
STATUTORY INSTRUMENTS

2004 No. 3305

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

PART 3

DETERMINATION OF APPEALS

CHAPTER I

Appeals to be determined on the basis of written representations

Site inspections

13.—(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 access authority.

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

(3) Where the appellant or the access authority have 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

14. 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

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

- (a) the appellant;
- (b) the access authority;
- (c) every interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum;

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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 II

Appeals to be determined by way of a hearing

Date and notification of hearing

- 16.—(1) The date fixed by the Secretary of State for the holding of a hearing shall be—
- (a) not later than 22 weeks after the start date, unless she considers such a date is not practicable; or
 - (b) the earliest date after that period which she considers to be practicable.

(2) In considering whether a date is practicable for the purposes of paragraph (1), the Secretary of State shall have regard to the desirability of arranging consecutive or concurrent hearings as mentioned in regulation 17.

(3) Unless the Secretary of State agrees a lesser period of notice with the appellant and the access authority, she shall give the appellant, the authority and every 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 (1)(a)) 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—
- (a) may require the access 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;
 - (b) may require the access authority to affix a notice of the hearing firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and the access authority shall not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify; and
 - (c) shall ensure that the Planning Inspectorate Executive Agency makes a notice of the hearing available for inspection on a website which it maintains until the appeal is determined.

- (7) Every notice of a hearing referred to in 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

17. 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 and notification of name of inspector

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

- (a) the appellant; and
- (b) the access 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.

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

Procedure at hearing

19.—(1) Except as otherwise provided in these Regulations, 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 access 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 access 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 access authority to alter or make any addition to a statement of case submitted under regulation 9 (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

20.—(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 access authority have raised any reasonable objections to the hearing 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 access 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 access authority are not present at the appointed time.

Procedure after hearing – appeals determined by the Secretary of State

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

(4) If, after the close of the hearing, 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, the access 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.

(5) Those persons making written representations or requesting the re-opening of the hearing pursuant to paragraph (4) 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.

(6) 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 access authority in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5); and where a hearing is re-opened (whether by the same or a different inspector) –

- (a) the Secretary of State shall send to the appellant, the access 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 16 shall apply as if the references to a hearing were references to a re-opened hearing.

Procedure after hearing – transferred appeals

22.—(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 24 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 access 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 access 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 access 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 16 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

23.—(1) This regulation applies where a hearing has been held for the purposes of any appeal 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 reaching it, in writing to –

- (a) the appellant;

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- (b) the access authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(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 made to the Secretary of State within four weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(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, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him that opportunity.

(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.

Notification of decision – transferred appeals

24.—(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;
- (b) the access authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector's decision under paragraph (2) may apply in writing to the Secretary of State for an opportunity of inspecting any documents referred to 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 receipt of the notification of the decision as mentioned in paragraph (2).

(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 III

Appeals to be determined by way of an inquiry

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

25.—(1) The Secretary of State or the inspector shall hold a pre-inquiry meeting if it appears to her 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 she shall notify in writing the appellant and the access authority of her 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 access authority; and
- (b) any other person whose presence at the pre-inquiry meeting she considers 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 access 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

26.—(1) Where a pre-inquiry meeting is held pursuant to regulation 25, the inspector shall arrange a timetable for the proceedings.

(2) The inspector shall specify in the timetable arranged pursuant to this regulation a date by which any proof of evidence as mentioned in regulation 28 shall be sent to the Secretary of State.

Date and notification of inquiry

27.—(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 25, 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.

(3) Unless the Secretary of State agrees a lesser period of notice with the appellant and the access authority, she shall give to the appellant, the access authority and every 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.

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(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—

- (a) may require the access authority to publish, not less than two weeks before the date fixed for the inquiry, a notice of the inquiry in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the access authority to affix a notice of the inquiry firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and the access authority shall not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify; and
- (c) shall ensure that the Planning Inspectorate Executive Agency makes a notice of the inquiry available for inspection on a website which it maintains until the appeal is determined.

(7) Every notice of an inquiry referred to in 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.

Proofs of evidence

28.—(1) Subject to paragraph (2), where the appellant or the access 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 access 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 26 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

29. The appellant and the access 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 and notification of the name of inspector

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

- (a) the appellant; and
- (b) the access 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.

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

Procedure at inquiry

31.—(1) Except as otherwise provided in these Regulations, 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 access 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 paragraphs (6) to (8), a person appearing at an inquiry shall be entitled to give, or call any other person to give, oral evidence; and the appellant, the access authority, and any other person if so permitted by the inspector, 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 (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 28(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.

(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

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- (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 9 or a proof of evidence or summary sent to the Secretary of State under regulation 28(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

32.—(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 access 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 access authority whether they wish to be present or be represented.

(3) Where the appellant or the access 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 access authority (or their representatives) are not present at the appointed time.

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

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

(4) 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 access 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.

(5) Those persons making written representations or requesting that the inquiry be re-opened under paragraph (4) 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.

(6) 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 access authority in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5); and where an inquiry is re-opened (whether by the same or a different inspector) –

- (a) the Secretary of State shall send to the appellant, the access authority and any other person 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 27 shall apply as if the references to an inquiry were references to a re-opened inquiry.

Procedure after inquiry – transferred appeals

34.—(1) This regulation applies where an inquiry has been 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 36 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 appellant and the access authority and any other person who appeared at the inquiry; 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 or request to re-open the inquiry 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 access 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 appellant, the access authority and any other person 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 27 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

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

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(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;
- (b) the access authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(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 made to the Secretary of State within four weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(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, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him that opportunity.

(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.

Notification of decision – transferred appeals

36.—(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;
- (b) the access authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(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 referred to in the notification 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 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 the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

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;
- (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 to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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).

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

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