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1980 No. 1676 (S. 140)

**TRIBUNALS AND INQUIRIES**

**The Town and Country Planning (Inquiries Procedure)  
(Scotland) Rules 1980**

*Made* - - - - 24th October 1980

*Laid before Parliament* 13th November 1980

*Coming into Operation* 22nd December 1980

**ARRANGEMENT OF RULES**

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In exercise of the powers conferred by section 11 of the Tribunals and Inquiries Act 1971(a) and now vested in me(b) and of all other powers enabling me in that behalf, and after consultation with the Council on Tribunals, I hereby make the following rules:—

*Citation and commencement*

1. These rules may be cited as the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1980 and shall come into operation on 22nd December 1980.

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(a) 1971 c. 62.

(b) S.I. 1972/2002.

*Application of rules*

2.—(1) Subject to the provisions of this rule, these rules apply to—

- (a) any local inquiry caused by the Secretary of State to be held, and
- (b) to the extent provided by rule 15, any hearing before a person appointed by the Secretary of State,

for the purpose of

- (i) any application referred to the Secretary of State or any appeal made to the Secretary of State under the Town and Country Planning (Scotland) Act 1972(a) or any regulations made thereunder; or
- (ii) any appeal to the Secretary of State under section 179(3) of the Local Government (Scotland) Act 1973(b) (appeals against decisions by regional planning authorities).

(2) These rules shall not apply to any local inquiry or to a hearing held under Schedule 7 to the Town and Country Planning (Scotland) Act 1972 except where the Secretary of State directs under paragraph 3(1) of that Schedule that an appeal which, by virtue of paragraph 1 of that Schedule, falls to be determined by a person appointed by the Secretary of State, shall, instead of being determined by that person, be determined by the Secretary of State; and these rules shall apply in relation to any step taken or thing done after the giving of the said direction, but do not affect any step taken or thing done before the giving of such direction.

*Interpretation*

3.—(1) In these rules, unless the context otherwise requires—

“the Act” means the Town and Country Planning (Scotland) Act 1972;

“the 1973 Act” means the Local Government (Scotland) Act 1973;

“applicant” in the case of an appeal means the appellant;

“the application” means the application to which the inquiry relates;

“the appeal” means the appeal to which the inquiry relates;

“development corporation” means the development corporation of a new town;

“documents” includes photographs, maps and plans;

“inquiry” means a local inquiry to which these rules apply;

“the land” means the land (including trees and buildings) to which the inquiry relates or, in the case of an inquiry relating to an advertisement the land on which the advertisement is or is to be displayed;

“listed building consent” means consent required by section 53(2) of the Act in respect of works for the demolition, alteration or extension of a listed building and the consent required by that subsection as applied by section 262A of the Act for works for the demolition of any building in a conservation area;

“permission” includes consent;

“planning authority” means the regional, general or district planning authority, as the case may be, who were responsible for dealing with the application (or in the case of a referred application would have been so responsible had it not been referred to the Secretary of State) or for service of the enforcement notice, as the case may be;

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(a) 1972 c. 52.

(b) 1973 c. 65.

“referred application” means an application referred to the Secretary of State under section 32 of the Act, or that section as applied by a tree preservation order or by or under paragraph 4 of Schedule 10 to the Act (listed building consent), or under regulations made under section 61 of the Act (control of advertisements) or under section 91 of the Act (established use certificates);

“reporter” means the person appointed by the Secretary of State to hold the inquiry and to report thereon to him;

“section 26 parties” means—

(a) in relation to a referred application, persons from whom representations are received—

- (i) in pursuance of section 26(2) or (3) of the Act, as applied by section 32(4) of the Act, before the end of the period mentioned in section 26(2) or section 24(4) of the Act, as the case may be,
- (ii) in the case of an application referred under paragraph 4 of Schedule 10 to the Act, in pursuance of regulations made under paragraph 2 of that Schedule, within the time prescribed by those regulations; and

(b) in relation to an appeal, persons from whom representations are received—

- (i) by the planning authority, in pursuance of section 26(3) of the Act, or by the Secretary of State, in pursuance of section 26(3) as applied by section 33(5) of the Act, before the end of the period mentioned in section 24(4) of the Act, or
- (ii) in the case of an appeal brought under paragraph 7 of Schedule 10 to the Act, in pursuance of regulations made under paragraph 2 of that Schedule, within the time prescribed by those regulations;

“trees” include groups of trees and woodlands;

and other expressions have the same meaning for the purpose of these rules as they have for the purpose of the Act or, as the case may be, for the purpose of Part IX (planning functions) of the 1973 Act.

(2) References in these rules to section 26 of the Act shall be construed as including where appropriate references to regulations made under paragraph 2 of Schedule 10 to the Act (listed buildings).

(3) Where the appeal is an appeal against an enforcement notice, any reference in these rules to an application shall be construed as a reference to that enforcement notice.

*Preliminary information to be supplied to and by the planning authority*

4.—(1) The planning authority, on being notified by the Secretary of State of his intention to proceed with the consideration of an application or appeal to which these rules apply and of the name and address of all section 26 parties, who have made representations to the Secretary of State, shall forthwith inform—

- (a) the applicant in writing of the name and address of all section 26 parties; and
- (b) the Secretary of State of any such persons who have made representations to the planning authority.

## (2) Where—

- (a) the Secretary of State has given to the planning authority a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, or
- (b) any government department, local authority or development corporation have expressed in writing to the planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, or, in the case of an application for consent under a tree preservation order, should be granted together with a direction requiring the replanting of trees or in the case of any application that it should be granted,

the planning authority shall inform the Secretary of State, government department, authority or development corporation concerned, as the case may be, that such direction or expression of view is relevant to the application or appeal and the Secretary of State, government department, authority or development corporation, as the case may be, shall (except where such action has already been taken) forthwith furnish to the planning authority a statement in writing of the reasons for the direction or expressions of view.

*Notification of inquiry*

5.—(1) A date, time and place for the holding of the inquiry shall be fixed by the Secretary of State who shall give not less than 28 days' notice in writing of such date, time and place to—

- (a) the applicant;
- (b) the planning authority;
- (c) all section 26 parties at the addresses furnished by them; and
- (d) any person to whom notification is required to be given under section 267(3) of the Act (notification of local inquiries):

Provided that—

- (i) with the consent in writing of the applicant and of the planning authority the Secretary of State may give such lesser period of notice as may be agreed with them and in that event he may specify a date for service of the statements referred to in rule 6(1) or (2), as the case may be, later than the date prescribed in that rule;
- (ii) the Secretary of State may vary the date, time and place fixed for the holding of the inquiry where it becomes necessary or advisable to do so and he shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

(2) Without prejudice to the foregoing provisions of this rule and, where the Secretary of State has not already done so, he may require the planning authority to take one or more of the following steps—

- (a) to publish in one or more newspapers circulating in the locality in which the land is situated such notices of the inquiry as he may direct;
- (b) to serve notice of the inquiry in such form and on such persons or classes of persons as he may specify;
- (c) to post such notices of the inquiry as he may direct in a conspicuous place or places near to the land;

but 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 inquiry*

## 6.—(1) In the case of a referred application—

- (a) the Secretary of State shall, where this has not already been done, not later than 28 days before the date of the inquiry (or such later date as he may specify under proviso (i) to rule 5(1)) serve or cause to be served on the applicant, on the planning authority and on all section 26 parties, a written statement of the reasons for his direction that the application be referred to him and of any matters which seem to him to be likely to be relevant to his consideration of the application; and
- (b) where a government department has expressed in writing to the Secretary of State the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, or, in the case of an application for consent under a tree preservation order, should be granted together with a direction requiring the replanting of trees or, in the case of any application, that it should be granted, the Secretary of State shall include this expression of view in his statement and shall supply a copy of the statement to the government department concerned.

## (2) The planning authority—

- (a) in the case of a referred application, not later than 14 days before the date of the inquiry (or such later date as the Secretary of State may specify under proviso (i) to rule 5(1));
- (b) in the case of an appeal, not later than 28 days before the date of the inquiry (or such later date as the Secretary of State may specify under proviso (i) to rule 5(1));

shall, where this has not already been done, supply to the Secretary of State a written statement of any observations which the authority propose to put forward at the inquiry together with copies of all representations received by them in relation to the application or appeal and serve a copy of the statement and representations on the applicant and on all section 26 parties:

## Provided that—

- (i) where, having regard to the number of representations received in the case of an application or appeal relating to a development to which section 23 of the Act applies, the planning authority consider it expedient, they may instead of supplying or serving copies of all such representations, include a summary of them in their statement of observations;
- (ii) where, having regard to the number of section 26 parties and the length of the planning authority's statement of observations, the Secretary of State considers it expedient, he may, at the request of the planning authority, authorise them, instead of serving a copy of the statement and, as the case may be, of the representations on all section 26 parties to give notice to all section 26 parties stating the times and places at which the statement and, as the case may be, the representations may be inspected by all section 26 parties; and the authority shall afford them a reasonable opportunity to inspect, and where practicable to take copies of the statement and, as the case may be, the representations.

(3) Where the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, the planning authority shall refer to this in their statement and shall include in the statement a copy of

the direction and the reasons given for it and shall, within the period specified in paragraph (2) of this rule, supply a copy of the statement to the Secretary of State.

(4) Where any government department, local authority or development corporation have expressed in writing to the planning authority the view that the application should not be granted either wholly or in part or should be granted only subject to conditions, or, in the case of an application for consent, or an appeal under a tree preservation order, should be granted together with a direction requiring the replanting of trees, or, in the case of any application, that it should be granted, and the planning authority propose to rely on such expression of view in their submissions at the inquiry they shall include it in their statement, provided that, in the case of an expression of view that the application should be granted, the planning authority shall in any event include it in their statement.

(5) The planning authority shall, within the period specified in paragraph (2) of this rule, supply a copy of the statement to the government department, local authority or development corporation concerned.

(6) Where the planning authority intend to refer to documents or put them in evidence at the inquiry, the authority's statement shall be accompanied by a list of such documents, together with a notice stating the time and place at which the documents may be inspected by the applicant and all section 26 parties; and the authority shall afford them a reasonable opportunity to inspect and, where practicable, to take copies of the documents.

(7) The planning authority shall afford any other person interested a reasonable opportunity to inspect and, where practicable, to take copies of any statement served by the Secretary of State under paragraph (1) or by the authority under paragraph (2) and of the other documents referred to in paragraph (6) as well as of any statement served on the authority by the applicant under paragraph (8) of this rule.

(8) The applicant shall, if so required by the Secretary of State, serve on the planning authority, all section 26 parties and the Secretary of State, within such time before the inquiry as the Secretary of State may specify, a written statement of the observations which he proposes to put forward at the inquiry; and such statement shall be accompanied by a list of any documents which the applicant intends to refer to or put in evidence at the inquiry and he shall, if so required by the Secretary of State, afford the planning authority, all section 26 parties and such other persons as the Secretary of State may specify a reasonable opportunity to inspect and, where practicable, to take copies of such documents.

(9) Without prejudice to the foregoing paragraphs of this rule, the Secretary of State may direct a more extensive circulation of the statements and other documents referred to therein where he considers this to be appropriate and reasonable.

#### *Appearances at inquiry*

7.—(1) The persons entitled to appear at the inquiry shall be—

- (a) the applicant;
- (b) the planning authority;
- (c) where the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, a representative of the Secretary of State;

- (d) where a government department have expressed a view in writing on the application and the planning authority have included this in their statement of observations, a representative of that department;
  - (e) any local authority;
  - (f) where the land is in an area designated as the site of a new town, the development corporation;
  - (g) all section 26 parties;
  - (h) any person on whom the Secretary of State has required notice to be served under rule 5(2)(b);
  - (i) any other person to whom notification has been given under section 267(3) of the Act (notification of local inquiries).
- (2) Any other person may appear at the inquiry at the discretion of the reporter.
- (3) Any local authority or development corporation may appear by an officer appointed for the purpose by the authority or corporation, as the case may be, or be represented 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 matter under inquiry, the reporter may allow one or more persons to appear for the benefit of some or all persons so interested.

*Representatives of the Secretary of State or government departments at inquiry*

**8.—(1) Where either—**

- (a) the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made, or a direction as to how the application is to be determined; or
  - (b) any government department have expressed in writing a view on the application, and the Secretary of State or the planning authority have included this view in their statement as required by rule 6(1) or (4),
- any of the persons mentioned in rule 7(1) may, not later than 14 days before the date of the inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or government department concerned to be made available at the inquiry.
- (2) Where an application is made to the Secretary of State under the foregoing paragraph, he shall make a representative of his department available to attend the inquiry, or, as the case may be, transmit the application to the other government department concerned who shall make a representative of that department available to attend the inquiry.
- (3) A representative who, in pursuance of this rule, attends an inquiry shall state the reasons for the Secretary of State's direction, or, as the case may be, the reasons for the view expressed by the department which he represents and shall give evidence and be subject to cross-examination to the same extent as any other witness.
- (4) Nothing in this rule shall require a representative of the Secretary of State or a government department to answer any question which in the opinion of the reporter is directed to the merits of government policy and the reporter shall disallow any such question.

*Representatives of local authorities at inquiry*

9.—(1) Where any local authority have expressed in writing the view that the application should not be granted wholly or in part or should be granted only subject to conditions, and the planning authority have included this view in their statement as required under rule 6(4), any of the persons mentioned in rule 7(1) may not later than 14 days before the date of the inquiry, apply in writing to the Secretary of State for a representative of the authority concerned to be made available to attend the inquiry.

(2) Where an application is made to the Secretary of State under the foregoing paragraph he shall transmit the application to the authority concerned, who shall make a representative of the authority available to attend the inquiry.

(3) A representative of a local authority who, in pursuance of this rule, attends an inquiry shall state the authority's reasons for the view expressed by them and included in the planning authority's statement under rule 6(4) and shall give evidence and be subject to cross-examination to the same extent as any other witness.

*Procedure at inquiry*

10.—(1) Except as otherwise provided in these rules, the procedure at the inquiry shall be such as the reporter shall in his discretion determine.

(2) The reporter shall state at the commencement of the inquiry the procedure which, subject to consideration of any submission by the parties, he proposes to adopt.

(3) Unless in any particular case the reporter with the consent of the applicant otherwise determines, the applicant shall be heard first and the other persons entitled or permitted to appear shall be heard in such order as the reporter may determine; and any closing statements shall be made in the same order as that in which the parties were heard, unless the reporter otherwise determines; at the discretion of the reporter the applicant may have the right to reply to the closing statements by the other parties.

(4) The applicant, the planning authority and the section 26 parties shall be entitled to call evidence and, subject to paragraph (5) of this rule, to cross-examine persons giving evidence and to make closing statements but any other person appearing at the inquiry may do so only to the extent permitted by the reporter.

(5) Where the reporter considers that further cross-examination of a witness would lead to undue repetition or elaboration, the reporter may disallow further cross-examination of the witness.

(6) The reporter 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 and without prejudice to rule 8(4) and section 267(4) and (5) of the Act (evidence at local inquiries) any evidence may be admitted at the discretion of the reporter, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies thereof.



(7) The reporter may allow the planning authority or the applicant, or both of them, to alter or add to the observations contained in any statement served under rule 6(2) or (8) 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 inquiry) give the applicant or the planning authority, as the case may be, and all section 26 parties an adequate opportunity of considering any such fresh observations or document; and the reporter may make in his report a recommendation as to the payment of any additional expenses occasioned by any such adjournment.

(8) If any person entitled to appear at the inquiry fails to do so, the reporter may proceed with the inquiry at his discretion.

(9) The reporter shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representations or statements received by him before the inquiry from any person, but shall circulate such documents in advance where he considers this to be practicable.

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

#### *Site inspections*

**11.—**(1) The reporter may at any time make an unaccompanied inspection of the land without giving notice of his intention to the persons entitled or permitted to appear at the inquiry.

(2) Subject to the provisions of this rule, the reporter may, and shall if so requested by the applicant or the planning authority before or during the inquiry, inspect the land during or after the close of the inquiry in the company of such of the persons entitled under paragraph (3) of this rule to accompany him as desire to do so.

(3) Where the reporter intends to make an inspection by virtue of paragraph (2) of this rule, he shall, during the inquiry announce the date and time at which he proposes to do so and the applicant, the planning authority, all section 26 parties and any other party to the inquiry shall be entitled to accompany him on any such inspection.

(4) The reporter shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

#### *Procedure after inquiry*

**12.—**(1) After the close of the inquiry the reporter shall prepare the first part of his report which shall include his findings of fact and—

- (a) if so required by any of the parties to the inquiry shall provide a copy of the first part of his report to every party to the inquiry;
- (b) shall consider any comments received by him from any such party within 14 days from the furnishing of the first part of his report;
- (c) may, after consulting all the other parties to the inquiry, amend the first part of his report so, however, that he shall not, except with the consent of all parties, introduce into his report any matter that had not been raised at the inquiry.

(2) The reporter shall thereafter complete his report, including therein any necessary reasoning and his recommendations, if any, or his reason for not making any recommendations.

(3) Where the Secretary of State—

(a) differs from the reporter on a finding of fact, or

(b) after the close of the inquiry 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) which was not raised at the inquiry,

and by reason thereof is disposed to disagree with a recommendation made by the reporter, he shall not come to a decision which is at variance with any such recommendation without first notifying the applicant, the planning authority and all section 26 parties who appeared at the inquiry of his disagreement and the reasons for it and affording them an opportunity of making representations thereon in writing within 21 days or (if the Secretary of State has received new evidence or taken into consideration any new issue of fact not being a matter of government policy) of asking within 21 days for the reopening of the inquiry.

(4) The Secretary of State may in any case if he thinks fit cause the inquiry to be reopened, and shall cause it to be reopened if asked to do so in accordance with the last foregoing paragraph of this rule, and if the inquiry is reopened, rule 5 shall apply to the reopened inquiry as it applied to the original inquiry with the substitution of the words “21 days” for the words “28 days”.

#### *Notification of decision*

13.—(1) The Secretary of State shall notify his decision and his reasons therefor in writing to the applicant, the planning authority and the section 26 parties and to any person who, having appeared or been represented at the inquiry, has asked to be notified of the decision.

(2) Where a copy of the report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the reporter's conclusions and recommendations; and if any person entitled to be notified of the Secretary of State's decision under paragraph (1) of this rule has not received a copy of the report, he shall be supplied with a copy thereof on written application made to the Secretary of State within six weeks from the date of his decision.

(3) For the purpose of this rule “report” means the report submitted to the Secretary of State but does not include documents appended to the report but any person entitled to be supplied with a copy of the report under paragraph (2) of this rule may apply to the Secretary of State in writing within six weeks of the notification to him of the decision or the supply to him of the report, whichever is the later, for an opportunity of inspecting such documents, and the Secretary of State shall afford him an opportunity accordingly.

#### *Service of notices by post*

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

#### *Hearings*

15. These rules, except rules 5(2) and 7(1) (h) shall apply to any such hearing as is mentioned in rule 2 and for that purpose references in these rules to an inquiry shall be construed as references to such a hearing.

*Revocation of previous rules*

16. The Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1964(a) are hereby revoked.

Dated 24th October 1980.

(Sgd.) Mackay of Clashfern,  
Lord Advocate.

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**EXPLANATORY NOTE**

*(This Note is not part of the Rules.)*

These rules re-enact with amendments the Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1964. They prescribe the procedure to be followed at local inquiries and hearings held for the purpose of applications referred or appeals made to the Secretary of State under the Town and Country Planning (Scotland) Act 1972.

Apart from the updating of the references to the provisions of the enactments consolidated by the Tribunals and Inquiries Act 1971 and by the Town and Country Planning (Scotland) Act 1972, the principal changes are:

- (a) applications referred to the Secretary of State under section 32 of the 1972 Act which were not previously within the scope of the 1964 Rules, are brought within these rules;
- (b) account has been taken of the reorganisation of local government under the Local Government (Scotland) Act 1973 and of the amendments made by that Act to the Town and Country Planning (Scotland) Act 1972 by providing in rule 2(1)(a) for appeals under section 179(3) of the 1973 Act, by providing a new definition of "planning authority" in rule 3(1) and by making provision in rules 4(2), 6(4) and 9(1) for the circumstances in which another local authority may express views as to the way in which a planning application should be dealt with;
- (c) rule 6(2) provides that in the case of a referred application, the planning authority's statement of observations must be sent to the applicant, the section 26 parties and the Secretary of State not later than 14 days before the date of the inquiry; in the case of an appeal the statement of observations must be submitted not later than 28 days (previously 21 days) before the date of the inquiry;
- (d) rule 8(1) provides that, where the Secretary of State has given a direction restricting the grant of planning permission for the proposed development or a direction as to how the application is to be determined or a government department have expressed in writing a view on an application, and the Secretary of State or the planning authority have included this view in their written statement of reasons, a representative of the Secretary of State or the government department concerned shall attend the inquiry;

- (e) rule 9(1) provides that in a case where the planning authority have included in their written statement of reasons the view of any local authority that the application should not be granted either wholly or in part, any of the persons mentioned in rule 7(1) may not later than 14 days, before the date of the inquiry, apply in writing to the Secretary of State for a representative of the local authority concerned to attend the inquiry;
- (f) under rule 10(3), the applicant now has the right to reply to the closing statements by the other parties at the discretion of the reporter;
- (g) rule 10(5) permits the reporter to disallow further cross-examination of a witness where he considers this would lead to undue repetition or elaboration;
- (h) rule 13(3) provides for the documents appended to a report to be made available for inspection by the persons entitled to receive a copy of that report, on a written request made to the Secretary of State within the prescribed period.

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