

SCHEDULE 5

Regulations 32(11) and 33(11)

Delegation of appellate functions

1. In this Schedule “appointed person” means a person appointed under regulation 32(11) or 33(11) and “appointment” means an appointment under either of those regulations.

2. An appointment must be in writing and—

- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a specified description;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of any conditions specified in the appointment; and
- (c) may, by notice given to the appointed person, be revoked at any time by the Secretary of State in respect of any appeal or matter which has not been determined by the appointed person before that time.

3. Subject to the provisions of this Schedule, an appointed person has, in relation to any appeal or matter to which his appointment relates, the same powers and duties as the Secretary of State has under regulation 32(7), or regulation 33(10), (13), (14) and (15), as the case may be.

4.—(1) The provisions of this paragraph apply to an appeal under regulation 32 or 33 which falls to be determined by an appointed person and, in the case of an appeal under regulation 32, apply instead of regulation 33(9).

(2) If the appellant or Natural England informs the appointed person that he or it wishes to appear before and be heard by him, the appointed person must give him or it an opportunity to do so.

(3) Even if the appellant or Natural England has not asked to appear and be heard, the appointed person—

- (a) may—
 - (i) in the case of an appeal under regulation 32, hold a hearing in connection with the appeal or matter, and
 - (ii) in the case of an appeal under regulation 33, hold a hearing or local inquiry in connection with the appeal or matter; and
- (b) must, in the case of an appeal under regulation 33, hold a local inquiry in connection with the appeal or matter if the Secretary of State directs.

(4) The appointed person must notify his decision to hold a hearing or a local inquiry (as the case may be) to the appellant, Natural England and to any persons who notified the Secretary of State that they wish to make representations under regulation 33(8).

(5) If an appointed person holds a hearing or local inquiry under this Schedule, the Secretary of State may appoint an assessor to sit with the appointed person and advise him on any matters arising, notwithstanding that the appointed person is to determine the matter or appeal.

(6) Subject to regulation 33(12), the costs of the hearing or local inquiry held under this Schedule must be met by the Secretary of State.

5.—(1) If the appointment of an appointed person is revoked under paragraph 2(c) in respect of any appeal or matter, the Secretary of State must, unless he proposes to determine the matter himself, appoint another person under regulation 32(11) or 33(11) to determine the appeal or matter instead.

(2) If a new appointment is made, the consideration of the appeal or matter, or any local inquiry or other hearing in connection with it, must begin afresh.

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(3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

6.—(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates is to be treated for all purposes as done or omitted to be done by the Secretary of State.

(2) But sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.