

2007 No. 841

TRIBUNALS AND INQUIRIES

**The Electricity Generating Stations and Overhead Lines
(Inquiries Procedure) (England and Wales) Rules 2007**

<i>Made</i>	- - - -	<i>13th March 2007</i>
<i>Laid before Parliament</i>		<i>15th March 2007</i>
<i>Coming into force</i>	- -	<i>6th April 2007</i>

The Lord Chancellor makes the following Rules in exercise of the powers conferred by section 9 of the Tribunals and Inquiries Act 1992(a).

In accordance with section 9 of that Act he has consulted with the Council on Tribunals.

Citation, commencement and application

1.—(1) These Rules may be cited as the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 and shall come into force on 6th April 2007.

(2) These Rules apply in relation to any public inquiry caused by the Secretary of State to be held in England and Wales—

- (a) under paragraph 2 or 3 of Schedule 8(b);
- (b) under section 62(c) in relation to any application notice of which was not required to be published by regulations under paragraph 3(1) of Schedule 8.

(3) In relation to an application which relates to—

- (a) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
- (b) the extension of a generating station at or to a place the whole or a part of which is not within such an area,

these Rules shall apply with the modifications set out in rule 27.

Interpretation

2.—(1) In these Rules—

(a) 1992 c.53, to which there are amendments not relevant to these Rules.
(b) 1989 c.29. Paragraph 2(6) of Schedule 8 has been amended by: the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 83(1); the Local Government (Wales) Act 1994 (c.19), Schedule 6, paragraph 22 and Schedule 18; and the Environment Act 1995 (c.25), Schedule 10, paragraph 30 and Schedule 24.
(c) To which there are amendments not relevant to these Rules.

“additional inspector” means an inspector appointed by the Secretary of State under paragraph 5A(3)(a) of Schedule 8(a);

“application” means, except where the context requires otherwise, an application made under paragraph 1 of Schedule 8 for—

(a) consent under section 36(b) to construct, extend or operate a generating station, together with any application under section 36A(c) for a declaration relating to rights of navigation which is made with that application for consent;

(b) consent under section 37 to install or keep installed an electric line above ground,

and “applicant” means the person making an application;

“assessor” means a person appointed by the Secretary of State to sit with an inspector at an inquiry or re-opened inquiry to advise the inspector on such matters arising as the Secretary of State may specify;

“by local advertisement”, in relation to a notice, means by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application relates is situated;

“document” includes a photograph, map or plan;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(d);

“generating station” shall be construed in accordance with section 64(e);

“inquiry” means a public inquiry in relation to which these Rules apply; and where an inquiry is conducted by means of concurrent sessions, it includes any such session;

“inspector” includes a lead inspector and an additional inspector;

“land” means the land (including trees, buildings or other structures, and land covered with water) to which an inquiry relates;

“lead inspector” means a person appointed by the Secretary of State to hold an inquiry or a re-opened inquiry;

“mediator” means a person who is appointed by the Secretary of State under rule 8;

“outline statement” means a written statement of the principal submissions which a person proposes to put forward at an inquiry;

“person entitled to appear at an inquiry” means a person described in rule 15(1), and cognate expressions shall be construed accordingly;

“pre-inquiry meeting” means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held about the same inquiry, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

“qualifying objector” means—

(a) where the Secretary of State has caused a public inquiry to be held under paragraph 2 or 3 of Schedule 8 in respect of an application, anyone who has objected to the application in accordance with regulations under paragraph 3(1) of that Schedule;

(b) where the Secretary of State has caused a public inquiry to be held under section 62 in respect of an application, notice of which was not required to be published by regulations under paragraph 3(1) of Schedule 8, anyone who has made a written objection in respect

(a) Paragraph 5A was inserted into Schedule 8 to the Electricity Act 1989 (c.29) by section 182(1) of the Energy Act 2004 (c.20).

(b) Section 36 was amended by section 93(1) and 93(3) of the Energy Act 2004. There are other amendments not relevant to these Rules.

(c) Section 36A was inserted into the Electricity Act 1989 by section 99(1) of the Energy Act 2004.

(d) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

(e) To which there are amendments not relevant to these Rules.

of the application to the Secretary of State or the relevant planning authority before the date of the relevant notice,

and whose objection has not been withdrawn;

“qualifying planning authority” means—

- (a) where the Secretary of State has caused a public inquiry to be held under paragraph 2 of Schedule 8 in respect of an application, any relevant planning authority who has objected to the application in accordance with regulations under paragraph 2(3) of that Schedule and whose objection has not been withdrawn;
- (b) where the Secretary of State has caused a public inquiry to be held under section 62 in respect of an application, notice of which was not required to be published by regulations under paragraph 3(1) of Schedule 8, any relevant planning authority;

“registration form” means a form for completion by persons who wish to participate in the inquiry;

“relevant notice” means (except in rule 28(2)) the Secretary of State’s written notice under rule 4(1);

“relevant planning authority” has the same meaning as in paragraph (a), (aa) or (ab) (as the case may be) of paragraph 2(6) of Schedule 8(a);

“statement of case” means a written statement which contains—

- (a) full particulars of the case which a person proposes to put forward at an inquiry;
- (b) a list of any documents which that person intends to refer to or put in evidence;
- (c) a list of the individuals whom that person proposes to call as witnesses; and
- (d) the subject-matter of the evidence of each such witness;

“statement of common ground” means a written statement prepared jointly by the relevant planning authority and the applicant, which contains agreed factual information about the proposal which is the subject of the application;

“technical adviser” means a person appointed by the Secretary of State under rule 7.

(2) Except where the context otherwise requires, any reference in these Rules to a numbered section or Schedule is a reference to that section of, or that Schedule to, the Electricity Act 1989(b).

(3) Subject to paragraph (5), a requirement imposed by these Rules on the Secretary of State or the inspector to circulate a document is met by sending a copy of that document to—

- (a) the relevant planning authority;
- (b) the applicant; and
- (c) each qualifying objector who has indicated in accordance with rule 6(4)(b)(iv) that he is likely to want to be represented formally and to play a major part in the inquiry.

(4) Subject to paragraph (5), a requirement imposed by these Rules on the Secretary of State or the inspector to deposit a document is met by sending a copy of it to the relevant planning authority.

(5) Nothing in paragraph (3) or (4) requires the Secretary of State or the inspector to send a copy of a document to the person from whom it was received.

(6) A requirement imposed by these Rules on the Secretary of State to publish a notice on a website is met—

- (a) by publication of the notice, or of the details required to be contained in that notice, on a website maintained by the Secretary of State; or

(a) Paragraph 2(6) of Schedule 8 has been amended by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 83(1); the Local Government (Wales) Act 1994 (c.19), Schedule 6, paragraph 22 and Schedule 18; and the Environment Act 1995 (c.25), Schedule 10, paragraph 30 and Schedule 24.

(b) 1989 c.29.

- (b) by publication of a link on a website maintained by the Secretary of State to another website on which the notice is published, or the details required to be contained in that notice are published.

Electronic communications

3.—(1) In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being carried out electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where any provision of these Rules requires any person to provide a name and address to any other person, the requirement shall not be fulfilled unless the person subject to the requirement provides a postal address;
- (b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement of these Rules to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement shall be taken to be fulfilled where the statement, notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(a).

(6) A requirement of these Rules that any document shall be in writing is fulfilled where that document satisfies the criteria in paragraph (3).

(7) A requirement in these Rules to send more than one copy of a statement, notice or other document may be complied with by transmitting one copy only of the statement, notice or other document in question.

Notice by Secretary of State

4.—(1) The Secretary of State shall send the applicant and the relevant planning authority in writing—

- (a) notice that an inquiry is to be held;
- (b) notice that there will be a pre-inquiry meeting or that he has decided not to hold one under rule 9(2), as the case may be; and
- (c) a statement of the matters which, in his view, are the matters to be considered at the inquiry; and where another Minister of the Crown or a government department has expressed in writing to the Secretary of State a view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, the Secretary of State shall set this out in his statement.

(2) The Secretary of State shall send a copy of the statement described in paragraph (1)(c) to the Minister or government department concerned.

(a) 1971 c.80, to which there are amendments not relevant to these Rules.

(3) The Secretary of State may at any time modify the statement referred to in paragraph (1)(c) and if he does so shall send the modified statement to the applicant who shall publish by local advertisement a notice of the modification made.

(4) Where the Secretary of State has modified the statement referred to in paragraph (1)(c) under paragraph (3), he shall publish a notice of the modification made on a website.

Preliminary information to be supplied

5. The Secretary of State shall as soon as practicable after the issue of a relevant notice inform the applicant and any qualifying planning authority in writing of the name and address of any qualifying objector.

Registration

6.—(1) The Secretary of State shall as soon as practicable after the issue of a relevant notice send to each person entitled to appear at the inquiry or whom he knows to have an interest in the proposal a copy of the statement sent by the Secretary of State under rule 4(1)(c) and a registration form.

(2) On receipt of the relevant notice, the applicant shall publish by local advertisement a notice stating—

- (a) that these Rules apply to the inquiry;
- (b) the matters contained in the statement sent by the Secretary of State under rule 4(1)(c);
- (c) the arrangements for the first pre-inquiry meeting, if any; and
- (d) that persons interested in participating in the inquiry should obtain from the Secretary of State a registration form.

(3) The Secretary of State shall as soon as practicable after the issue of the relevant notice publish the notice referred to in paragraph (2) on a website.

(4) The registration form shall—

- (a) include the address to which completed forms must be returned, and the date by which that must be done, which shall be not later than eight weeks after the date of the relevant notice; and
- (b) request the following information—
 - (i) the name, address and telephone number of the person registering;
 - (ii) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person;
 - (iii) whether or not the person registering has an interest in any land which will be affected by the proposal;
 - (iv) whether or not the person registering is likely to want to be represented formally and to play a major part in the inquiry;
 - (v) if not, whether or not the person registering will wish to give oral evidence at the inquiry or will wish only to submit representations in writing; and
 - (vi) two copies of an outline statement from the person registering.

(5) The Secretary of State shall, as soon as practicable after the date by which the registration form must be returned under paragraph (4)(a), circulate each outline statement received by him as mentioned in paragraph (4)(b)(vi).

Appointment of technical adviser

7.—(1) If it appears to the Secretary of State that evidence to be given to the inquiry is, or is likely to be, of such technical or scientific nature that the inquiry would be conducted more efficiently and expeditiously if an expert and independent assessment of that evidence were to be made, he may at any time appoint a technical adviser for that purpose.

(2) A technical adviser shall be a person appearing to the Secretary of State to have such qualifications and experience as enable him to conduct an expert assessment of scientific or technical evidence to be given to the inquiry.

(3) Where the Secretary of State appoints a technical adviser, he may in writing require the applicant to publish by local advertisement and within such period as he may specify a notice stating the name of the person so appointed and specifying the evidence to be assessed.

(4) Where the Secretary of State requires the applicant to publish a notice under paragraph (3), as soon as reasonably practicable thereafter, the Secretary of State shall publish that notice on a website.

(5) The technical adviser shall, in consultation with the persons entitled to appear at the inquiry either jointly or separately, assess the evidence so specified and shall report his assessment in writing to the inspector.

(6) The technical adviser's report shall include a description of any areas of disagreement between the parties and shall state his view of the significance of each such disagreement.

(7) The inspector shall within seven days of receipt of the technical adviser's report circulate it.

(8) The technical adviser shall give evidence on his report at the inquiry and shall be subject to cross-examination to the same extent as any other witness.

(9) The inspector may allow the technical adviser to alter or add to his report 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 entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition.

Mediation

8.—(1) If it appears to the Secretary of State that—

- (a) there is an absence of agreement between persons entitled to appear at the inquiry on a matter which is relevant to the inquiry;
- (b) the inquiry would be conducted more efficiently and expeditiously if agreement could be reached in relation to that matter or any disagreement in relation to it could be defined and narrowed; and
- (c) such a result is capable of being achieved by mediation,

then he may at any time appoint a mediator for that purpose.

(2) A mediator shall be a person appearing to the Secretary of State to have been trained in mediation techniques by an independent mediation organisation.

(3) Where the Secretary of State appoints a mediator, he may in writing require the applicant to publish by local advertisement and within such period as he may specify a notice stating the name of the person so appointed and the matter in relation to which he is to mediate.

(4) Where the Secretary of State requires the applicant to publish a notice under paragraph (3), as soon as reasonably practicable thereafter, the Secretary of State shall publish that notice on a website.

(5) The mediator shall determine the procedure for the mediation.

(6) Within seven days from the conclusion of the mediation, the mediator shall give to the inspector a report describing the mediation procedure and its outcome and the inspector shall, as soon as practicable after receipt, send the report to persons entitled to appear at the inquiry.

(7) The inspector shall permit any person entitled to appear at the inquiry to address him on the report referred to in paragraph (6), but the mediator shall not give evidence at the inquiry.

Procedure for pre-inquiry and other meetings

9.—(1) Subject to paragraph (2), the Secretary of State shall hold one or more pre-inquiry meetings.

(2) Paragraph (1) does not apply where the Secretary of State considers that holding a pre-inquiry meeting would not result in the inquiry being conducted more efficiently and expeditiously, in which case paragraphs (3) to (8) do not apply.

(3) The pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) shall be held within twelve weeks of the date of the relevant notice.

(4) The Secretary of State shall give not less than three weeks' written notice of the pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) to—

- (a) any person entitled to appear at the inquiry; and
- (b) any other person whose presence at the pre-inquiry meeting seems to him to be desirable.

(5) The Secretary of State may in writing require the applicant to take one or more of the following steps—

- (a) not less than two weeks before the date fixed for the first pre-inquiry meeting to publish by local advertisement a notice of the pre-inquiry meeting;
- (b) to send a notice of that pre-inquiry meeting to such persons or classes of persons as he may specify, within such period as he may specify;
- (c) to post a notice of that pre-inquiry meeting in such places near to the land, and within such period, as he may specify.

(6) A notice of the pre-inquiry meeting published, sent or posted pursuant to paragraph (5) shall state—

- (a) the fact that the application has been made, and the purpose of it, together with a description of the land to which it relates;
- (b) a place in the locality where a copy of the application, and of the map referred to in it, can be inspected; and
- (c) the place, date and time of the pre-inquiry meeting.

(7) The inspector—

- (a) shall preside at each 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, in his opinion, 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.

(8) If the Secretary of State requests any further information from the applicant, any qualifying planning authority, any qualifying objector or any other person at the pre-inquiry meeting, that person shall ensure that two copies, in the case of the applicant or any qualifying planning authority, or three copies in the case of any other person, of the information have been received by the Secretary of State within such period as he may specify; and the Secretary of State shall, as soon as practicable after receipt, circulate all information received by him under this paragraph.

(9) The inspector may at any time and for any purpose connected with the inquiry to which these Rules apply hold such other meetings as he considers necessary, and he shall arrange for such notice to be given of those meetings as appears to him necessary; and paragraph (7) shall apply to such meetings.

Publicity for inspector's notes of pre-inquiry meetings and recommendations

10.—(1) As soon as practicable after the end of each pre-inquiry meeting the inspector shall prepare a note of the proceedings at that meeting and shall send a copy of that note to the Secretary of State.

(2) As soon as practicable after sending the copy of the note to the Secretary of State, the inspector shall circulate it.

(3) As soon as practicable after making recommendations to the Secretary of State on—

- (a) a timetable for the proceedings, in accordance with rule 12(2); or
 - (b) the matters which he is directed to consider under paragraph 5A(2)(a) of Schedule 8(a),
- the inspector shall circulate a copy of those recommendations.

Receipt of statements of case etc.

11.—(1) The applicant shall—

- (a) ensure that within the period specified in paragraph (3) two copies of his statement of case have been received by the Secretary of State; and
- (b) as soon as reasonably practicable after sending the statement of case to the Secretary of State, send a copy of it to every other person whom the applicant knows to be entitled to appear at the inquiry in accordance with rule 15(1).

(2) The persons to whom this paragraph applies shall—

- (a) ensure that within the period specified in paragraph (3) two copies of their statement of case have been received by the Secretary of State; and
- (b) as soon as reasonably practicable after sending the statement of case to the Secretary of State, send a copy of it to every other person whom they know to be entitled to appear at the inquiry in accordance with rule 15(1).

(3) Unless the Secretary of State specifies another period by notice in writing, the periods within which statements of case must be received by the Secretary of State are—

- (a) in the case of an applicant—
 - (i) where a pre-inquiry meeting is held, four weeks from the conclusion of it;
 - (ii) otherwise twelve weeks from the date of the relevant notice;
- (b) in the case of any person to whom paragraph (2) applies—
 - (i) where a pre-inquiry meeting is held, six weeks from the conclusion of it;
 - (ii) otherwise fourteen weeks from the date of the relevant notice.

(4) Paragraph (2) applies to the following persons—

- (a) any qualifying planning authority;
- (b) any qualifying objector who has indicated in accordance with rule 6(4)(b)(iv) that he is likely to want to be represented formally and to play a major part in the inquiry; and
- (c) any other person who is required to send a statement of case in accordance with paragraph (5).

(5) The Secretary of State may in writing require any other person who has notified him of an intention or wish to appear at the inquiry, to send to him two copies of their statement of case and in this case the Secretary of State shall—

- (a) send a written statement of the matters referred to in rule 4(1)(c) to that person; and
- (b) as soon as practicable inform that person of the name and address of every person to whom his statement of case is required to be sent.

(6) A relevant planning authority required to send a statement of case under this rule shall include in that statement of case details of the time and place where the opportunity to inspect and take copies described in paragraph (13) shall be afforded.

(7) Any person referred to in paragraph (4)(a) or (b) shall in their statements of case identify each part of the applicant's statement of case with which they agree and each part with which they do not agree, and shall state the reasons for each disagreement.

(8) The Secretary of State shall, as soon as practicable after receipt by him of each statement of case and copies of any documents or relevant part of any documents, deposit them.

(a) Paragraph 5A was inserted into Schedule 8 to the Electricity Act 1989 (c.29) by section 182(1) of the Energy Act 2004 (c.20).

(9) The applicant, and any person referred to in paragraph 4(a) or (b), may in writing request from any other person who is required to provide a statement of case a copy of any document, or of the relevant part of any document, referred to in the list of documents comprised in that person's statement of case; and any such document, or relevant part, shall be sent, as soon as practicable, to the person who requested it.

(10) The Secretary of State or the inspector may in writing require any person, who has sent a statement of case in accordance with this rule, to provide—

- (a) a specified number of additional copies of the statement; or
- (b) such further information about the matters contained in the statement as he may specify, and shall specify the time within which the copies or information must be received by him.

(11) Any person required to provide additional copies or further information shall—

- (a) ensure that the additional copies have been received by the Secretary of State or inspector, within the specified time;
- (b) ensure that two copies of the further information have been received by the Secretary of State or the inspector, within the specified time; and the Secretary of State or the inspector shall, as soon as practicable after receipt, deposit that further information; and
- (c) as soon as reasonably practicable after sending the further information to the Secretary of State or the inspector, send a copy of it to every other person whom the person providing the information knows to be entitled to appear at the inquiry in accordance with rule 15(1).

(12) Any person who sends a statement of case to the Secretary of State shall send with it a copy of—

- (a) any document; or
- (b) the relevant part of any document,

referred to in the list comprised in that statement of case, unless a copy of the document or part of the document in question is already available for inspection pursuant to paragraph (13).

(13) The relevant planning authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of—

- (a) any statement of case, written comments, information or other document a copy of which has been deposited in accordance with this rule; and
- (b) the statement of case, if any, of the relevant planning authority and any written comments, information or other documents sent by the relevant planning authority pursuant to this rule,

subject to the payment by that person of a reasonable charge.

(14) If any person who sends a statement of case under this rule wishes to comment on another person's statement of case they shall—

- (a) ensure that within four weeks of its receipt two copies of their written comments have been received by the Secretary of State; and the Secretary of State shall, as soon as practicable after receipt, deposit such comments; and
- (b) as soon as practicable after sending their comments to the Secretary of State, send a copy of them to every other person whom they know to be entitled to appear at the inquiry in accordance with rule 15(1).

(15) The Secretary of State shall, as soon as practicable after receipt, send to the inspector any statement of case, document or further information or written comments sent to him in accordance with this rule and received by him within the relevant period, if any, specified in this rule.

Inquiry timetable

12.—(1) The inspector shall at a pre-inquiry meeting held in accordance with rule 9—

- (a) propose a timetable for the proceedings at, or at part of, an inquiry; and

- (b) specify the date by which any proof of evidence and summary sent in accordance with rule 17, and any statement of common ground sent in accordance with rule 18, shall be received by the Secretary of State,

and shall give written notice of the date so specified to every person entitled to appear at the inquiry.

(2) The inspector shall, as soon as practicable after the pre-inquiry meeting referred to in paragraph (1), make recommendations to the Secretary of State on the proposed timetable.

(3) The inspector shall no later than four weeks before the start of the inquiry send to every person entitled to appear at the inquiry a copy of the timetable for the proceedings approved by the Secretary of State.

(4) The inspector may subsequently vary the timetable mentioned in paragraph (2) with the approval of the Secretary of State, except that where—

- (a) the inquiry has already started; and
- (b) the variation would not result in the inquiry closing on a date later than the date on which it was to close under the timetable which is being varied,

the approval of the Secretary of State is not required.

(5) Where no pre-inquiry meeting is held, the inspector—

- (a) may arrange a timetable for the proceedings at, or at part of, an inquiry; and
- (b) shall specify the date by which any proof of evidence and summary sent in accordance with rule 17, and any statement of common ground sent in accordance with rule 18, shall be received by the Secretary of State,

and shall give written notice of the timetable, if any, and date so specified to every person entitled to appear at the inquiry within ten weeks of the date of the relevant notice.

(6) The inspector may, at any time, vary any timetable arranged under paragraph (5).

Notification of appointment of assessor

13. Where the Secretary of State appoints an assessor, he shall notify in writing every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector.

Date and notification of inquiry

14.—(1) The date fixed by the Secretary of State for the holding of an inquiry shall be, unless he considers such a date impracticable, not later than—

- (a) where a pre-inquiry meeting is held, ten weeks after the conclusion of it;
- (b) otherwise eighteen weeks from the date of the relevant notice.

(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 after the end of the period applicable under that paragraph which he considers to be practicable.

(3) Unless the Secretary of State agrees a lesser period of notice with the applicant and any qualifying planning authority, he shall give not less than four weeks' written notice of the date, time and place fixed by him for the holding of an inquiry to every person entitled to appear at the inquiry.

(4) The Secretary of State may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period applicable under paragraph (1); and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

(5) The Secretary of State may vary the time or place for the holding of an inquiry and shall give such notice of any variation as appears to him to be reasonable.

(6) A written notice shall be taken to have been given by the Secretary of State for the purposes of paragraph (3) where he and any person entitled to appear at the inquiry have agreed that notice

of the matters mentioned in that paragraph may instead be accessed by that person via a website, and—

- (a) the notice is a notice to which that agreement applies;
- (b) the Secretary of State has published that notice on the website; and
- (c) not less than four weeks before the date fixed by the Secretary of State for the holding of the inquiry, the person is notified of—
 - (i) the publication of the notice on the website;
 - (ii) the address of the website; and
 - (iii) the place on the website where the notice may be accessed, and how it may be accessed.

(7) Where these Rules apply to an inquiry by virtue of rule 1(2)(b), paragraphs (5) and (6) of rule 9 shall (in addition to paragraphs (1) to (6) above) apply in relation to that inquiry as if references in those paragraphs to a pre-inquiry meeting or the first pre-inquiry meeting were references to the inquiry.

Appearances at inquiry

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

- (a) the applicant;
- (b) a qualifying planning authority;
- (c) any of the following bodies if the land is situated in their area and they are not the relevant planning authority—
 - (i) a county, county borough or district council (including the council of the Isles of Scilly);
 - (ii) a joint planning board constituted under section 2(1) or 2(1B) of the Town and Country Planning Act 1990(a);
 - (iii) an urban development corporation established by order under section 135(1) of the Local Government, Planning and Land Act 1980(b);
- (d) where the land is in an area previously designated as a new town, the Commission for New Towns;
- (e) a qualifying objector who has returned a registration form in accordance with rule 6(4)(a);
- (f) any other person who has sent a statement of case in accordance with rule 11(2).

(2) Nothing in paragraph (1) shall prevent the inspector from permitting any other person to appear at an inquiry, and such permission shall not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on his own behalf or be represented by any other person.

(4) An inspector may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry.

Representatives of government departments at inquiry

16.—(1) Where another Minister of the Crown or any government department has expressed a view described in rule 4(1)(c) and the Secretary of State has included its terms in a statement sent in accordance with that rule, any person entitled to appear may, not later than four weeks before

(a) 1990 c.8; section 2 was amended by the Local Government (Wales) Act 1994 (c.19), section 19(1) and 19(4)(a) and Schedule 18. There are other amendments to section 2 which are not relevant to these Rules. S.I. 1999/672, article 2, and Schedule 1 transfers the functions of the Secretary of State under section 2, so far as they are exercisable in relation to Wales, to the National Assembly for Wales.

(b) 1980 c.65. There is an amendment to section 135 which is not relevant to these Rules. S.I. 1999/672, article 2, and Schedule 1 transfers the function of the Secretary of State under section 135, so far as it is exercisable in relation to Wales, to the National Assembly for Wales.

the date of an inquiry, apply in writing to the Secretary of State for a representative of the other Minister or department concerned to be made available at the inquiry.

(2) Where an application is made in accordance with paragraph (1), the Secretary of State shall send the application to the other Minister or department, who shall make a representative available to attend the inquiry.

(3) Any person attending an inquiry as a representative in pursuance of this rule shall state the reasons for the expressed view and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in paragraph (3) shall require a representative of a Minister or a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy.

Proofs of evidence

17.—(1) Any person entitled to appear at an inquiry, who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, shall send two copies of the proof of evidence, in the case of a qualifying planning authority and the applicant, or three copies in any other case, to the Secretary of State.

(2) Where a copy of a proof of evidence sent under paragraph (1) contains more than 1,500 words, it shall be accompanied by a written summary, which, unless the inspector permits otherwise, shall not contain more than 1,500 words.

(3) Where a person sends copies of a proof of evidence and summary (if any), that person shall at the same time send a copy to every other person whom that person knows to be entitled to appear at the inquiry in accordance with rule 15(1) unless such a person has indicated in writing that he does not require to be sent a copy.

(4) The proof of evidence and any summary shall be received by the Secretary of State no later than the date specified by the inspector pursuant to rule 12(1)(b) or rule 12(5)(b) and as soon as practicable after receipt, the Secretary of State shall deposit each such proof of evidence and each such summary.

(5) The Secretary of State shall send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him in accordance with this rule.

(6) Any person, required by this rule 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, unless a copy of the document or part of the document in question is already available for inspection pursuant to rule 11(13).

(7) The Secretary of State or the inspector may in writing require any person who has sent a copy of a proof of evidence or summary in accordance with this rule to provide such additional copies of the proof or summary as he may specify and shall specify the time within which the copy of the proof or summary must be received by him.

(8) Any person required to provide additional copies shall ensure that the copies have been received by the Secretary of State or the inspector within the specified time.

Statement of common ground

18.—(1) The Secretary of State may in writing require the relevant planning authority and the applicant to prepare together an agreed statement of common ground.

(2) Where an agreed statement of common ground is prepared in accordance with paragraph (1), the applicant shall—

- (a) ensure that, by the date specified by the inspector under rule 12(1)(b) or 12(5)(b), two copies of the statement have been received by the Secretary of State; and the Secretary of State shall, as soon as practicable after receipt, deposit that statement;

- (b) at the same time as he sends the statement to the Secretary of State, send a copy of it to every other person whom the applicant knows to be entitled to appear at the inquiry in accordance with rule 15(1), except the relevant planning authority; and
- (c) afford to any other person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of the statement.

Procedure at inquiry

19.—(1) Except as otherwise provided, the inspector shall determine the procedure at an inquiry.

(2) At the start of the inquiry the inspector—

- (a) shall identify—
 - (i) the matters to be considered at the inquiry; and
 - (ii) any matters on which he requires further explanation from the persons entitled or permitted to appear;
- (b) may direct that in relation to such matters as he may specify, either or both of the following are to apply—
 - (i) evidence is not to be read out at the inquiry (or where a summary of evidence is sent in accordance with rule 17(4), that only the summary is to be read out); and
 - (ii) persons giving evidence are not to be subject to cross-examination on those matters.

(3) Nothing in paragraph (2) shall preclude any person entitled or permitted to appear from—

- (a) referring to matters which they consider relevant to the consideration of the application but which were not matters identified by the inspector pursuant to paragraph (2)(a); and
- (b) making oral submissions on any matters which are the subject of a direction under paragraph (2)(b).

(4) Unless in any particular case the inspector otherwise determines, the applicant shall begin and shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the inspector may determine.

(5) Subject to any direction under paragraph (2)(b), a person entitled to appear at an inquiry shall be entitled to call evidence and the applicant and a qualifying planning authority shall be entitled to cross-examine persons giving evidence.

(6) The inspector may refuse to permit the—

- (a) giving or production of evidence;
- (b) cross-examination of persons giving evidence; or
- (c) presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he 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.

(7) The inspector may refuse to permit the cross-examination of persons giving evidence, or may require such cross-examination to cease, if it appears to him that permitting such cross-examination or allowing it to continue would have the effect that the timetable approved by the Secretary of State or arranged by the inspector under rule 12 could not be met.

(8) The inspector shall not require or permit the giving or production of any evidence, whether written or oral, which he considers would be contrary to the public interest; but otherwise, the inspector may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry.

(9) Where a person gives evidence at an inquiry by reading a summary of his proof of evidence received by the Secretary of State under rule 17—

- (a) the proof of evidence 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) subject to any direction under paragraph (2)(b)(ii), 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.

(10) Where the inspector gives a direction under paragraph (2)(b)(i), any proof of evidence received by the Secretary of State under rule 17 which covers matters which are the subject of that direction shall, to the extent that it covers those matters, be treated as tendered in evidence, unless—

- (a) the person has provided a summary in accordance with rule 17 and that person has notified the inspector that he now wishes to rely on the contents of that summary alone, in which case the summary shall be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction;
- (b) the person alters or adds to the proof of evidence under paragraph (13), in which case the proof of evidence, as altered, shall be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction; or
- (c) the person who has sent the proof of evidence notifies the inspector that he no longer wishes to give or call that evidence.

(11) The inspector may direct that facilities shall be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection.

(12) The inspector may—

- (a) require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave; and
- (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 him any evidence or other matter in writing before the close of the inquiry.

(13) The inspector may allow any person to alter or add to a statement of case received by the Secretary of State under rule 11 or a proof of evidence received by the Secretary of State under rule 17 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 entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition.

(14) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(15) The inspector may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry.

(16) 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.

(17) Any person who appears at an inquiry and makes closing submissions shall by the close of the inquiry provide the inspector with a copy of their closing submission in writing.

Site inspections

20.—(1) The inspector may make an unaccompanied inspection of the land before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

(2) During an inquiry or after its close, the inspector may inspect the land in the company of the applicant, any qualifying planning authority, and, subject to paragraph (3), any qualifying objector who has returned a registration form in accordance with rule 6(4)(a).

(3) Where the inspector inspects the land after the close of an inquiry, a qualifying objector shall only be entitled to accompany him on that inspection if that objector appeared at the inquiry.

(4) In all cases where the inspector intends to make an accompanied site inspection he shall announce during the inquiry the date and time at which he proposes to make it.

(5) The inspector shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after inquiry

21.—(1) After the close of an inquiry, the lead inspector shall by such date as the Secretary of State may determine make a report in writing to the Secretary of State which shall include—

- (a) his consideration of the application;
- (b) the consideration by any additional inspector of the matters relating to the application which that additional inspector has been directed to consider;
- (c) his conclusions; and
- (d) his recommendations or his reasons for not making any recommendation.

(2) Where the Secretary of State determines a date by which the lead inspector is to report to him, he shall give notice in writing of that determination to the lead inspector and to all persons entitled to appear at the inquiry.

(3) Where an assessor has been appointed, he may, 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.

(4) Where an assessor makes a report in accordance with paragraph (3), the inspector shall append it to his own report and shall state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement.

(5) When making his decision the Secretary of State may disregard any written representations, evidence or any other document received after the close of the inquiry.

(6) If, after the close of an inquiry, the Secretary of State—

- (a) differs from an inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or
- (b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy),

and is for that reason disposed to disagree with a recommendation made by the lead inspector, he shall not come to a decision which is at variance with that recommendation without first notifying in writing the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it; and affording them an opportunity of making written representations to him or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking for the re-opening of the inquiry.

(7) Those persons making written representations or requesting the inquiry to be re-opened under paragraph (6) 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.

(8) The Secretary of State may, as he thinks fit, cause an inquiry to be re-opened, and he shall do so if asked by the applicant or a qualifying planning authority in the circumstances mentioned in paragraph (6) and within the period mentioned in paragraph (7); and where an inquiry is re-opened (whether by the same or a different lead inspector)—

- (a) the Secretary of State shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited;
- (b) paragraphs (3) to (6) of rule 14 shall apply in relation to the re-opened inquiry as if references in those paragraphs to an inquiry were references to the re-opened inquiry; and
- (c) paragraphs (5) and (6) of rule 9 shall apply in relation to the re-opened inquiry as if references in those paragraphs to the pre-inquiry meeting were references to the re-opened inquiry.

Notification of decision

22.—(1) The Secretary of State shall, as soon as practicable, notify his decision on an application, and his reasons for it, in writing to—

- (a) all persons entitled to appear at the inquiry who did appear; and
- (b) any other person who, having appeared at the inquiry, has asked to be notified of the decision.

(2) Notification in writing of a decision and reasons shall be taken to have been given to a person for the purposes of this rule where—

- (a) the Secretary of State and the person have agreed that decisions and reasons required under this rule to be given in writing may instead be accessed by that person via a website;
- (b) the decision and reasons are a decision and reasons to which that agreement applies;
- (c) the Secretary of State has published the decision and reasons on a website; and
- (d) the person is notified, in the manner for the time being agreed between him and the Secretary of State, of—
 - (i) the publication of the decision and reasons on a website;
 - (ii) the address of the website; and
 - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.

(3) Where a copy of the lead 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 to the Secretary of State.

(4) In this rule "report" includes any assessor's report appended to an inspector's report and an additional inspector's report appended to the lead inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State in writing, within six weeks of the date of the Secretary of State's decision, for an opportunity of inspecting any such documents and the Secretary of State shall afford him that opportunity.

(5) Any person applying to the Secretary of State under paragraph (3) shall ensure that his application is received by the Secretary of State within four weeks of the Secretary of State's determination.

Procedure following quashing of decision

23.—(1) Where a decision of the Secretary of State on an application in respect of which an inquiry has been held is quashed in proceedings before any court, the Secretary of State—

- (a) shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further representations are invited for the purposes of his further consideration of the application;
- (b) shall afford to those persons the opportunity of making written representations to him in respect of those matters or of asking for the re-opening of the inquiry; and
- (c) may, as he thinks fit, cause the inquiry to be re-opened (whether by the same or a different lead inspector).

(2) Where the Secretary of State causes an inquiry to be re-opened—

- (a) paragraphs (3) to (6) of rule 14 shall apply in relation to the re-opened inquiry as if references in those paragraphs to an inquiry were references to the re-opened inquiry; and

- (b) paragraphs (5) and (6) of rule 9 shall apply in relation to the re-opened inquiry as if references in those paragraphs to the pre-inquiry meeting were references to the re-opened inquiry.

(3) 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).

Allowing further time

24. The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Rules, and references in these Rules to a day by which, or a period within which, any step is required or enabled to be taken shall be construed accordingly.

Additional copies

25.—(1) The Secretary of State may at any time before the close of an inquiry request from any person entitled or permitted to appear additional copies of the following—

- (a) an outline statement (as mentioned in rule 6(4)(b)(vi)) sent in accordance with rule 6(4)(a);
- (b) a statement of case or comments sent in accordance with rule 11;
- (c) a proof of evidence sent in accordance with rule 17; or
- (d) any other document or information sent to the Secretary of State before or during an inquiry,

and shall specify the time within which such documents should be received by him.

(2) Any person so requested shall ensure that the copies are received by the Secretary of State within the period specified.

Sending of notices and inspection of documents

26.—(1) Notices or documents required or authorised to be sent under these Rules may be sent—

- (a) by post; or
- (b) by using electronic communications to send or supply the notice or document to a person at such address as may for the time being be specified by the person for that purpose.

(2) Where the relevant planning authority is under an obligation to afford to any person who so requests an opportunity to inspect and take copies of any document, an opportunity shall be taken to have been afforded to a person where the person is notified of—

- (a) publication of the relevant document on a website;
- (b) the address of the website; and
- (c) the place on the website where the document may be accessed, and how it may be accessed.

Generating stations not within areas of relevant planning authorities

27.—(1) The modifications referred to in rule 1(3) are—

- (a) in rule 2(1)—
 - (i) in the definition of “by local advertisement” for the words from “circulating in the” onwards substitute “which is likely to come to the attention of those likely to be affected by the consent applied for if it is given;”; and
 - (ii) after the definition of “person entitled to appear at an inquiry” insert—

““place” means, unless the context otherwise requires, the place to which an inquiry relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated;”;

(b) in rule 9—

- (i) in paragraph (5)(c) for “near to the land” substitute “that it is likely to come to the attention of those likely to be affected by the consent applied for if it is given”;
- (ii) in paragraph (6)(a) for “land” substitute “place”; and
- (iii) in paragraph (6)(b) delete the words “in the locality” and after the words “can be inspected” insert “, which shall be the same location or locations where, under regulations 4(2) and 8 of the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006(a), a copy of the application, and of the map referred to in it, can be inspected”; and

(c) in rule 20 for “land”, wherever it appears, substitute “place”.

(2) In addition to the modifications referred to in paragraph (1), where no part of the place to which an application relates is within the area of a relevant planning authority, the modifications referred to in rule 1(3) shall include—

(a) in rule 2(1) after the definition of “inspector” insert—

““interested authority” means any body upon whom the applicant has served a notice of the application in accordance with regulation 6 of the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006(b);”;

(b) in rules 2(4), 11(6) and 11(13) for “relevant planning authority”, wherever it appears, substitute “interested authority”.

Revocation and transitional provision

28.—(1) Subject to paragraph (2), the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990(c) (“the 1990 Rules”) are revoked.

(2) The 1990 Rules shall continue to apply in relation to any inquiry which commenced before the date on which these Rules come into force and for the purposes of this rule an inquiry shall be taken to have commenced on the day on which the Secretary of State issued the relevant notice under the 1990 Rules(d) of his intention to cause the inquiry to be held.

13th March 2007

Cathy Ashton
Parliamentary Under-Secretary of State,
Department for Constitutional Affairs

(a) S.I. 2006/2064.

(b) Regulation 6 provides for the service of a notice of a section 36 application on planning authorities likely to have an interest in the proposed development, where no part of the place to which the application relates is within the area of a relevant planning authority.

(c) S.I. 1990/528.

(d) The definition of “relevant notice” in the 1990 Rules is contained in the definition of “relevant date” in rule 2(1).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure to be followed in connection with public inquiries relating to applications for consent under section 36 of the Electricity Act 1989 (“the 1989 Act”) to construct, extend or operate a generating station and to applications for consent under section 37 to install or keep installed an electric line above ground. For the purposes of these Rules, a reference to an application for consent under section 36 includes any application under section 36A of the 1989 Act for a declaration relating to public rights of navigation, which is made with the section 36 application. The Rules have been made following the enactment of the Energy Act 2004 which inserted a new paragraph 5A into Schedule 8 to the Electricity Act 1989, providing for the appointment of additional inspectors for inquiries held under paragraph 2 or 3 of Schedule 8.

The Rules apply in relation to England and Wales. They revoke the previous rules applicable to such inquiries, the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990, except that those Rules shall continue to apply to inquiries which commenced before 6th April 2007 (rule 28).

Rule 3, together with rule 26, makes provision for the use of electronic communications for sending notices or documents where the person to whom it is sent has specified an address for that purpose.

Rules 4 to 6 include provision for the notification of the inquiry, any pre-inquiry meeting and the Secretary of State’s statement of matters and for registration by persons with an interest in the proposal.

Rules 7, 8 and 13 deal with the appointment of technical advisers, mediators, and assessors respectively.

Rules 9 and 10 provide for when a pre-inquiry meeting is to be held, the procedure to be followed at such meetings and publicity following them.

Rule 11 deals with the provision of statements of case, further information and comments on another person’s statement of case.

Rules 12 and 14 make provision for the setting of a timetable for the inquiry and notification of the date of the inquiry respectively.

Rules 15 to 17 provide for the persons who are entitled to appear at an inquiry, representatives of government departments and the provision of proofs of evidence and any summaries.

Rule 18 allows the Secretary of State to require the applicant and relevant planning authority to prepare together an agreed statement of common ground.

Rules 19 to 25 make provision for the procedure at and after the inquiry, including provisions for site visits, notification of decisions and the procedure to be followed if the decision is subsequently quashed in legal proceedings.

Rule 27 modifies the Rules in relation to inquiries into applications for consent under section 36 where the whole or part of the generating station which it is proposed to construct, operate or the proposed extension to a generating station, is at a place which is not within the area of a relevant planning authority.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been placed in the Library of each House of Parliament and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. Copies of the regulatory impact assessment are available on the DTI website <http://www.dti.gov.uk/energy/review/implementation/page31829.html> or through the DTI Publications Orderline telephone: 0845 015 0010 quoting “URN 07/783”.

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TRIBUNALS AND INQUIRIES

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