

1974 No. 2068 (S.190)

TRIBUNALS AND INQUIRIES

**The Health and Safety Licensing Appeals (Hearings Procedure)
(Scotland) Rules 1974**

<i>Made</i>	- - -	<i>6th December 1974</i>
<i>Laid before Parliament</i>		<i>11th December 1974</i>
<i>Coming into Operation</i>		<i>1st January 1975</i>

The Lord Advocate, in exercise of the powers conferred upon him by section 11 of the Tribunals and Inquiries Act 1971(a) as amended by the Transfer of Functions (Secretary of State and Lord Advocate) Order 1972(b) and as applied by section 44(4) of the Health and Safety at Work etc. Act 1974(c), and after consultation with the Council on Tribunals, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Health and Safety Licensing Appeals (Hearings Procedure) (Scotland) Rules 1974 and shall come into operation on 1st January 1975.

Interpretation

2.—(1) In these Rules—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“appeal” means an appeal under section 44(1) of the 1974 Act;

“appellant” means a person who has brought an appeal;

“appointed person” means the person appointed by the Secretary of State to hold the hearing and, when so directed by the Secretary of State, to determine the appeal;

“hearing” means a hearing to which these Rules apply;

“licensing authority” means the authority against whose decision the appeal is brought;

(a) 1971 c.62. (b) S.I. 1972/2002 (1972 III, p.5957). (c) 1974 c.37.

“the parties” means the appellant and the licensing authority;

“the site” means the site to which the licence which is the subject of the appeal relates or would, if issued, relate.

(2) The Interpretation Act 1889(a) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Application of Rules

3. These Rules apply to hearings held in Scotland in pursuance of subsection (3) of section 44 of the 1974 Act on appeals brought under that section.

Notification of hearing

4.—(1) A date, time and place for the holding of the hearing shall be fixed and may be varied by the Secretary of State, who shall give not less than 42 days' notice in writing of such date, time and place to the parties:

Provided that—

- (i) with the consent of the parties, the Secretary of State may give such lesser period of notice as shall be agreed with the parties and in that event he may specify a date for service of the statement referred to in rule 5(1) later than the date therein prescribed;
- (ii) where it becomes necessary or advisable to vary the time or place fixed for the hearing the Secretary of State shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

(2) The notice given under paragraph (1) of this rule shall state the name of the appointed person and whether or not he is to determine the appeal on behalf of the Secretary of State.

(3) Without prejudice to the foregoing provisions of this rule, the Secretary of State may require the licensing authority to take one or more of the following steps, namely:—

- (a) to publish in one or more newspapers circulating in the locality in which the site is situated such notice of the hearing and in such form as he may direct;
- (b) to serve such notice of the hearing, in such form and on such persons or classes of persons as he may direct;
- (c) to give such other notice of the hearing and in such form as he may direct,

and the requirements as to the period of notice contained in paragraph (1) of this rule shall not apply to any such notices.

Statements to be served before hearing

5.—(1) Not later than 28 days before the date of the hearing (or such later date as the Secretary of State may specify under proviso (i) to paragraph (1) of

rule 4), the licensing authority shall serve on the appellant a written statement of any submission which the licensing authority propose to put forward at the hearing and shall supply a copy of the statement to the Secretary of State for transmission to the appointed person.

(2) Where a government department has expressed in writing to the licensing authority a view in support of the decision of the licensing authority and the licensing authority propose to rely on such expression of view in their submissions at the hearing, they shall include it in their statement and shall supply a copy of the statement to the government department concerned.

(3) Where the licensing authority intend to refer to or put in evidence at the hearing, documents (including photographs, maps and plans), the authority's statement shall be accompanied by a list of such documents, together with a notice stating the times and place at which the documents may be inspected by the appellant; and the licensing authority shall afford the appellant a reasonable opportunity to inspect and, where practicable, to take copies of the documents.

(4) The appellant shall, if so required by the Secretary of State—

(a) serve on the licensing authority and on the Secretary of State for transmission to the appointed person, within such time before the hearing as the Secretary of State may specify, a written statement of the submissions which he proposes to put forward at the hearing; and such statement shall be accompanied by a list of any documents (including photographs, maps and plans) which the appellant intends to refer to or put in evidence at the hearing; and

(b) afford the licensing authority a reasonable opportunity to inspect and, where practicable, to take copies of such documents as are referred to in the foregoing provision.

Appearances at hearing

6.—(1) The parties shall be entitled to appear at the hearing.

(2) Any other person may appear at the discretion of the appointed person provided that he has, not later than 7 days before the date of the hearing, served on the licensing authority a statement of his proposed submissions; and the licensing authority shall send a copy of any such statement duly served on it to the appointed person and to the appellant.

(3) A body corporate may appear by its clerk or secretary or by any other officer appointed for the purpose by that body, or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the subject matter of the hearing, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested.

Representatives of Government Departments at hearing

7.—(1) Where a government department has expressed in writing to the licensing authority a view in support of the decision of the licensing authority and the licensing authority have included this view in the statement referred to in rule 5(1), the appellant may, not later than 14 days before the date of the hearing, apply in writing to the Secretary of State for a representative of the government department concerned to be made available at the hearing.

(2) The Secretary of State shall transmit any application made to him under the last foregoing paragraph to the government department concerned, who shall make a representative of the department available to attend the hearing.

(3) A representative of a government department who, in pursuance of this rule, attends a hearing shall be called as a witness by the licensing authority and shall state the reasons for the view expressed by his department and included in the authority's statement under rule 5(1) and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in the last foregoing paragraph shall require a representative of a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy or to matters which affect the safety of the State and the appointed person shall disallow any such question.

Procedure at hearing

8.—(1) Except as otherwise provided in these Rules, the procedure at the hearing shall be such as the appointed person shall in his discretion determine and the appointed person shall state at the commencement of the hearing the procedure which, subject to consideration of any submission by the parties, he proposes to adopt, and shall inform the parties what he proposes as regards any site inspection arising out of the hearing.

(2) Unless in any particular case the appointed person with the consent of the appellant otherwise determines, the appellant shall be heard first; the other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine; and any closing statements shall be made in the same order, unless the appointed person otherwise determines.

(3) The parties shall be entitled to make an opening statement, to call evidence and to cross-examine persons giving evidence, but any other person appearing at the hearing may do so only to the extent permitted by the appointed person.

(4) The appointed person shall not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest; but, save as aforesaid, any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the hearing and that facilities be afforded him to take or obtain copies thereof.

(5) The appointed person may allow the licensing authority or the appellant, or both of them, to alter or add to the submissions contained in any statement

served under rule 5(1) or (4), or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but shall (if necessary by adjourning the hearing) give the appellant or the licensing authority, as the case may be, an adequate opportunity of considering any such fresh submission or document.

(6) If any person entitled to appear at the hearing fails to appear, the appointed person may proceed with the hearing at his discretion.

(7) The appointed person shall be entitled (subject to disclosure thereof at the hearing) to take into account any written representations or statements received by him before the hearing from any person.

(8) The appointed person may from time to time adjourn the hearing, and where he does so, shall give reasonable notice to every person entitled or permitted to appear at the hearing of the date, time and place of the adjourned hearing, provided that where the date, time and place of the adjourned hearing are announced at the hearing, no further notice shall be required.

Site inspections

9.—(1) The appointed person may make an inspection of the site before or during the hearing after having given notice to the parties of the date and time at which he proposes to do so.

(2) The appointed person may, and shall if so requested by any party before or during the hearing, inspect the premises after the close of the hearing and shall, in all cases where he intends to make such an inspection, announce during the hearing the date and time at which he proposes to do so.

(3) The parties shall be entitled to accompany the appointed person on any inspection under this rule; but the appointed person shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after hearing where the appointed person is to determine the appeal

10.—(1) Where the appointed person has been directed to determine the appeal on behalf of the Secretary of State and, after the close of the hearing, proposes to take into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy or a matter affecting the safety of the State) 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 notifying the parties of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 21 days or of asking within that time for the re-opening of the hearing.

(2) The appointed person may in any case, if he thinks fit, cause the hearing to be re-opened and shall cause it to be re-opened if asked to do so in accordance with the foregoing paragraph; and if the hearing is re-opened, paragraphs (1) and (3) of rule 4 shall apply as they applied to the original hearing with the substitution in paragraph (1) of “28” for “42”, and with the substitution for references to the Secretary of State, wherever they occur, of references to the appointed person.

Procedure after hearing where the appointed person is to report to the Secretary of State

11.—(1) After the close of the hearing, unless the Secretary of State has directed the appointed person to determine the appeal on his behalf—

- (a) the appointed person shall prepare the first part of his report comprising a summary of the evidence led at the hearing together with his findings of fact, and—
 - (i) shall provide a copy of the first part of his report to the parties and to any person who appeared at the hearing, if so required by any of them;
 - (ii) shall consider any comments received by him from either party or from any such person within 14 days from the furnishing of the first part of his report;
 - (iii) may, after consulting the other party or persons, amend the first part of his report, so however that he shall not, except with the consent of both parties and all such persons, introduce into his report any matter that had not been raised at the hearing;
- (b) the appointed person shall thereafter prepare the second part of his report and shall include therein his recommendations if any or his reason for not making any recommendation; and
- (c) the appointed person shall then send his report to the Secretary of State.

(2) Where the Secretary of State on receipt of the appointed person's report made under paragraph (1) of this rule—

- (a) differs from the appointed person on a finding of fact, or
- (b) after the close of the hearing takes into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy or a matter affecting the safety of the State) which was not raised at the hearing,

and by reason thereof is disposed to disagree with a recommendation made by the appointed person, he shall not come to a decision which is at variance with any such recommendation without first notifying the parties of the terms of the recommendation, of his disagreement with it and of the reasons (other than reasons of which the disclosure might in his opinion affect the safety of the State) for his disagreement with it and affording them an opportunity of making representations in writing within 21 days or (if the Secretary of State has taken into consideration any new evidence or any new issue of fact, not being a matter of government policy or a matter affecting the safety of the State) of asking within 21 days for the re-opening of the hearing.

(3) The Secretary of State may in any case, if he thinks fit, cause the hearing to be re-opened, and shall cause it to be re-opened if asked to do so in accordance with the last foregoing paragraph; and, if the hearing is re-opened, paragraphs (1) and (3) of rule 4 shall apply as they applied to the original hearing with the substitution in paragraph (1) of "28" for "42".

Notification of decision

12.—(1) The Secretary of State or the appointed person (if the Secretary of State has directed the appointed person to determine the appeal on his behalf) shall notify the decision on the appeal, and the reasons therefor, in writing to the parties and to any person who, having appeared at the hearing, has asked to be notified of the decision.

(2) Where a report has been made by the appointed person under rule 11(1) and a copy of that report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the appointed person's conclusions and recommendations.

(3) Where a report has been made by the appointed person under rule 11(1) and any person entitled to be notified of the decision on the appeal under paragraph (1) of this rule has not received a copy of that report, he shall be supplied with a copy thereof on written application made to the Secretary of State within one month from the date of such decision.

(4) For the purposes of this rule "report" does not include documents, photographs or plans appended to the report.

Service of notices by post

13. Notices or documents required or authorised to be served or sent under the provisions of any of the foregoing rules may be sent by post.

Ronald King Murray,
Lord Advocate.

6th December 1974.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

Section 44 of the Health and Safety at Work etc. Act 1974 gives a right of appeal to the Secretary of State to persons aggrieved by decisions of an authority having power to issue licences (other than agricultural licences and nuclear site licences) under Part I of that Act or under the Acts specified in Schedule 1 to that Act. That section also provides that before the determination of an appeal the Secretary of State shall, if either the appellant or the licensing authority expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.

These Rules prescribe the procedure to be followed in connection with hearings held in Scotland on such appeals.

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