

## SCHEDULE 1

Regulation 38

### Modifications where national security direction given

#### Interpretation

1. Regulation 2 is read as if in the appropriate places there is inserted—
  - ““appointed representative” (“*cynrychiolydd penodedig*”) means a person appointed under section 321(5) or (6) of the 1990 Act;”;
  - ““closed evidence” (“*tystiolaeth gaeedig*”) means evidence which is subject to a security direction;”;
  - ““security direction” (“*cyfarwyddyd diogelwch*”) means a direction given by the Welsh Ministers or the Secretary of State under section 321(3) of the 1990 Act (matters related to national security);”.

#### Further information

2. Regulation 15 is read as if after paragraph (7) there is inserted—
  - “(7A) Paragraph (7) does not apply where the representations and written responses received by the Welsh Ministers (“further representations”) include or refer to closed evidence.
  - (7B) Where further representations includes or refers to closed evidence—
    - (a) the Welsh Ministers must, as soon as practicable after receipt, send the further representations to the applicant and any appointed representative; and
    - (b) must make the further representations (other than the closed evidence) available in such manner as the Welsh Ministers think appropriate as soon as practicable.”

#### Site inspections

3. Regulation 16 is read as if—
  - (a) at the end of paragraph (2) there is inserted “and they must so notify any appointed representative”;
  - (b) after paragraph (2) there is inserted—
    - “(2A) Where an inspection of a site involves the inspection of closed evidence, the Welsh Ministers may inspect the land in the company of the applicant and any appointed representative.”

#### Pre-inquiry meetings

4. Regulation 31(1) is read as if after sub-paragraph (b) there is inserted—
  - “(ba) any appointed representative;”.

#### Date and place of inquiry

5. Regulation 32(5) is read as if after “applicant” in both places there is inserted “, any appointed representative”.

**Absence, adjournment, etc.**

6. Regulation 25 (as applied to inquiries by regulation 30(3)) is read as if after “applicant” there is inserted “, any appointed representative”.

**Procedure at inquiry**

7. Regulation 33 is read as if—

- (a) in paragraph (2) after “local planning authority” there is inserted “, any appointed representative”;
- (b) in paragraph (4) after “local planning authority” there is inserted “, any appointed representative”;
- (c) in paragraph (6) after “applicant” there is inserted “, any appointed representative”;
- (d) at the end of paragraph (12) there is inserted “subject to paragraph (12A)”;
- (e) after paragraph (12) there is inserted—

“(12A) Where any written representation or other document (“further information”) contains closed evidence, the appointed person must—

- (a) disclose the further information to the applicant and any appointed representative;
- (b) disclose the further information other than any closed evidence to the local planning authority and every person who takes part in the inquiry.”

**Procedure after inquiry**

8. Regulation 28 (as it applies to inquiries by regulation 30(3)) is read as if—

(a) after paragraph (2) there is inserted—

“(2A) Where closed evidence was considered at the inquiry—

- (a) the appointed person and assessor, where one has been appointed, must set out in a separate part (“the closed part”) of their reports any description of that evidence together with any conclusions or recommendations in relation to that evidence; and
- (b) where an assessor has been appointed, the appointed person must append the closed part of the assessor’s report to the closed part of the appointed person’s report and must state in the closed part of that report the level of agreement or disagreement with the closed part of the assessor’s report and, where there is disagreement with the assessor, the reasons for that disagreement.”;

(c) after paragraph (5) there is inserted—

“(5A) Where the Welsh Ministers differ from the appointed person on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the appointed person in relation to a matter in respect of which closed evidence has been given, the notification referred to in paragraph (5) must include the reasons for the Welsh Ministers’ disagreement unless—

- (a) the notification is addressed to a person who is neither the appointed representative nor any person specified, or of a description specified, in the security direction; and
- (b) inclusion of the reasons would disclose any part of the closed evidence.”;

(d) in paragraph (8) after “applicant” there is inserted “, the appointed representative”.

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

9. Regulation 37 is read as if—

(a) at the beginning of sub-paragraph (a) of paragraph (1) there is inserted “subject to paragraph (1A),”; and

(b) after paragraph (1) there is inserted—

“(1A) Where the matters referred to in paragraph (1)(a) will involve consideration of closed evidence, the Welsh Ministers must only send the written statement to—

(a) any appointed representative; and

(b) a person specified, or of any description specified, in the security direction.”

### **Closed evidence not to be disclosed**

10. Part 10 is read as if after regulation 39 there is inserted—

#### **“Closed evidence not to be disclosed**

**39A.** Nothing in these Regulations is to be taken so as to require or permit closed evidence to be disclosed to a person other than—

(a) the Welsh Ministers;

(b) the appointed representative; or

(c) a person specified, or of any description specified, in the security direction.”