official representation has been made

6. Where any part of the Scottish Administration has made an official representation it shall (unless it has already done so) serve upon the Scottish Ministers, the applicant and any statutory objector an official case within 4 weeks of the starting date.

Service of statements of case, etc

7.—(1) The applicant shall not later than 4 weeks after the starting date serve a statement of case on the Scottish Ministers and on each statutory objector and each person who is required to serve a statement of case under paragraph (3).

- (2) In addition to the statement of case served under paragraph (1), the applicant shall serve—
- (a) upon the Scottish Ministers a copy of every document or the relevant part of any document which the applicant intends to refer to or put in evidence and of the notice mentioned in sub-paragraph (b); and
 - (b) upon each statutory objector and each person who is required to serve a statement of case under paragraph (3) a notice giving the names of all places, within each area in which the proposals contained in the application are to have effect (or as close as reasonably possible to any such area), where a copy of every document or the relevant part of any document which the applicant intends to refer to or put in evidence may be inspected free of charge at all reasonable hours until the date of commencement of the inquiry.
- (3) When required by notice in writing from the Scottish Ministers to do so—
- (a) a statutory objector; or
 - (b) any other person who has notified the Scottish Ministers of an intention or wish to appear at the inquiry,

shall within 4 weeks from the date of such notice serve a statement of case on the Scottish Ministers, on the applicant and on any other person specified in such notice and the Scottish Ministers shall, as soon as practicable, notify the applicant of the name and address of each person required to serve a statement of case.

(4) In addition to the statement of case served under paragraph (3), every person mentioned in paragraph (3)(a) and (b) shall serve upon the Scottish Ministers and the applicant a copy of every document or the relevant part of any document which such person intends to refer to or put in evidence unless copies of the document or part of the document are available for inspection pursuant to paragraph (9).

- (5) Any person who has served a statement of case in accordance with this rule shall—
- (a) when required by notice in writing from the Scottish Ministers or the reporter provide such further information about the matters contained in the statement as the Scottish Ministers or reporter may specify; and
 - (b) at the same time send a copy of such further information to any other person on whom the statement of case has been served.

(6) The Scottish Ministers shall, within 8 weeks from the starting date, serve a statement of matters on the applicant, each statutory objector and any person from whom they have required a statement of case.

(7) The Scottish Ministers may amend a statement of matters served under paragraph (6) at any time up to 4 weeks before the commencement of the inquiry.

(8) Any person who has served a statement of case in accordance with this rule and who wishes to comment on another person's statement of case shall, not later than 4 weeks before the date fixed for the commencement of the inquiry, send further comments in writing to the Scottish Ministers, the applicant and the person whose statement of case is the subject of the comment if that person is not the applicant.

(9) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and subject to payment by that person of a reasonable charge, take copies of any statement or document which, or a copy of which, has been served on or by the applicant in accordance with any of the preceding paragraphs of this rule; and shall specify in the applicant's statement of case the time and place at which the opportunity will be afforded.

Pre-inquiry meetings

8.—(1) The reporter may hold a pre-inquiry meeting if the reporter thinks it desirable.

(2) The reporter shall arrange for not less than 2 weeks' written notice of a meeting pursuant to paragraph (1) to be given to the applicant, each statutory objector, any other person known at the date of the notice to be entitled to appear at the inquiry, and any other person whose presence at the meeting appears to the reporter to be desirable.

(3) The reporter shall preside at the pre-inquiry meeting and shall determine the matters to be discussed and the procedure to be followed; and the reporter may require any person present at the pre-inquiry meeting who, in the reporter's opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit that person to return or attend only on such conditions as the reporter may specify.

(4) The reporter may at any time hold such other meetings (including pre-inquiry meetings) as the reporter considers necessary for the efficient and expeditious conduct of the inquiry and the reporter shall arrange for such notice to be given of such meetings as appears to the reporter to be necessary; and paragraph (3) shall apply to such meetings.

Inquiry timetable

9.—(1) Where a pre-inquiry meeting is held pursuant to rule 8 the reporter may arrange a timetable for the proceedings at, or at part of, the inquiry and may at any time vary the timetable.

(2) A reporter may specify in a timetable arranged under paragraph (1) a date by which any precognition and summary required by rule 14(1) to be sent to the reporter shall be so sent.

Notification of appointment of assessor

10. Where the Scottish Ministers appoint an assessor, they shall notify the persons specified in rule 12(1) of the assessor's name and of the matters on which the assessor is to advise the reporter.

Date and notification of inquiry

11.—(1) The date fixed by the Scottish Ministers for the commencement of an inquiry shall be determined in consultation with the applicant but shall be—

- (a) not later than 14 weeks after the starting date;
- (b) in a case where a pre-inquiry meeting is held pursuant to rule 8, not later than 6 weeks after the conclusion of the meeting; or
- (c) where the Scottish Ministers are satisfied that in all the circumstances of the case it is impracticable to commence the inquiry within the applicable period mentioned in sub-paragraph (a) or (b), the earliest practicable date after the end of that period.

(2) The place at which the inquiry is to be held shall be determined by the Scottish Ministers in consultation with the applicant and where the Scottish Ministers are satisfied, having regard to the nature of the application, that it is reasonable to do so they may direct that it shall be held at more than one place.

(3) Unless the Scottish Ministers agree to a lesser period of notice with the applicant and each statutory objector, they shall give not less than 4 weeks' notice of the date, time and place fixed by them for the holding of an inquiry to every person specified in rule 12(1).

(4) The Scottish Ministers may—

- (a) vary the date fixed for the commencement of an inquiry whether or not the revised date is within the applicable period mentioned in paragraph (1); and
- (b) where a direction has been given under paragraph (2) vary the date of the holding of the inquiry at any place,

and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

(5) The Scottish Ministers may vary the time or place for the holding of an inquiry and shall give such notice of any such variation as appears to them to be reasonable.

(6) Unless the Scottish Ministers otherwise direct, and subject to paragraph (7), the applicant shall not later than 2 weeks before the date fixed for the commencement of an inquiry—

- (a) post a notice of the inquiry 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 reasonably practicable to, the land to which the powers sought in the application relate;

- (b) post a notice of the inquiry in one or more places where public notices are usually posted in the area in which the proposals contained in the application relate; and
- (c) publish a notice of the inquiry by local advertisement in the area in which the proposals contained in the application are to have effect.

(7) Where a direction has been given under paragraph (2), paragraph (6) shall have effect with the substitution—

- (a) for references to the inquiry, of references to the part of the inquiry 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 inquiry.

(8) Any notice posted pursuant to paragraph (6)(a) or (b) shall be readily visible to and legible by members of the public provided that where the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the commencement of the inquiry, 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.

(9) Any notice of the inquiry posted or published pursuant to paragraph (6) shall contain a statement of the date, time and place of the inquiry, and of the relevant section of the Act under which the application has been made, together with a sufficient description of the proposals in the application to identify their location with or without reference to a specified map.

Appearances at inquiry

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

- (a) the applicant;
- (b) any statutory objector; and
- (c) any other person who has served a statement of case under rule 7.

(2) Nothing in paragraph (1) shall prevent the reporter from permitting any other person to appear at an inquiry, and such permission shall not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on that person's own behalf or be represented by counsel, a solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the reporter may allow one or more persons to appear on behalf of some or all of any persons so interested.

Representation of Scottish Administration at inquiry

13.—(1) Any part of the Scottish Administration which has provided an official case shall arrange for its representative to attend the inquiry if that part of the Scottish Administration has received, not later than 4 weeks before the date fixed for the commencement of any inquiry, a written request for such attendance from the Scottish Ministers, the applicant or a statutory objector.

(2) A person attending an inquiry as a representative in pursuance of this rule shall give evidence and be subject to cross-examination to the same extent as any other witness.

(3) Nothing in paragraph (2) shall require a representative of any part of the Scottish Administration to answer any question which in the opinion of the reporter is directed to—

- (a) the merits of government policy; or
- (b) in the case of any inquiry into an application to which section 13(3) of the Act may apply by virtue of section 13(1)(a) of the Act, the merits of the carrying out of work which would be authorised by the order constituting a national development.

Precognitions

14.—(1) A person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a precognition shall send to the reporter a copy of the precognition and (subject to paragraph (2)) a written summary of it.

(2) No written summary shall be required where the precognition which it is proposed to read contains no more than 1500 words.

(3) The precognition and summary shall be sent to the reporter not later than—

- (a) 4 weeks before the date fixed for the commencement of the inquiry;
- (b) where a timetable has been arranged pursuant to rule 9, which specifies a date by which the precognition and summary shall be sent to the reporter, that date; or
- (c) by such other date as the reporter may specify.

(4) Where the applicant sends a precognition and a summary to a reporter in accordance with paragraph (1), the applicant shall at the same time send a copy to every other person specified in rule 12(1); and where any other person so sends such a precognition and summary that person shall at the same time send a copy to the applicant.

(5) Unless paragraph (2) applies, only the summary shall be read at the inquiry unless the reporter permits or requires otherwise.

(6) Subject to paragraph (7), any person required by this rule to send a precognition to any other person shall send with it a copy of the whole, or the relevant part, of any document referred to in it, unless copies of the document or part of the document in question are already available for inspection pursuant to rule 7(9).

(7) Where any person has confirmed to the applicant in writing that that person does not wish to be sent a copy of, or a copy of part of, a precognition, summary or other document that the applicant is required to send, the applicant shall not be required to send that person that document or the relevant part of it.

(8) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of any document sent to or by the applicant in accordance with any of the preceding paragraphs of this rule.

Statement of common ground

15.—(1) Where practicable, the applicant and any other party who wishes to participate in the inquiry may together prepare an agreed statement of common ground, and where this is done the applicant shall send a copy of such statement to the reporter no later than 4 weeks before the date fixed for the commencement of the inquiry.

(2) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of any statement of common ground prepared under paragraph (1).

Procedure at inquiry

16.—(1) Except as otherwise provided in these Rules, the reporter shall determine the procedure at an inquiry and shall state at the commencement of the inquiry the procedure the reporter proposes to adopt subject to consideration of any submission by any of the persons specified in rule 12(1).

(2) Unless in any particular case the reporter with the consent of the applicant otherwise determines, the applicant shall begin and shall have the right of final reply and other persons entitled or permitted to appear shall be heard in such order as the reporter may determine.

(3) Persons specified in rule 12(1) shall be entitled to call evidence, and the applicant and the statutory objectors shall be entitled to cross-examine persons giving evidence, but, subject to paragraphs (2), (4), (5), and (8), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the reporter's discretion.

- (4) The reporter may refuse to permit—
- (a) the giving or production of evidence;
 - (b) the cross-examination of persons giving evidence; or
 - (c) the presentation of any other matter,

which the reporter considers to be irrelevant or repetitious but, where the reporter refuses to permit the giving of oral evidence for these reasons, the person wishing to give evidence may submit to the reporter in writing any such evidence or other matter before the close of the inquiry.

(5) Where a person gives evidence at an inquiry by reading a summary in accordance with rule 14(5), the precognition referred to in rule 14(1) and the documents referred to in rule 14(6) shall, unless the person required to provide the summary notifies the reporter that that person now wishes to rely on the contents of that summary only, be treated as tendered in evidence, and the person whose evidence the precognition contains shall then be subject to cross-examination on it to the same extent as if it were evidence that person had given orally.

(6) The reporter may refuse to permit the cross-examination of persons giving evidence, or may require such cross-examination to cease, if it appears to the reporter that permitting such cross-examination or allowing it to continue (as the case may be) would have the effect that the timetable referred to in rule 9 could not be met.

(7) The reporter may direct the applicant to provide facilities so that any person appearing at an inquiry may take or obtain copies of documentary evidence open to public inspection, subject to such a person paying to the applicant a reasonable charge for the use of the facilities.

(8) The reporter may require any person appearing or present at an inquiry who, in the reporter's opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit that person to return only on such conditions as the reporter may specify; but any such person may submit to the reporter in writing any evidence or other matter before the close of the inquiry.

(9) The reporter may proceed with an inquiry in the absence of any person specified in rule 12(1).

(10) The reporter may allow any person to alter or add to a statement of case served under rule 7 so far as may be necessary for the purpose of the inquiry; but the reporter shall (if necessary by adjourning the inquiry) give every other person specified in rule 12(1) an adequate opportunity of considering any fresh matter or document.

(11) The reporter may take into account any written representation or evidence or any other document received by the reporter from any person before an inquiry opens or during the inquiry provided that the reporter discloses it either, where practical, in advance of the inquiry by circulating copies of the documents or otherwise, at the inquiry, by ensuring that copies are available for inspection.

- (12) The reporter may from time to time adjourn an inquiry, and
- (a) if at the inquiry the reporter announces the date, time and place for reconvening the adjourned inquiry no further notice shall be required, but
 - (b) if the reporter makes no such announcement the reporter shall give such notice as the reporter considers reasonable and appropriate.

(13) Any person who appears at an inquiry and makes a closing submission shall by the close of the inquiry, or by such later time (if any) as the reporter may permit, provide the reporter with a copy of that person's closing submission in writing.

Site inspections

17.—(1) The reporter may make an unaccompanied inspection of any site to which the application relates before or during an inquiry without giving notice of the reporter's intention to the persons specified in rule 12(1).

(2) The reporter may, during an inquiry or after its close, inspect such a site in the company of a representative of—

- (a) the persons specified in rule 12(1); and
- (b) any other person permitted to appear at the inquiry pursuant to rule 12(2),

and the reporter shall make such an inspection if so requested by the applicant or by any statutory objector before or during an inquiry.

(3) In all cases where the reporter intends to make an inspection of the kind referred to in paragraph (2) the reporter shall announce during the inquiry the date and time at which the reporter proposes to make it.

(4) The reporter shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after inquiry

18.—(1) After the close of an inquiry, the reporter shall make a report in writing to the Scottish Ministers, which shall include the reporter's findings of fact, conclusions and recommendations or the reporter's reasons for not making any recommendations.

(2) Where an assessor has been appointed, the assessor may, after the close of the inquiry, make a report in writing to the reporter in respect of the matters on which the assessor was appointed to advise.

(3) Where an assessor makes a report in accordance with paragraph (2), the reporter shall append it to the reporter's own report and shall state in the reporter's own report how far the reporter agrees or disagrees with the assessor's report and, where the reporter disagrees with the assessor, the reporter's reasons for that disagreement.

(4) When making their decision the Scottish Ministers may disregard any written representations, evidence or any other document received after the close of the inquiry.

(5) If, after the close of an inquiry, the Scottish Ministers—

- (a) differ from the reporter on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the reporter; or
- (b) take into consideration any new evidence or new matter of fact (not being a matter of government policy),

and are for that reason disposed to disagree with a recommendation made by the reporter, they shall not come to a decision which is at variance with that recommendation without first notifying such of the persons specified in rule 12(1) who appear to them to be likely to be affected by that, and who have appeared at the inquiry, of their disagreement and the reasons for it.

(6) The Scottish Ministers shall afford each person to be notified pursuant to paragraph (5) an opportunity either of making written representations to the Scottish Ministers within 3 weeks of the date of the notification, or (if the Scottish Ministers have taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking within that period for the re-opening of the inquiry.

(7) The Scottish Ministers may, if they think fit, cause an inquiry to be re-opened, and they shall do so if asked by the applicant or a statutory objector in the circumstances and within the period mentioned in paragraph (6); and where an inquiry is re-opened (whether by the same or a different reporter)—

- (a) the Scottish Ministers shall send to the persons specified in rule 12(1) who appeared at the inquiry a written statement of the matters in respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of rule 11 shall apply—
 - (i) as if references to an inquiry were references to a re-opened inquiry; and
 - (ii) as if the words “whether or not the revised date is within the applicable period mentioned in paragraph (1)” were omitted from paragraph (4)(a).

Notification of decision

19.—(1) Where the Scottish Ministers have published and given notice of their decision under section 12 of the Act and a copy of the reporter’s report is not sent with the notification of the decision, the notification shall be accompanied by a copy of the reporter’s conclusions and any recommendations made by the reporter.

(2) Subject to paragraph (3) if a person entitled to be notified of the decision under section 12 of the Act has not received a copy of the reporter’s report, that person shall be supplied with a copy of it on written request to the Scottish Ministers.

(3) Any person making a request to the Scottish Ministers under paragraph (2) shall send a request to the Scottish Ministers within 4 weeks of the date of the Scottish Ministers’ decision.

(4) In this rule “reporter’s report” includes any assessor’s report appended to it but does not include any other documents so appended, but any person who has received a copy of the reporter’s report may apply to the Scottish Ministers in writing within 6 weeks of the date of the Scottish Ministers’ decision, for an opportunity of inspecting any such documents and the Scottish Ministers shall afford that person that opportunity.

Procedure following quashing of decision

20.—(1) Where a decision of the Scottish Ministers on an application in respect of which an inquiry has been held is quashed in proceedings before any court, the Scottish Ministers—

- (a) shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further representations are invited for the purpose of the Scottish Ministers further consideration of the application;
- (b) shall afford to those persons the opportunity of making written representations to the Scottish Ministers in respect of those matters or of asking for the re-opening of the inquiry; and
- (c) may, if the Scottish Ministers think fit, cause the inquiry to be re-opened (whether by the same or a different reporter) and if they do so paragraphs (2) to (9) of rule 11 shall apply—
 - (i) as if references to any inquiry were references to a re-opened inquiry; and
 - (ii) as if the words “whether or not the revised date is within the applicable period mentioned in paragraph (1)” were omitted from paragraph (4)(a).

(2) Any persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) shall submit such representations or requests to the Scottish Ministers within 3 weeks of the date of the written statement sent under paragraph (1)(a).

PART 3

HEARINGS

Preliminary action to be taken by the Scottish Ministers

21.—(1) Where the Scottish Ministers intend to cause a hearing to be held, they shall, not later than 3 weeks after the date specified in paragraph (2), give written notice of that intention to the applicant and to each person whose objection is or representations are to be dealt with at the hearing and to any part of the Scottish Administration which has made an official representation.

(2) The date referred to in paragraph (1) is the date of expiry of the period within which an objection to the application may be made.

Preliminary action where an official representation has been made

22. Where any part of the Scottish Administration has made an official representation it shall (unless it has already done so) serve upon the Scottish Ministers, the applicant and each other

person whose objection is or representations are to be dealt with at the hearing an official case within 4 weeks of the starting date.

Service of hearing statements, etc

23.—(1) The applicant shall not later than 4 weeks after the starting date serve a hearing statement on the Scottish Ministers and on each person whose objection is or representations are to be dealt with at the hearing.

(2) In addition to the hearing statement served under paragraph (1), the applicant shall serve—

- (a) upon the Scottish Ministers a copy of every document or the relevant part of any document which the applicant intends to refer to or put in evidence and of the notice mentioned in sub-paragraph (b); and
- (b) upon each person whose objection is or representations are to be dealt with at the hearing a notice giving the names of all places, within each area in which the proposals contained in the application are to have effect (or as close as reasonably possible to any such area), where a copy of every document or the relevant part of any document which the applicant intends to refer to or put in evidence may be inspected free of charge at all reasonable hours until the date of commencement of the hearing.

(3) If required by notice in writing from the Scottish Ministers to do so any person whose objection is or representations are to be dealt with at the hearing shall within 4 weeks from the date of such notice serve a hearing statement on the Scottish Ministers, on the applicant and on any other person specified in such notice and the Scottish Ministers shall, as soon as practicable, notify the applicant of the name and address of each person required to serve a hearing statement.

(4) In addition to the hearing statement served under paragraph (3), every person who is required under that paragraph to serve a hearing statement shall serve upon the Scottish Ministers and the applicant a copy of every document or the relevant part of any document which such person intends to refer to or put in evidence unless copies of the document or part of the document are available for inspection pursuant to paragraph (7).

(5) Any person who has served a hearing statement in accordance with this rule shall—

- (a) when required by notice in writing from the Scottish Ministers or the reporter provide such further information about the matters contained in the statement as the Scottish Ministers or reporter may specify; and
- (b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.

(6) Any person who has served a hearing statement in accordance with this rule and who wishes to comment on another person's hearing statement shall, not later than 4 weeks before the date fixed for the commencement of the hearing, send further comments in writing to the Scottish Ministers, the applicant and the person whose hearing statement is the subject of the comment if that person is not the applicant.

(7) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and subject to payment by that person of a reasonable charge, take copies of any statement or document which, or a copy of which, has been served on or by the applicant in accordance with any of the preceding paragraphs of this rule; and shall specify in the applicant's hearing statement the time and place at which the opportunity will be afforded.

Notification of appointment of assessor

24. Where the Scottish Ministers appoint an assessor, they shall notify the persons specified in rule 26(1) of the assessor's name and of the matters on which the assessor is to advise the reporter.

Date and notification of hearing

25.—(1) The date fixed by the Scottish Ministers for the commencement of a hearing shall be determined in consultation with the applicant but shall be—

- (a) not later than 14 weeks after the starting date; or
- (b) where the Scottish Ministers are satisfied that in all the circumstances of the case it is impracticable to commence the hearing within the period mentioned in sub-paragraph (a), the earliest practicable date after the end of that period.

(2) The place at which the hearing is to be held shall be determined by the Scottish Ministers in consultation with the applicant and where the Scottish Ministers are satisfied, having regard to the nature of the application, that it is reasonable to do so they may direct that it shall be held at more than one place.

(3) Unless the Scottish Ministers agree to a lesser period of notice with the applicant and each statutory objector, they shall give not less than 4 weeks' notice of the date, time and place fixed by them for the holding of a hearing to every person specified in rule 26(1).

(4) The Scottish Ministers may—

- (a) vary the date fixed for the holding of a hearing whether or not the revised date is within the applicable period mentioned in paragraph (1); and
- (b) where a direction has been given under paragraph (2) vary the date of the holding of the hearing at any place,

and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

(5) The Scottish Ministers may vary the time or place for the holding of a hearing and shall give such notice of any such variation as appears to them to be reasonable.

(6) Unless the Scottish Ministers otherwise direct, and subject to paragraph (7), the applicant shall not later than 2 weeks before the date fixed for the commencement of a hearing—

- (a) post 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 reasonably practicable to, the land to which the powers sought in the application relate;
- (b) post a notice of the hearing in one or more places where public notices are usually posted in the area in 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) Where a direction has been given under paragraph (2), 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.

(8) Any notice posted pursuant to paragraph (6)(a) or (b) shall be readily visible to and legible by members of the public provided that where the notice is, without any fault or intention of the applicant, 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.

(9) Any notice of the hearing posted or published pursuant to paragraph (6) shall contain a statement of the date, time and place of the hearing, and of the relevant section of the Act under which the application has been made, together with a sufficient description of the proposals in the application to identify their location with or without reference to a specified map.

Appearances at hearing

26.—(1) The persons entitled to appear at a hearing are—

- (a) the applicant; and
- (b) any other person whose objection is or representations are to be dealt with at the hearing.

(2) Nothing in paragraph (1) shall prevent the reporter from permitting any other person to appear at a hearing, and such permission shall not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on that person's own behalf or be represented by counsel, a solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing, the reporter may allow one or more persons to appear on behalf of some or all of any persons so interested.

Representation of Scottish Administration at hearing

27.—(1) Any part of the Scottish Administration which has provided an official case shall arrange for its representative to attend the hearing if that part of the Scottish Administration has received, not later than 4 weeks before the date fixed for the commencement of a hearing, a written request for such attendance from the Scottish Ministers, the applicant or a statutory objector.

(2) A person attending a hearing as a representative in pursuance of this rule shall give evidence and be subject to cross-examination to the same extent as any other witness.

(3) Nothing in paragraph (2) shall require a representative of any part of the Scottish Administration to answer any question which in the opinion of the reporter is directed to—

- (a) the merits of government policy; or
- (b) in the case of any hearing dealing with an objection or representations in relation to an application to which section 13(3) of the Act may apply by virtue of section 13(1)(a) of the Act, the merits of the carrying out of work which would be authorised by the order constituting a national development.

Procedure at hearing

28.—(1) Except as otherwise provided in these Rules, the reporter shall determine the procedure at a hearing and shall state at the commencement of the hearing the procedure the reporter proposes to adopt subject to consideration of any submission by any of the persons specified in rule 26(1).

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

(3) Where the reporter considers that cross-examination is required under paragraph (2) the reporter shall consider, after consulting the persons specified in rule 26(1), whether the hearing should be closed and a public local inquiry pursuant to section 9 of the Act held instead and if so the reporter shall advise the Scottish Ministers accordingly.

(4) At the start of the hearing the reporter shall identify what are, in the reporter's opinion, the main issues to be considered at the hearing and any matters on which the reporter requires further explanation from any person entitled or permitted to appear.

(5) Nothing in paragraph (4) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the application but which were not issues identified by the reporter pursuant to that paragraph.

(6) A person entitled to appear at a hearing shall be entitled to call evidence but, subject to paragraphs (7) and (9), the calling of evidence shall otherwise be at the reporter's discretion.

- (7) The reporter may refuse to permit—
- (a) the giving or production of evidence; or
 - (b) the presentation of any other matter,

which the reporter considers to be irrelevant or repetitious but, where the reporter refuses to permit the giving of oral evidence for these reasons, the person wishing to give evidence may submit to the reporter in writing any such evidence or other matter before the close of the hearing.

(8) The reporter may direct the applicant to provide facilities so that any person appearing at a hearing may take or obtain copies of documentary evidence open to public inspection, subject to such a person paying to the applicant a reasonable charge for the use of the facilities.

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

(10) The reporter may proceed with a hearing in the absence of any person specified in rule 26(1).

(11) The reporter may allow any person to alter or add to a hearing statement served under rule 23 so far as may be necessary for the purpose of the hearing; but the reporter shall (if necessary by adjourning the hearing) give every other person specified in rule 26(1) an adequate opportunity of considering any fresh matter or document.

(12) The reporter may take into account any written representation or evidence or any other document received by the reporter from any person before a hearing opens or during the hearing provided that the reporter discloses it either, where practical, in advance of the hearing by circulating copies of the documents or otherwise, at the hearing, by ensuring that copies are available for inspection.

- (13) The reporter may from time to time adjourn a hearing, and
- (a) if at the hearing the reporter announces the date, time and place for reconvening the adjourned hearing no further notice shall be required, but
 - (b) if the reporter makes no such announcement the reporter shall give such notice as the reporter considers reasonable and appropriate.

Site inspections

29.—(1) The reporter may make an unaccompanied inspection of any site to which the application relates before or during a hearing without giving notice of the reporter's intention to the persons specified in rule 26(1).

(2) The reporter may, during a hearing or after its close, inspect such a site in the company of a representative of—

- (a) the persons specified in rule 26(1); and
- (b) any other person permitted to appear at the hearing pursuant to rule 26(2),

and the reporter shall make such an inspection if so requested by the applicant or by any statutory objector before or during a hearing.

(3) In all cases where the reporter intends to make an inspection of the kind referred to in paragraph (2) the reporter shall announce during the hearing the date and time at which the reporter proposes to make it.

(4) The reporter shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after hearing

30.—(1) After the close of a hearing, the reporter shall make a report in writing to the Scottish Ministers, which shall include the reporter’s findings of fact, conclusions and recommendations or the reporter’s reasons for not making any recommendations.

(2) Where an assessor has been appointed, the assessor may, after the close of the hearing, make a report in writing to the reporter in respect of the matters on which the assessor was appointed to advise.

(3) Where an assessor makes a report in accordance with paragraph (2), the reporter shall append it to the reporter’s own report and shall state in the reporter’s own report how far the reporter agrees or disagrees with the assessor’s report and, where the reporter disagrees with the assessor, the reporter’s reasons for that disagreement.

(4) When making their decision the Scottish Ministers may disregard any written representations, evidence or any other document received after the close of the hearing.

(5) If, after the close of a hearing, the Scottish Ministers—

- (a) differ from the reporter on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the reporter; or
- (b) take into consideration any new evidence or new matter of fact (not being a matter of government policy),

and are for that reason disposed to disagree with a recommendation made by the reporter, they shall not come to a decision which is at variance with that recommendation without first notifying such of the persons specified in rule 26(1) who appear to them to be likely to be affected by that, and who have appeared at the hearing, of their disagreement and the reasons for it.

(6) The Scottish Ministers shall afford each person to be notified pursuant to paragraph (5) an opportunity either of making written representations to the Scottish Ministers within 3 weeks of the date of the notification, or (if the Scottish Ministers have taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking within that period for the re-opening of the hearing.

(7) The Scottish Ministers may, if they think fit, cause a hearing to be re-opened, and they shall do so if asked by the applicant or a statutory objector in the circumstances and within the period mentioned in paragraph (6); and where a hearing is re-opened (whether by the same or a different reporter)—

- (a) the Scottish Ministers shall send to the persons specified in rule 26(1) who appeared at the hearing a written statement of the matters in respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of rule 25 shall apply—
 - (i) as if references to a hearing were references to a re-opened hearing; and
 - (ii) as if the words “whether or not the revised date is within the applicable period mentioned in paragraph (1)” were omitted from paragraph (4)(a).

Notification of decision

31.—(1) Where the Scottish Ministers have published and given notice of their decision under section 12 of the Act and a copy of the reporter’s report is not sent with the notification of the decision, the notification shall be accompanied by a copy of the reporter’s conclusions and any recommendations made by the reporter.

(2) Subject to paragraph (3) if a person entitled to be notified of the decision under section 12 of the Act has not received a copy of the reporter’s report, that person shall be supplied with a copy of it on written request to the Scottish Ministers.

(3) Any person making a request to the Scottish Ministers under paragraph (2) shall send a request to the Scottish Ministers within 4 weeks of the date of the Scottish Ministers’ decision.

(4) In this rule “reporter’s report” includes any assessor’s report appended to it but does not include any other documents so appended, but any person who has received a copy of the reporter’s report may apply to the Scottish Ministers in writing within 6 weeks of the date of the Scottish Ministers’ decision, for an opportunity of inspecting any such documents and the Scottish Ministers shall afford that person that opportunity.

Procedure following quashing of decision

32.—(1) Where a decision of the Scottish Ministers on an application in respect of which a hearing has been held is quashed in proceedings before any court, the Scottish Ministers—

- (a) shall send to the persons entitled to appear at the hearing who appeared at it a written statement of the matters with respect to which further representations are invited for the purpose of the Scottish Ministers further consideration of the application;
- (b) shall afford to those persons the opportunity of making written representations to the Scottish Ministers in respect of those matters or of asking for the re-opening of the hearing; and
- (c) may, if the Scottish Ministers think fit, cause the hearing to be re-opened (whether by the same or a different reporter) and if they do so paragraphs (2) to (9) of rule 25 shall apply—
 - (i) as if references to any hearing were references to a re-opened hearing; and
 - (ii) as if the words “whether or not the revised date is within the applicable period mentioned in paragraph (1)” were omitted from paragraph (4)(a).

(2) Any persons making representations or asking for the hearing to be re-opened under paragraph (1)(b) shall submit such representations or requests to the Scottish Ministers within 3 weeks of the date of the written statement sent under paragraph (1)(a).

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
18th December 2007

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the procedures prior to, the conduct of proceedings during and the procedures after, a public local inquiry or hearing held pursuant to section 9 of the Transport and Works (Scotland) Act 2007. These relate to applications or proposals for orders under section 1 of that Act to authorise transport systems and inland waterways.

Part 1 of the Rules makes introductory provision.

Rule 4 provides for the extension of time limits for the taking of steps set out in the Rules.

Part 2 of the Rules applies in relation to inquiries.

Rule 5 imposes a requirement on the Scottish Ministers, where they cause an inquiry to be held, to notify the persons directly interested in the inquiry within a specified time period.

Rule 6 imposes requirements on the Scottish Administration to serve an official case comprising a statement of its evidence where an official representation has been made.

Rule 7 imposes requirements on the applicant and (where required by the Scottish Ministers) other persons with an interest in the inquiry to serve documents relevant to it. It also requires the Scottish Ministers to serve a statement of the matters about which they particularly wish to be informed for the purposes of their consideration of an order. It also makes provision for the supply of additional information and a right of any person to inspect information held by the applicant.

Rule 8 enables a reporter to hold a pre-inquiry meeting.

Rule 9 enables the reporter, where a pre-inquiry meeting is held, to arrange a timetable for the inquiry and to vary that timetable.

Rule 10 provides for the appointment of an assessor by the Scottish Ministers.

Rule 11 provides for fixing the date of, and the notification procedures relating to, an inquiry.

Rule 12 sets out those who may take part in an inquiry and rule 13 makes provision to require any part of the Scottish Administration which has provided an official case to attend the inquiry.

Rule 14 imposes a requirement on those giving (or calling another person to give) evidence to the inquiry to prepare a precognition. It also sets out requirements and service arrangements in this connection.

Rule 15 enables the applicant and any other party to prepare a statement of common ground and send it to the reporter 4 weeks before the inquiry.

Rule 16 provides for the procedure at an inquiry and rule 17 makes provision for the reporter to make unaccompanied and accompanied site visits.

Rule 18 provides for the procedure after an inquiry in respect of the production of the report of the inquiry by the reporter and the notification procedures to affected parties if the Scottish Ministers disagree with a matter of fact in the report or they are taking into consideration new evidence or a new matter of fact.

Rule 19 provides the procedure to make available the reporter's report when the Scottish Ministers have not supplied that report with the notification of their decision.

Rule 20 provides the procedure following the quashing by a court of the Scottish Ministers' decision in relation to an application or proposal for an order.

Part 3 of the Rules applies in relation to hearings.

Rule 21 imposes a requirement on the Scottish Ministers where they cause a hearing to be held to notify the persons directly interested in the hearing within a specified time period.

Rule 22 imposes requirements on the Scottish Administration to serve an official case comprising a statement of its evidence where an official representation is made.

Rule 23 imposes requirements on the applicant and (where required by the Scottish Ministers) any person whose objection or representations are to be dealt with at the hearing to serve documents relevant to it. It also makes provision for the supply of additional information and a right of any person to inspect information held by the applicant.

Rule 24 provides for the appointment of an assessor by the Scottish Ministers.

Rule 25 provides for fixing the date of, and the notification procedures relating to, a hearing.

Rule 26 sets out those who may take part in a hearing and rule 27 makes provision to require any part of the Scottish Administration which has provided an official case to attend the hearing.

Rule 28 provides for the procedure at a hearing and rule 29 makes provision for the reporter to make unaccompanied and accompanied site visits.

Rule 30 provides for the procedure after a hearing in respect of the production of the report of the hearing by the reporter and the notification procedures to affected parties if the Scottish Ministers disagree with a matter of fact in the report or they are taking into consideration new evidence or a new matter of fact.

Rule 31 provides the procedure to make available the reporter's report when the Scottish Ministers have not supplied that report with the notification of their decision.

Rule 32 provides the procedure following the quashing by a court of the Scottish Ministers decision in relation to an application or proposal for an order.

A Regulatory Impact Assessment has been prepared in respect of these rules. A copy can be obtained from the Scottish Government Transport Directorate, Victoria Quay, Edinburgh EH6 6QQ.

2007 No. 571

TRANSPORT AND WORKS

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CANALS AND INLAND WATERWAYS

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