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STATUTORY INSTRUMENTS

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**2004 No. 3305**

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

**PART 3**

**DETERMINATION OF APPEALS**

**CHAPTER IV**

*General*

**Notification of appointment of assessor**

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

**Further time and additional copies**

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

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

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

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

**Inspection and copying of documents**

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

- (a) the notice of appeal submitted by the appellant pursuant to regulation 4(1);
- (b) the questionnaire completed by the authority pursuant to regulation 6(a) together with any documents referred to in it;

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

### Changes of procedure

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

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

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

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

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

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

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

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

### **Recovery of jurisdiction**

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

### **Procedure following quashing of a decision**

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

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

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

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**Changes and effects yet to be applied to :**

- Regulations revoked by [S.I. 2011/2019 reg. 45](#)