
STATUTORY INSTRUMENTS

2003 No. 2713

The Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003

PART III

APPEALS

CHAPTER I

Initial stages of all appeals (other than an appeal against a decision of a relevant authority not to act in accordance with an application for a direction under section 25(1)(a))

Interpretation

19. In this Part—

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

“appeal period” means the period referred to in regulations 20(1) and 56(1);

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

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

“document” includes a photograph, map or plan;

“hearing” means a hearing in relation to which this Part applies;

“inquiry” means a local inquiry in relation to which this Part applies;

“inspector” means—

(a) an appointed person; or

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

“interested person” means a person who has made representations to the Secretary of State in respect of the appeal pursuant to regulation 25(c);

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

“prescribed period” means a period prescribed by these Regulations as one within which certain requirements so prescribed are to be met;

“proof of evidence” means a proof of evidence sent to the Secretary of State in accordance with regulation 47;

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“questionnaire” means a document, in a form supplied by the Secretary of State, seeking information relating to the appeal;

“start date” means the date on which certain prescribed periods are to begin, and, in relation to any given appeal, means the date specified by the Secretary of State under regulation 23(1) (a) in her written notice to the appellant and the relevant authority under that regulation;

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

“statement of common ground” means a written statement which is prepared jointly by the appellant and the relevant authority pursuant to regulation 48, and contains agreed factual information about the appeal;

“transferred appeal” means an appeal or any matter involved in an appeal, in respect of which the Secretary of State has exercised her power in section 8 to appoint a person to determine the appeal or the matter (as the case may be) on her behalf, and in relation to any such appeal, references in these Regulations to a decision on appeal shall be construed as references to a decision on the appeal or the matter involved in an appeal (as the case may be) which that person has been appointed to determine; and

“written representations” includes supporting documents.

Notice of appeal

20.—(1) Any appeal to the Secretary of State under section 30 against a decision of a relevant authority not to act in any respect in accordance with—

- (a) an application made by the appellant for a direction under section 24 or 25(1)(b); or
- (b) any representations made by the appellant on being consulted by the authority under section 27(5);

shall be made by notice given to the Secretary of State, on a form obtained from her, within six weeks of the date on which the authority issued the decision.

(2) If the appellant wishes to withdraw the appeal before it is determined, he shall do so by giving notice to the Secretary of State in writing before the appeal is determined, and the Secretary of State shall, as soon as practicable, send a copy of that notice to the relevant authority.

Notification of receipt of documents etc.

21. The Secretary of State shall, as soon as practicable after she has received all the information required to enable her to entertain the appeal, notify the appellant and relevant authority of this in writing and send a copy of the notice of appeal to the authority.

Preliminary information to be supplied by the relevant authority

22. The relevant authority shall ensure that, within two weeks of the receipt by them of notification in accordance with regulation 21, the following have been received by the Secretary of State and a copy has been received by the appellant—

- (a) a completed questionnaire (which shall also state the date on which it is sent to the Secretary of State) together with a copy of each document referred to in it;
- (b) the names and addresses of any person who made representations to the authority in respect of—

- (i) where a decision not to act in any respect in accordance with an application made by the appellant for a direction under section 24 or 25(1)(b) is the subject of the appeal, that application, or
- (ii) where a decision not to act in any respect in accordance with any representations made by the appellant on being consulted by the authority under section 27(5) is the subject of the appeal, those representations or the review under section 27(3); and
- (c) details of the time and place at which the authority intends to make documents available for the purpose of regulation 67.

Notification of start of appeal etc.

23.—(1) The Secretary of State shall, as soon as practicable after receipt of the information required to be supplied by the relevant authority in accordance with regulation 22, notify in writing the appellant, the authority and any other person who has made representations to the authority in respect of the appeal land of—

- (a) the start date;
 - (b) whether the appeal will take the form of a hearing or inquiry or will be determined on the basis of written representations;
 - (c) whether the appeal will be determined by the Secretary of State or by an inspector;
 - (d) the reference number allocated to the appeal;
 - (e) the address (including an e-mail address) to which written communications to the Secretary of State about the appeal are to be sent; and
 - (f) the time and place where documents relating to the appeal are to be made available for the purposes of regulation 67.
- (2) A notice under paragraph (1) shall—
- (a) state the name of the appellant and the location and extent of the appeal land, sufficiently to enable it to be identified;
 - (b) state that the appeal is in respect of the decision of a relevant authority not to act in accordance with—
 - (i) an application made by the appellant for a direction under section 24 or 25(1)(b), or
 - (ii) representations made by the appellant on being consulted under section 27(5) in respect of the proposed revocation or variation of such a direction,and provide a brief description of such application or representations;
 - (c) state that the relevant authority—
 - (i) has sent to the Secretary of State and the appellant the name and address of any person, other than the appellant, who made representations to the relevant authority in respect of the matters mentioned in regulation 22(b)(i) or (ii), and
 - (ii) is required to send a copy of such representations to the Secretary of State and the appellant;
 - (d) state that, if any such persons wish their representations to be disregarded by the Secretary of State for the purposes of the appeal, they should notify the Secretary of State in writing of this within six weeks of the start date;
 - (e) state that a person who has made any such representations may make further representations in writing to the Secretary of State in respect of the appeal by ensuring that they are received by the Secretary of State within six weeks of the start date;

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- (f) state that any other person may also make representations in writing to the Secretary of State in respect of the appeal by ensuring that they are received by the Secretary of State within such time; and
 - (g) if there is to be a hearing or inquiry, state that any person, other than the appellant or a relevant authority, may be heard with the permission of the inspector and that such permission shall not be unreasonably withheld.
- (3) The Secretary of State shall ensure that a copy of the notice of appeal is available for inspection on a website maintained by the Planning Inspectorate Executive Agency until the appeal is determined.

Supply of further information by the relevant authority

24. The relevant authority shall ensure that, within two weeks of the start date, the Secretary of State and the appellant have received copies of—

- (a) any representations made to the relevant authority in respect of—
 - (i) the application made by the appellant for a direction under section 24 or 25(1)(b), or
 - (ii) any representations made by the appellant on being consulted by the authority under section 27(5) or the review under section 27(3),
 where a decision not to act in any respect in accordance with such application or representations is or are the subject of the appeal; and
- (b) any correspondence between the appellant and the relevant authority relating to such application or representations made by the appellant.

Submission of statements of case etc.

25. Within six weeks of the start date—

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

Copies of documents etc.

26.—(1) The Secretary of State shall, as soon as practicable after receipt of copies of the documents referred to in regulation 25—

- (a) send to the appellant a copy of any statement of case submitted by the relevant authority under regulation 25(a);
- (b) send to the relevant authority a copy of any statement of case submitted by the appellant under regulation 25(b); and
- (c) send to the appellant and the relevant authority a copy of any representations submitted by any interested person.

(2) The Secretary of State shall, as soon as practicable after the receipt of any further information required under regulation 28, send a copy of the documents received—

- (a) in the case of information received from the appellant or the relevant authority, to the other party; and

- (b) in the case of information received from any interested person, to the appellant and the relevant authority.

Comments on statement of case etc.

27. Within nine weeks of the start date—

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

Provision of further information

28. The Secretary of State, or the inspector, may require such further information as she or he may specify from—

- (a) the appellant or the relevant authority in respect of their statement of case;
- (b) any interested person,

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

CHAPTER II

Appeals to be determined on the basis of written representations

Site inspections

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

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

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

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

Decision on appeal

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

Notification of decision

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

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- (a) the appellant;
- (b) the relevant authority; and
- (c) any interested person;

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

CHAPTER III

Appeals determined by way of a hearing

Date and notification of hearing

32.—(1) The date fixed by the Secretary of State for a hearing shall be the earliest date after the expiry of the appeal period which she considers to be practicable having regard to the desirability of arranging for consecutive or concurrent hearings to be held in connection with appeals against a decision of a relevant authority.

(2) If the Secretary of State does not consider it desirable to arrange consecutive or concurrent hearings in connection with appeals against a decision of a relevant authority, the date fixed for the holding of a hearing shall be—

- (a) not later than twenty-two weeks after the start date, unless she considers such a date impracticable; or
- (b) the earliest date after that period which she considers to be practicable.

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

(4) The Secretary of State may at any time change the date fixed for the holding of a hearing (whether or not the new date is within the period mentioned in paragraph (2)) and paragraph (3) shall apply to the new date.

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

(6) The Secretary of State may require the relevant authority to publish, not less than two weeks before the date fixed for the hearing, a notice of the hearing in one or more newspapers circulating in the locality in which the appeal land is situated; and the Secretary of State shall ensure that the Planning Inspectorate Executive Agency makes a copy of such notice available for inspection on a website which it maintains until the appeal is determined.

(7) Every notice of a hearing published pursuant to paragraph (6) shall contain—

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

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

Consecutive and concurrent hearings

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

Appearances at hearing

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

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

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

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

Notification of name of inspector

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

Procedure at hearing

36.—(1) The inspector shall determine the procedure at a hearing.

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

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

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

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

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

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

(8) The inspector may allow the appellant or the relevant authority to alter or make any addition to a statement of case submitted under regulation 25 (a) or (b) so far as may be necessary for the purposes of the hearing.

(9) The inspector may—

- (a) proceed with a hearing in the absence of any person entitled to appear at it;

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- (b) take into account any written representations or evidence or any other document received by him from any person before a hearing opens or during the hearing provided he discloses it at the hearing; and
- (c) from time to time adjourn a hearing, and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

Site inspections

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

- (a) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
- (b) all parties present at the hearing would have the opportunity to attend the adjourned hearing; and
- (c) neither the appellant nor the relevant authority has raised any reasonable objections to its being continued at the site of the appeal land.

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

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

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

Procedure after hearing—appeals determined by the Secretary of State

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

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

(3) Where an assessor has been appointed, he shall, after the close of the hearing, make a report in writing to the inspector in respect of the matters on which he was appointed to advise.

(4) Where an assessor makes such a report, the inspector shall append it to his own report and shall state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement.

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

(6) If, after the close of the hearing, the Secretary of State—

- (a) differs from an inspector on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by the inspector; or
- (b) takes into consideration any new evidence or new matter of fact,

and is, for that reason, disposed to disagree with a recommendation made by the inspector, she shall not come to a decision which is at variance with that recommendation without first

notifying the appellant, the relevant authority and any other person who appeared at the hearing of her disagreement and the reasons for it, and affording them an opportunity of making written representations to her or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, of asking for the re-opening of the hearing.

(7) Those persons making written representations or requesting the re-opening of the hearing pursuant to paragraph (6) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under that paragraph.

(8) The Secretary of State may, if she thinks fit, cause a hearing to be re-opened, and she shall do so if asked by the appellant or the relevant authority in the circumstances mentioned in paragraph (6) and within the period mentioned in paragraph (7); and where a hearing is re-opened (whether by the same or a different inspector)—

- (a) the Secretary of State shall send to the persons mentioned in paragraph (6) a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 32 shall apply as if the references to a hearing were references to a re-opened hearing.

Procedure after hearing—transferred appeals

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

(2) Where an assessor has been appointed he shall, after the close of the hearing, make a report in writing to the inspector of the matters on which he was appointed to advise, and the inspector shall state in the notification of his decision pursuant to regulation 41 that such a report was made.

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

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

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

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

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

- (a) the inspector shall send to the appellant, the relevant authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 32 shall apply as if the references to a hearing were references to a re-opened hearing.

Notification of decision—appeals determined by the Secretary of State

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

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

- (a) the appellant and the relevant authority; and
- (b) any other person who—
 - (i) appeared at the hearing, or
 - (ii) is an interested person.

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

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

(5) A person applying to the Secretary of State under paragraph (3) or (4) shall ensure that his application is received by the Secretary of State within four weeks and six weeks, respectively, of the date of the decision of the Secretary of State.

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

Notification of decision—transferred appeals

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

- (2) An inspector shall notify his decision on an appeal, and his reasons for it, in writing to—
 - (a) the appellant and the relevant authority; and
 - (b) any other person who—
 - (i) appeared at the hearing, or
 - (ii) is an interested person.

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

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

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

CHAPTER IV

Appeals to be determined by way of an inquiry

Statements of case

42. The appellant and the relevant authority may each in writing require the other to provide a copy of any document referred to in the list of documents comprised in their statement of case, and any such document (or relevant part of it) shall be sent, as soon as practicable, to the party who required it.

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

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

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

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

- (a) the appellant and the relevant authority; and
- (b) any other person whose presence at the pre-inquiry meeting she or they consider desirable.

(4) The inspector—

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

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

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

Inquiry timetable

44.—(1) Where a pre-inquiry meeting is held pursuant to regulation 43, the inspector shall arrange a timetable for the proceedings at, or at part of, the inquiry.

(2) The inspector shall specify in a timetable arranged pursuant to this regulation a date by which any proof of evidence sent in accordance with regulation 47 shall be received by the Secretary of State.

Date and notification of inquiry

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

- (a) subject to sub-paragraph (b), twenty-two weeks after the start date; or
- (b) where a pre-inquiry meeting is held pursuant to regulation 43, eight weeks after the conclusion of that meeting.

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

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

(4) The Secretary of State may—

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

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

(6) The Secretary of State may require the relevant authority to publish, not less than two weeks before the date fixed for the holding of an inquiry, a notice of the inquiry in one or more newspapers circulating in the locality in which the appeal land is situated; and the Secretary of State shall ensure that the Planning Inspectorate Executive Agency makes a copy of such notice available for inspection on a website which it maintains until the appeal is determined.

(7) Every notice of an inquiry published pursuant to paragraph (6) shall contain—

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

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

Notification of name of inspector

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

Proofs of evidence

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

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

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

- (a) four weeks before the date fixed for the holding of the inquiry; or
- (b) where a timetable has been arranged pursuant to regulation 44 which specifies a date by which the proof of evidence and any summary shall be received by the Secretary of State, that date.

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

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

Statement of common ground

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

Appearances at inquiry

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

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

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

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

Procedure at inquiry

50.—(1) The inspector shall determine the procedure at an inquiry.

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

(3) Nothing in paragraph (2) shall preclude the addition in the course of the inquiry of other issues for consideration or preclude any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

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

(5) Subject to paragraph (6), a person appearing at an inquiry shall be entitled to give, or call any other person to give, oral evidence and the appellant and the relevant authority shall be entitled to cross-examine persons giving evidence, and any other person, if so permitted by the inspector at his discretion, may give or call another person to give evidence, and may cross-examine any person giving evidence.

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

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

which he considers to be irrelevant or repetitious.

(7) Where under paragraph (5) or (6) the inspector refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry.

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

- (a) the proof of evidence referred to in regulation 47(1) shall be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone; and
- (b) the person whose evidence the proof of evidence contains shall then be subject to cross-examination on it to the same extent as if it were evidence he had given orally.

Status: Point in time view as at 17/11/2003.

Changes to legislation: There are currently no known outstanding effects for the The Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, PART III. (See end of Document for details)

(9) The inspector may—

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

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

(10) The inspector may allow any person to alter or add to a statement of case received by the Secretary of State under regulation 25 or a proof of evidence or summary sent to the Secretary of State under regulation 47(1) so far as may be necessary for the purposes of the inquiry; but he shall (if necessary by adjourning the inquiry) give every other person appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

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

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

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

Site inspections

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

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

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

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

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

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

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

(3) Where an assessor has been appointed, he shall, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise.

(4) Where an assessor makes such a report, the inspector shall append it to his own report and shall state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement.

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

(6) If, after the close of the inquiry, the Secretary of State—

- (a) differs from the inspector on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by the inspector; or
- (b) takes into consideration any new evidence or new matter of fact,

and is for that reason disposed to disagree with a recommendation made by the inspector, she shall not come to a decision which is at variance with that recommendation without first notifying the appellant and the relevant authority and any other person who appeared at the inquiry of her disagreement and the reasons for it, and affording them an opportunity of making written representations to her or of asking for the re-opening of the inquiry.

(7) Those persons making written representations or requesting that the inquiry be re-opened under paragraph (6) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under that paragraph.

(8) The Secretary of State may, if she thinks fit, cause an inquiry to be re-opened, and she shall do so if asked by the appellant or the relevant authority in the circumstances mentioned in paragraph (6) and within the period mentioned in paragraph (7); and where an inquiry is re-opened (whether by the same or a different inspector)—

- (a) the Secretary of State shall send to the persons who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 45 shall apply as if the references to an inquiry were references to a re-opened inquiry.

Procedure after inquiry—transferred appeals

53.—(1) This regulation applies for the purposes of an inquiry held for the purposes of a transferred appeal.

(2) Where an assessor has been appointed he shall, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise, and the inspector shall state in the notification of his decision pursuant to regulation 55 that such a report was made.

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

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

- (a) notifying the persons entitled to appear at the inquiry who appeared at it of the matter in question; and
- (b) affording them an opportunity of making written representations to him or of asking for the inquiry to be re-opened;

and they shall ensure that such written representations are received by the Secretary of State within three weeks of the date of the notification.

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

- (a) the inspector shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited; and

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- (b) paragraphs (3) to (8) of regulation 45 shall apply as if the references to an inquiry were references to a re-opened inquiry.

Notification of decision—appeals determined by the Secretary of State

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

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

- (a) the appellant and the relevant authority; and
- (b) any other person who—
 - (i) appeared at the inquiry, or
 - (ii) is an interested person.

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

(4) In this regulation, “report” includes any assessor’s report appended to the inspector’s report but not any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State, in writing, within six weeks of the date of the Secretary of State’s decision, for an opportunity of inspecting such documents, and the Secretary of State shall afford him such an opportunity.

(5) Any person applying to the Secretary of State under paragraph (3) or (4) shall ensure that his application is received by the Secretary of State within four weeks of the Secretary of State’s decision.

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

(7) An inspector may, in place of the Secretary of State, take such steps as the Secretary of State is required or enabled to take under or by virtue of this regulation.

Notification of decision—transferred appeals

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

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

- (a) the appellant and the relevant authority; and
- (b) any other person who—
 - (i) appeared at the inquiry, or
 - (ii) is an interested person.

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

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

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

CHAPTER V

Appeal against a decision of a relevant authority not to act in accordance with an application for a direction under section 25(1)(a)

Notice of appeal etc.

56.—(1) An appeal to the Secretary of State under section 30 against a decision of the relevant authority not to act in any respect in accordance with an application for a direction under section 25(1)(a) shall be made by notice given to the Secretary of State, on a form obtained from her, within six weeks of the date on which the authority issued the decision.

(2) If the appellant wishes to withdraw the appeal before it is determined, he shall do so by giving notice to the Secretary of State in writing before the appeal is determined, and the Secretary of State shall, as soon as practicable, send a copy of that notice to the relevant authority.

(3) The Secretary of State shall, on the day (or on the first working day thereafter where she receives it on a day which is not a working day) send a copy of the notice to the relevant authority by electronic communication or facsimile transmission, except that where it is not reasonably practicable for the Secretary of State to comply with this requirement within the specified time she shall do so as soon as reasonably practicable thereafter.

(4) Where a relevant authority receives a notice of appeal pursuant to paragraph (3) they shall submit their statement of case by completing the relevant section of the notice and shall then send the notice, as amended, to the Secretary of State by electronic communication or facsimile transmission before the end of the second working day after the day on which they received it.

Arrangement and notification of hearing

57. The Secretary of State shall, before the end of the next working day after the day on which she has received an amended notice of appeal from a relevant authority pursuant to regulation 56(4) or, where it is not reasonably practicable to do so, as soon as reasonably practicable thereafter—

- (a) make appropriate arrangements for a hearing to be held;
- (b) notify the appellant and the authority, by telephone, electronic communication, facsimile transmission or first class post, of the date, time and place of the hearing; and
- (c) ensure that the information referred to in sub-paragraph (b) and a copy of the amended notice of appeal are available for inspection on a website maintained by the Secretary of State until the appeal is determined.

Consecutive and concurrent hearings

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

Appearances at hearing

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

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

but the inspector may permit any other person to appear in person or be represented by any other person.

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

Procedure at hearing

60.—(1) The inspector shall determine the procedure at a hearing.

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

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

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

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

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

(7) The inspector may—

- (a) proceed with a hearing in the absence of any person entitled to appear at it;
- (b) take into account any written representations or evidence or any other document received by him from any person before a hearing opens or during the hearing provided he discloses it at the hearing; and
- (c) at any time adjourn a hearing, and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

Notification of decision—appeals determined by the Secretary of State

61. Where a hearing has been held for the purposes of an appeal determined by the Secretary of State she shall, within forty-eight hours of the close of the hearing, notify her decision on the appeal to the appellant, the relevant authority and any one other person who appeared at the hearing by sending to them a copy of the amended notice of appeal with her decision endorsed on it.

Notification of decision—transferred appeals

62.—(1) Where a hearing has been held for the purposes of a transferred appeal the inspector shall—

- (a) unless it is not reasonably practicable to do so, announce his decision on the appeal at the close of the hearing; and
- (b) within forty-eight hours of the close of the hearing, notify his decision on the appeal to the appellant, the relevant authority and any other person who appeared at the hearing, by sending to them a copy of the amended notice of appeal with his decision endorsed on it.

(2) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (1), a copy of the amended notice of appeal is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

Extension of time

63. The Secretary of State may, at any time and in any particular case, extend the time within which any of the requirements in regulation 56 must be complied with.

Changes of procedure

64.—(1) The Secretary of State may, at any time before the close of a hearing held under this Chapter, notify the appellant and the relevant authority that the appeal is no longer to be determined in accordance with the provisions of this Chapter but instead by way of written representations, or by way of a hearing or inquiry, in accordance with the provisions of Chapters I to IV of this Part as if the appeal were an appeal against a decision of a relevant authority not to grant a direction under section 24 or 25(1)(b).

(2) Where the appeal procedure is changed by the Secretary of State under this regulation the Secretary of State shall—

- (a) notify the appellant, the relevant authority and any interested person of such change, and
- (b) ensure that a copy of such notice is available for inspection on a website maintained by the Planning Inspectorate Executive Agency until the appeal is determined; and

the Secretary of State may give any consequential directions as to the procedure to be applied in relation to the appeal as she may consider necessary.

CHAPTER VI

General

Notification of appointment of assessor

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

Further time and additional copies

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

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

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- (a) further written representations or evidence, or (in the case of a hearing or inquiry) oral evidence with regard to any matter on which she or he requires further information; and
- (b) copies of (as appropriate)—
 - (i) a statement of case or comments sent in accordance with regulation 25 or 27;
 - (ii) a proof of evidence sent in accordance with regulation 47; or
 - (iii) any other document or information sent to the Secretary of State or inspector before or during a hearing or inquiry;

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

Inspection and copying of documents

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

- (a) the notice of appeal submitted by the appellant pursuant to regulation 20(1) or 56(1);
- (b) the questionnaire completed by the authority pursuant to regulation 22(a) together with any documents referred to in it;
- (c) any representations made to the authority in respect of matters mentioned in regulation 22(b)(i) or (ii);
- (d) the notice given by the Secretary of State pursuant to regulation 23;
- (e) all documents submitted by the authority pursuant to regulation 24, 25(a), 27(b) and 56(4);
- (f) the statement of case submitted by the appellant pursuant to regulation 25 (b), the comments submitted by the appellant pursuant to regulation 27(a) and the further information provided by the appellant, the authority or an interested person pursuant to regulation 28;
- (g) any representations made to the Secretary of State in respect of the appeal under regulation 25(c);
- (h) any proof of evidence (together with any written summary) sent by or to the authority pursuant to regulation 47; or
- (i) any statement of common ground prepared by the appellant and the authority pursuant to regulation 48.

Changes of procedure

68.—(1) If, at any time before the Secretary of State or the inspector, in either case under regulation 31, notifies her or (as the case may be) his decision on an appeal, the appellant, the relevant authority or the Secretary of State wishes the appeal to be determined no longer by way of written representations but instead by way of a hearing or inquiry, the Secretary of State shall arrange for the appeal to proceed by way of a hearing or inquiry.

(2) Paragraphs (3) and (4) apply at any time before the Secretary of State, under regulation 40 or 54, or an inspector, under regulation 41 or 55, notifies her or (as the case may be) his decision on an appeal.

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

procedure, the Secretary of State shall arrange for the appeal to be determined by way of written representations.

(4) If the appellant, the relevant authority or the Secretary of State wishes an appeal to be determined—

- (i) no longer by way of a hearing but instead by way of an inquiry, or
- (ii) no longer by way of an inquiry but instead by way of a hearing,

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

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

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

Recovery of jurisdiction

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

Procedure following quashing of a decision

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

- (a) shall send to the appellant, the relevant authority and any interested person a written statement of the matters with respect to which further representations are invited for the purposes of her further consideration of the appeal;
- (b) shall afford to those persons the opportunity of making written representations to her in respect of those matters or of asking for the re-opening of the hearing or the inquiry, and
- (c) may, as she thinks fit, cause the hearing or inquiry to be re-opened and, if she re-opens the hearing or inquiry, paragraphs (3) to (8) of regulation 32 and paragraphs (3) to (8) of regulation 45 shall apply as if the references to a hearing or inquiry were references to a re-opened hearing or inquiry respectively.

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

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