

## SCHEDULE

Rules 1 and 2

Provisions in respect of a request for a direction and the examination of closed evidence

### PART 1

#### Interpretation

1. In this Schedule—

“application” means an application for development consent under section 37 (applications for orders granting development consent) to which closed evidence relates and includes—

- (a) part of the application;
- (b) any accompanying documents and further representations made by the applicant; and
- (c) any amendments made to the application;

“appointed representative” means a person appointed under paragraph 4(2) of Schedule 3 to represent the interests of a precluded person;

“examiner” means the person appointed under paragraph 9(1);

“hearing” means the hearing at which closed evidence is to be examined;

“party”, except in the expression “interested party”, means—

- (a) the person making the request for a direction; or
- (b) any appointed representative; and

“precluded person” means a person who is prevented from inspecting or hearing closed evidence during the examination of the application as a result of a direction.

### PART 2

#### Request for a direction

##### **Acknowledgement of request for a direction**

2. As soon as practicable after receiving a request for a direction the Secretary of State shall acknowledge receipt of the request in writing.

##### **Publicity**

3.—(1) As soon as practicable after receiving a request for a direction the request shall be publicised by the Secretary of State in accordance with paragraphs (2) and (3).

(2) Notice of the request shall be given—

- (a) to each interested party;
- (b) by posting and maintaining notice of the request in a conspicuous place or (in the case of an application for an order making provision for land-based linear works more than 5 kilometres in length) at intervals of not more than 5 kilometres on, or as close as is reasonably practicable to, the land to which the application relates; and
- (c) by local advertisement.

(3) The notice given under paragraph (2) shall—

- (a) state that a request for a direction has been made;

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- (b) state that written representations as to whether a direction should be given can be made to the Secretary of State at the address specified in the notice; and
- (c) specify the date by which any such representations should be made to the Secretary of State (being a date not less than 14 days from the date when the notice is given).

(4) Any notice posted pursuant to paragraph (2)(b) shall be readily visible to and legible by members of the public; but where, without any fault or intention of the applicant, the notice is removed, obscured or defaced before the commencement of the hearing, the Secretary of State shall be treated as having complied with the requirements of that sub-paragraph if the Secretary of State has taken reasonable steps for the protection of the notice and, if need be, its replacement.

(5) In this rule “by local advertisement” means—

- (a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) where the Secretary of State maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.

#### **Notice of decision in respect of request for a direction**

4.—(1) As soon as practicable after determining whether or not to give a direction, the Secretary of State shall notify the decision to—

- (a) any person who made representations to the Secretary of State; and
- (b) any precluded person,

but nothing in this paragraph requires or permits the Secretary of State to give reasons for the decision, where the giving of reasons would result in the public disclosure of closed evidence.

(2) Where a direction is given the Secretary of State shall, at the same time as notifying the decision in accordance with paragraph (1), send a copy of the direction to—

- (a) the person who requested the direction;
- (b) the Commission; and
- (c) any precluded person or their appointed representative.

## **PART 3**

### **Examination of closed evidence**

#### **Functions of appointed representative**

5.—(1) The provisions of this paragraph apply to an appointed representative.

(2) The first function of an appointed representative is to represent the interests of the precluded person by—

- (a) taking instructions from the precluded person before receiving copies of closed evidence;
- (b) inspecting, considering and making representations in respect of closed evidence;
- (c) dealing with preliminary matters in relation to closed evidence in connection with any hearing;
- (d) making representations in relation to closed evidence at any hearing; and
- (e) attending site visits.

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(3) The second function of an appointed representative is to ensure that the copies of the closed evidence are returned to the person who supplied them as soon as practicable after whichever is the later of—

- (a) the end of the hearing at which closed evidence is considered; or
- (b) notification by the Secretary of State that no such hearing will be held.

(4) The third function of an appointed representative, where a decision is quashed, is to—

- (a) consider and make representations in relation to the matters with respect to which the Secretary of State has invited further representations; and
- (b) make representations in relation to these matters at any hearing.

(5) The fourth function of an appointed representative is to make applications to the Court in relation to any of the appointed representative's other functions.

(6) For the purpose of the exercise of any of the appointed representative's functions, the appointed representative may discuss any matter relating to the closed evidence with—

- (a) the person who supplied the closed evidence to the Secretary of State; or
- (b) a person specified, or of any description specified, in the direction.

### **Pre-hearing meeting**

6.—(1) The Secretary of State may hold a pre-hearing meeting and shall give the parties, and such other persons as the Secretary of State may invite, not less than 14 days' notice of the date, time and place fixed for the holding of the pre-hearing meeting.

(2) At the pre-hearing meeting the Secretary of State shall—

- (a) identify what are, in the Secretary of State's opinion—
  - (i) the main issues to be considered at the hearing; and
  - (ii) any matters on which the Secretary of State requires further explanation from the parties;
- (b) specify—
  - (i) the timetable for the submission and exchange of representations; and
  - (ii) any other deadlines the Secretary of State thinks necessary; and
- (c) make such other procedural decisions as the Secretary of State thinks appropriate.

(3) When deciding the application the Secretary of State may disregard any written representation, received after the date, or the expiry of the period, specified for their receipt.

(4) The Secretary of State must notify the parties and any other persons invited under paragraph (1) of the timetable.

(5) The Secretary of State may vary the timetable and as soon as is practicable must notify the parties and any other persons invited under paragraph (1) of the variation.

(6) In this paragraph, "procedural decision" means a decision about how the closed evidence is to be examined.

### **Notice of hearing**

7.—(1) Unless the Secretary of State agrees a lesser period of notice with the parties and anyone invited to the pre-hearing meeting, the Secretary of State must give to them not less than 14 days' notice of the date, time and place fixed for the holding of the hearing.

(2) The Secretary of State may vary the date, time or place for the holding of the hearing and shall give the parties such notice of any variation as appears to the Secretary of State to be reasonable.

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### **Hearing procedure**

8.—(1) The Secretary of State shall determine the procedure at the hearing.

(2) Without prejudice to the generality of sub-paragraph (1), the Secretary of State shall determine—

- (a) the order in which oral representations are to be made;
- (b) the amount of time to be allowed for making any oral representation;
- (c) the matters in respect of which there may be oral questioning by persons other than the person making the representation; and
- (d) the amount of time to be allowed for such oral questioning.

(3) The Secretary of State shall be responsible for the oral questioning of a person giving evidence except where the Secretary of State thinks that the oral questioning of a person giving evidence by another person is necessary in order to ensure—

- (a) adequate testing of any representation; or
- (b) that a party has a fair chance to put their case.

(4) The Secretary of State may proceed with a hearing in the absence of a party.

(5) The Secretary of State may 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.

### **Appointment of an examiner**

9.—(1) The Secretary of State may appoint an examiner to preside at the hearing.

(2) The Secretary of State must notify all parties if an examiner is appointed.

(3) Where an examiner has been appointed, paragraphs 8 and 12 shall apply in relation to the examiner as if for “the Secretary of State”, there were substituted “the examiner”.

### **Procedure after a hearing**

10.—(1) This paragraph applies if an examiner has been appointed.

(2) The examiner must make a report in writing to the Secretary of State setting out the examiner’s—

- (a) findings and conclusions in respect of the closed evidence; and
- (b) recommendation, if any, as to the decision to be made on the application.

(3) The report referred to in paragraph (2) must only be disclosed to the parties and any person specified, or of a description specified, in the direction.

### **Further time**

11. The Secretary of State may at any time and in any particular case allow further time for the taking of any step which must or may to be taken virtue of this Schedule.

### **Site inspections**

12.—(1) Before or during the examination of the closed evidence, the Secretary of State may make an unaccompanied inspection of any site to which the closed evidence or application relates, without giving notice of his intention to the parties.

(2) The Secretary of State may, as part of the examination of closed evidence and before its completion, inspect such a site in the company of any party.

(3) Where the Secretary of State intends to make an inspection of the kind referred to in subparagraph (2), the Secretary of State shall notify the parties of the date, time and place at which the Secretary of State proposes to make it.

(4) The Secretary of State shall not be bound to defer an inspection of the kind referred to in subparagraph (2) where a party is not present at the time appointed.

### **Procedure after completion of examination**

**13.**—(1) The Secretary of State may disregard any representations received after the completion of the examination.

(2) If, after the completion of the examination, the Secretary of State—

(a) differs from the examiner on any matter of fact mentioned in, or appearing to the Secretary of State to be material to, a conclusion reached by the examiner; or

(b) takes into consideration any new evidence or new matter of fact,

and is for that reason disposed to disagree with any recommendation made by the examiner, the Secretary of State shall not come to a decision which is at variance with that recommendation without—

(i) notifying the parties of the disagreement and the reasons for it; and

(ii) giving them an opportunity of making written representations to the Secretary of State in respect of the new evidence or new matter of fact.

(3) In the circumstances described in paragraphs (2)(a) and (b) the Secretary of State may re-open the hearing.

(4) Where the hearing is re-opened, the provisions in paragraph 9 shall apply and where an examiner has been appointed paragraph 10 shall apply.

(5) In this paragraph “completion of the examination” means the completion of the examination of the closed evidence.

### **Reasons for decision to grant or refuse development consent**

**14.**—(1) The Secretary of State may refer to the report of an examiner in the statement of reasons prepared in accordance with section 116 (reasons for decision to grant or refuse development consent) but must not disclose the closed evidence.

(2) The Secretary of State may refer to the closed evidence in the version of the statement of reasons which is sent to the parties in accordance with section 116.

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

**15.**—(1) This paragraph applies where the Secretary of State’s decision on an application is quashed in proceedings before any court.

(2) The Secretary of State shall—

(a) send to the parties a written statement of the matters with respect to which further written representations are invited for the purposes of further consideration of the application by the Secretary of State; and

(b) give the parties the opportunity of making further representations to the Secretary of State in respect of those matters, either in writing or by way of a hearing.

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(3) Where a hearing is held pursuant to sub-paragraph (2)(b), paragraph 9 shall apply, and where an examiner is appointed, paragraphs 10(2) and (3) shall apply.