

# PLANNING ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 6, Chapter 4: Examination of applications under Chapter 2 or 3**

##### ***Section 86: Chapter applies to examination by Panel or single Commissioner***

162. This section provides for this Chapter to apply to the examination of an application by a Panel or by a single Commissioner. Where an application is to be examined by a Panel, the Panel is the Examining authority. Where an application is to be examined by a single Commissioner, the single Commissioner is the Examining authority.

##### ***Section 87: Examining authority to control examination of application***

163. This section provides that it is for the Examining authority to decide how to examine an application. When doing this the examining authority must comply with the provisions of this Chapter and any procedural rules made by the Lord Chancellor and must have regard to any guidance given by the Secretary of State and the Commission.
164. Subsection (3) provides that the examining authority may disregard representations which it considers are vexatious or frivolous, relate to the merits of a policy set out in a national policy statement or to compensation for the compulsory acquisition of land or of an interest in or right over land.

##### ***Section 88: Initial assessment of issues and preliminary meeting***

165. This section requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it should hold a preliminary meeting with the applicant and each other interested party. The purpose of this meeting is to enable those present to make representations as to how the application should be examined and to discuss any other matter the Examining authority wishes.

##### ***Section 89: Examining authority's decisions about how application is to be examined***

166. This section requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. These decisions can be made at or after the meeting. The Examining authority must inform every interested party of its decisions.

##### ***Section 90: Written representations***

167. This section provides that the Examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in section 91, 92 and 93 and to any decision of the Examining authority that it should take a different form (e.g. a site visit). The Lord Chancellor may make procedural rules about which written representations are to be considered.

***Section 91: Hearings about specific issues***

168. This section provides that the Examining authority must arrange a hearing when it decides that it is necessary for its examination of a specific issue to receive oral representations, either to ensure the adequate examination of the issue, or so that an interested party has a fair chance to put their case. Each interested party will be entitled to make oral representations about the specific issue. Concurrent hearings may be held where a Panel of Commissioners is the examining authority.

***Section 92: Compulsory acquisition hearings***

169. This section provides that where an application for a development consent order includes a request for authorisation of compulsory acquisition of land or an interest in or right over land the Examining authority must inform affected parties of a deadline by which they must notify the Commission that they require a compulsory acquisition hearing to take place. If such a request is received by the Commission before the deadline the Examining authority must cause a hearing to be held.

***Section 93: Open-floor hearings***

170. This section provides that the Examining authority must arrange an open floor hearing if at least one interested party informs the Examining authority of a wish to be heard within the specified deadline. Each interested party is entitled to make oral representations at an open-floor hearing.

***Section 94: Hearings: general provisions***

171. This section contains general provisions in respect of specific issue, compulsory acquisition and open floor hearings. It provides that these should be in public and presided over by at least one member of the Panel or the single Commissioner. The Examining authority will decide how a hearing is to be conducted.
172. In particular, the Examining authority can decide whether a person making an oral representation can be questioned by an interested party, and the duration of an oral representation and/or questioning. When making decisions about these matters, the Examining authority must apply the principle that it should undertake any oral questioning itself unless it is necessary to allow an interested party to do this in order to ensure adequate testing of any representations or that an interested party has a fair chance to put its case.
173. An Examining authority may refuse to allow a representation if it considers it:
- a) is irrelevant or frivolous;
  - b) relates to the merits of policy set out in a national policy statement;
  - c) repeats other representations already made; or
  - d) relates to the compensation payable on the compulsory acquisition of land or of an interest in or right over land.

***Section 95: Hearings: disruption, supervision and costs***

174. This section provides that the Examining authority may exclude a person from a hearing if he behaves in a disruptive manner.
175. Subsection (2) defines what is meant by a “hearing” for these purposes.
176. Subsection (3) provides that the Examining authority’s examination of an application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 and therefore is subject to supervision by the Administrative Justice and Tribunals Council.

***Section 96: Representations not made orally may be made in writing***

177. This section states that where a person has asked to make an oral representation at a hearing, but has not done so, he can make a written representation. The Examining authority must consider this as part of its examination of an application, if the written representation is received before it completes its examination of the application.

***Section 97: Procedure rules***

178. This section enables the Lord Chancellor, and, in the case of certain oil or gas cross-country pipe-lines, the Secretary of State, to make procedural rules for the examination of applications. Subsections (1) and (4) are based on the general rule-making powers conferred by section 9 of the Tribunals and Inquiries Act 1992. Subsection (3) is included to enable rules to make provision about site visits, including site visits where the applicant is neither the owner nor occupier of the land concerned. Subsection (7) follows the 1992 Act by providing for the rules to be subject to the negative resolution procedure in Parliament.

***Section 98: Timetable for examining, and reporting on, application***

179. This section imposes a duty on the Examining authority to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to section 88. The Examining authority must decide the application or (where the Secretary of State or the Commission's Council is responsible for taking the decision) report to the Secretary of State or the Council within nine months of this date.
180. Subsection (4) gives the chair (or a deputy chair) of the Commission the power to extend these deadlines at any time. If the deadlines are extended, he must inform the Secretary of State of this decision, along with his justification for doing so. Any such change of date must be included in the Commission's annual report with an explanation of why the decision was taken.

***Section 99: Completion of Examining authority's examination of application***

181. This section provides that the Examining authority must tell each interested party once it has completed its examination of the application.

***Section 100: Assessors***

182. This gives the chair (or a deputy chair) of the Commission, at the Examining authority's request, the power to appoint an assessor to help it examine an application, providing the assessor is considered to have the relevant expertise.

***Section 101: Legal advice and assistance***

183. This section allows the chair of the Commission to appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining authority. The advice and assistance which may be provided includes oral questioning at a hearing. The Examining authority must request an appointment before one can be made.

***Section 102: Interpretation of Chapter 4: "interested party" and other expressions***

184. This section defines "interested party" and "representation" for the purposes of Chapter 4 of Part 6 of the Act.