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STATUTORY INSTRUMENTS

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**2011 No. 2055**

**The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011**

**PART 2**

**Changes to, and revocation of, orders granting development consent under paragraphs 3(1), 3(4), and 3(5) of Schedule 6 to the Act**

**General**

**9.—**(1) The regulations in this Part apply in relation to—

- (a) a proposed application;
- (b) an application;
- (c) the decision-making process in relation to such an application;
- (d) the making of a decision on such an application;
- (e) the effect of any such decision; and
- (f) the compensation payable in consequence of an order under paragraph 3(1) of Schedule 6 to the Act.

(2) In this Part “application” means an application for an order under paragraph 3(1) of Schedule 6 to the Act but does not include an application for an order in the circumstances described in paragraph 3(6) of Schedule 6 to the Act.

**Duty to consult**

**10.—**(1) Subject to paragraph (2), the applicant must consult the following about a proposed application—

- (a) each person that was consulted about the application for the development consent order which is the subject of the proposed application;
- (b) each person who has the benefit of the development consent order to which the application relates, unless that person is also the applicant;
- (c) any other person or authority who does not fall within paragraph (a) and is—
  - (i) listed in column 1 of the table in Schedule 1 to these Regulations, who must be consulted in the circumstances specified in relation to each such person in column 2 of that table;
  - (ii) an authority which, in relation to the proposed application, is a relevant local authority;
  - (iii) a person who is within one or more of the categories set out in section 44;
- (d) the Greater London Authority if the land to which the proposed application relates, or any part of it, is in Greater London;

(e) the Marine Management Organisation if the land is in one or more of the areas specified in subsection (1A) of section 102; and

(f) any other person the appropriate authority considers should be consulted.

(2) The applicant need not consult a person or authority listed above, if the appropriate authority is satisfied that this is not necessary.

(3) If the appropriate authority exercises its discretion under paragraph (2) it must publish its reasons for doing so on its website.

### **Timetable for consultation under regulation 10**

**11.**—(1) The applicant must, when consulting a person under regulation 10, notify the person of the deadline for the receipt by the applicant of the person’s response to the consultation.

(2) A deadline notified under paragraph (1) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents.

(3) In paragraph (2) “the consultation documents” means the documents supplied to the person by the applicant for the purpose of consulting the person.

### **Duty to notify appropriate authority of proposed application**

**12.**—(1) The applicant must supply the appropriate authority with such information in relation to the proposed application as the applicant would supply to the appropriate authority for the purpose of complying with regulation 10 if the applicant were required by that regulation to consult the appropriate authority about the proposed application.

(2) The applicant must comply with paragraph (1) on or before commencing consultation under regulation 10.

### **Duty to consult local community**

**13.**—(1) The applicant must prepare a statement setting out how the applicant proposes to consult people living in the vicinity of the land, about the proposed application.

(2) Before preparing the statement, the applicant must consult each local authority about what is to be in the statement.

(3) The deadline for the receipt by the applicant of a local authority’s response to consultation under paragraph (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.

(4) In paragraph (3) “the consultation documents” means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under paragraph (2).

(5) In preparing the statement, the applicant must have regard to any response to consultation under paragraph (2) that is received by the applicant before the deadline imposed by paragraph (3).

(6) Once the applicant has prepared the statement, the applicant must publish it in a newspaper circulating in the vicinity of the land.

(7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

(8) The applicant shall make available, at the request of the appropriate authority, all responses to the publicity and consultation carried out in accordance with this regulation.

(9) In this regulation “local authority” means the local authority for the area in which the land is situated.

### **Publicising a proposed application**

14.—(1) The applicant must publish a notice, which must include the matters prescribed by paragraph (2) of this regulation, of the proposed application—

- (a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the land is situated;
- (b) once in a national newspaper;
- (c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
- (d) where the proposed application relates to offshore development—
  - (i) once in Lloyd’s List; and
  - (ii) once in an appropriate fishing trade journal.

(2) The matters which the notice must include are—

- (a) the name and address of the applicant;
- (b) a statement that the applicant intends to make an application to the appropriate authority;
- (c) a summary of the main elements of the proposed application;
- (d) a statement as to whether the proposed application involves EIA development;
- (e) a statement that the documents, plans and maps showing the nature and location of the land are available for inspection free of charge at the places (including at least 1 address in the vicinity of the proposed development) and the times set out in the notice;
- (f) the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline in sub-paragraph (i));
- (g) whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge;
- (h) details of how to respond to the publicity; and
- (i) a deadline for receipt of those responses by the applicant, being not less than 28 days following the date when the notice is last published.

(3) The applicant must arrange for a notice of the proposed application, which must include the matters specified in paragraph (2) of this regulation, to be displayed at, or as close as reasonably practicable to, the land at a place accessible to the public.

(4) Where the proposed application relates to development which consists of, or includes, a linear scheme exceeding 5 kilometres in length the notice, which must include the matters specified in paragraph (2) of this regulation, must be—

- (a) displayed at intervals of not more than 5 kilometres along the whole proposed route of the works, except where this is impracticable due to the land in question being covered in water; and
- (b) be published for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route to which the development consent order relates.

(5) The applicant need not publish, or arrange for, a notice of a proposed application in the manner specified in paragraph (4) above, if the appropriate authority is satisfied that this is not necessary.

(6) If the appropriate authority exercises its discretion under paragraph (5) it must publish its reasons for doing so on its website.

### **Duty to take account of responses to consultation and publicity**

15.—(1) Paragraph (2) applies where the applicant—

- (a) has complied with regulations 10 to 14; and

- (b) proposes to go ahead with making an application.
- (2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.
- (3) In paragraph (2) “relevant response” means—
  - (a) a response from a person consulted under regulation 10 that is received by the applicant before the deadline imposed by regulation 11 in that person’s case;
  - (b) a response to consultation under regulation 13 that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under regulation 13, or
  - (c) a response to publicity under regulation 14 that is received by the applicant before the deadline imposed in accordance with regulation 14 in relation to that publicity.

### **Applications – general**

- 16.—**(1) The application must be made to the appropriate authority.
- (2) The application must be made in writing and must contain the following—
- (a) the name and address of the applicant;
  - (b) the name and address of an agent, if appointed;
  - (c) the Commission’s reference for the development consent order to which the application relates;
  - (d) details of the land and the change being applied for;
  - (e) an explanatory memorandum explaining the purpose and effect of the application;
  - (f) a statement that the applicant is either—
    - (i) the person who applied for the development consent order to which the application relates or their successor in title;
    - (ii) a person with an interest in the land to which the development consent order relates;  
or
    - (iii) any other person for whose benefit the development consent order has effect;
  - (g) details of the applicant’s interest in the land;
  - (h) where the applicant is a local planning authority, evidence of the matters specified in paragraph 3(5)(a), (b) and (c) of Schedule 6 to the Act;
  - (i) a statement which—
    - (i) identifies the extent to which the information submitted with the initial application for an order granting development consent in accordance with regulations 5 and 6 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1) is correct and relevant to the application; and
    - (ii) where necessary updates the parts of this information that relate to the application;
  - (j) any documents and plans considered necessary to support the application;
  - (k) a statement as to whether the application involves EIA development;
  - (l) a consultation report;
  - (m) a statement that the applicant has, in relation to a proposed application that has become an application, complied with regulations 10 to 15;

- (n) unless the appropriate authority specifies otherwise, any plans, drawings or sections provided shall be no larger than A0 size, shall be drawn to an identified scale (not smaller than 1:2500) and, in the case of plans, shall show the direction of North;
  - (o) where a plan comprises 3 or more separate sheets a key plan must be provided showing the relationship between the different sheets; and
  - (p) if requested by the appropriate authority, 3 paper copies of the application and other supporting plans and documents.
- (3) The applicant shall make available, at the request of the appropriate authority, all responses to the consultation carried out in accordance with regulations 10 to 14.
- (4) In this regulation—
- “consultation report” means a report giving details of—
- (a) what has been done in compliance with regulations 10 to 14 in relation to a proposed application that has become the application,
  - (b) any relevant responses, and
  - (c) the account taken of any relevant responses; and
- “relevant response” has the meaning given by regulation 15.

### **EIA development**

- 17.—(1) An application shall be treated as a subsequent application for the purposes of the following provisions in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(2)—
- (a) regulation 3 (prohibition on granting consent without consideration of environmental information);
  - (b) regulation 6 (procedure for establishing whether environmental impact assessment is required);
  - (c) regulation 8 (application for a scoping opinion);
  - (d) regulation 18 (subsequent application for EIA development); and
  - (e) regulation 19 (subsequent application not complying with EIA requirements).
- (2) References in the regulations referred to in paragraph (1) to the following terms shall be construed as follows—
- (a) references to “the Commission” and “the relevant authority” as references to the “appropriate authority”;
  - (b) references to “an application for an order granting development consent” as references to “an application” as defined in regulation 2 of these Regulations; and
  - (c) reference to the “consultation under section 42” as reference to consultation under regulation 10 of these Regulations.

### **Fees for applications**

- 18.—(1) Subject to paragraph (2), the Commission must charge the fees set out in Schedule 2 to these Regulations in respect of an application.
- (2) No fee is chargeable in respect of an application for an order to be made under paragraph 3(5) of Schedule 6 to the Act.

**Notice of an application**

- 19.**—(1) Subject to paragraph (3), notice of an application must be given by the applicant to—
- (a) each person for whose benefit the development consent has effect;
  - (b) each authority which, in relation to the application, is a relevant local authority;
  - (c) the Greater London Authority if the land is in Greater London;
  - (d) the Marine Management Organisation if the land is in one or more of the areas specified in subsection (1A) of section 102;
  - (e) each person who is within one or more of the categories set out in section 57 as regards the land;
  - (f) the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission;
  - (g) the persons listed in column 1 of the table in Schedule 1 to these Regulations, in the circumstances specified in relation to each such person in column 3 of that table; and
  - (h) each other person the appropriate authority requires the applicant to consult.
- (2) The notice must include—
- (a) the name and address of the applicant;
  - (b) a statement to the effect that an application has been made to the appropriate authority;
  - (c) any reference applied to that application by the appropriate authority;
  - (d) a summary of the main proposals;
  - (e) a map showing details of the location of the development, to which the application relates;
  - (f) a statement as to whether the application involves EIA development;
  - (g) a statement that a copy of the application and its accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice;
  - (h) the latest date on which those documents will be available for inspection being a date not earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the notice;
  - (i) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;
  - (j) details of how to make representations (giving notice of any interest in, or objection to, the application); and
  - (k) a deadline for the receipt by the appropriate authority of those representations being not less than 28 days following the date on which the person receives the notice.
- (3) The applicant need not give notice of an application to a person or authority listed above, if the appropriate authority is satisfied that this is not necessary.
- (4) If the appropriate authority exercises its discretion under paragraph (3) it must publish its reasons for doing so on its website.

**Publicising an application**

- 20.**—(1) The applicant must publish a notice of the application, which must include the matters specified in paragraph (2) of this regulation, in the same manner as is prescribed in relation to a proposed application, by regulation 14.
- (2) The matters which the notice must include are—

- (a) the name and address of the applicant;
- (b) a statement to the effect that an application has been made to the appropriate authority;
- (c) the reference, if any, applied to the application by the appropriate authority;
- (d) a summary of the main proposals, specifying, where relevant, the location or route to which the application relates;
- (e) a statement saying whether the application involves EIA development;
- (f) a statement that a copy of the application and its accompanying documents, plans and maps are available for inspection free of charge at the places (including at least one address in the vicinity of the land) and times set out in the notice;
- (g) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline under sub-paragraph (j));
- (h) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;
- (i) details of how to make representations (giving notice of any interest in, or objection, to the application); and
- (j) a deadline for the receipt by the appropriate authority of those representations being not less than 28 days following the date that the notice is last published.

#### **Notice of person interested in land to which compulsory acquisition request relates**

**21.**—(1) This regulation applies where an application includes a request for authorisation to acquire compulsorily land or an interest in or right over land (“a compulsory acquisition request”).

(2) The applicant must give to the appropriate authority a notice specifying the names, addresses for service and contact details of the affected persons.

(3) The notice must be given within the period of 10 working days immediately following the deadline set in regulation 19(2)(k).

(4) A person is an “affected person” for the purpose of this regulation if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition relates or any part of that land.

#### **Appointment of the Examining body**

**22.**—(1) This regulation applies where the Commission is the appropriate authority.

(2) The Commission must decide whether the Examining body is to consist of a single Commissioner or more than one Commissioner.

(3) The Commission must then—

- (a) appoint the Examining body;
- (b) notify all those who in accordance with regulation 19 have been notified about the application of the appointment of the Examining body and give details of who has been appointed; and
- (c) where more than one Commissioner has been appointed, appoint one of those Commissioners to chair the Examining body.

(4) Before making an appointment under paragraph (3) the Commission must consult—

- (a) any Commissioners the Commission thinks it appropriate to consult, and
- (b) the chief executive of the Commission.

(5) In making an appointment under paragraph (3), the Commission must have regard to any views expressed—

- (a) by any of the other Commissioners who have been consulted in accordance with paragraph (4)(a), or
- (b) by the chief executive of the Commission.

(6) Where the Commission has appointed a single commissioner to be the Examining body, if the Commission subsequently decides that the application should instead be examined by more than one commissioner, the Commission may appoint additional commissioners.

(7) Before making an appointment under paragraph (6) the Commission must consult—

- (a) any Commissioners the Commission thinks it appropriate to consult, and
- (b) the chief executive of the Commission.

(8) In making an appointment under paragraph (6), the Commission must have regard to any views expressed—

- (a) by any of the other Commissioners in accordance with paragraph (7)(a), or
- (b) by the chief executive of the Commission.

#### **Additional appointments to the Examining body**

**23.**—(1) The Commission may appoint a further Commissioner to be a member of the Examining body at any time after the Examining body has been appointed under regulation 22.

(2) A person appointed under paragraph (2) becomes a member of the Examining body in addition to any person who is otherwise a member of the Examining body.

#### **Replacement of the Commissioner appointed to be the chair of the Examining body**

**24.**—(1) Paragraph (2) applies where a person appointed to be the chair of the Examining body ceases to hold the office of the Commissioner.

(2) The Commission must appoint a member of the Examining body to chair the Examining body.

(3) A person may be appointed under paragraph (2) even though that person was not a member of the Examining body when the vacancy arose.

#### **Membership of Examining body where application relates to land in Wales**

**25.**—(1) This regulation applies where the application relates to land in Wales (even if it also relates to land not in Wales).

(2) The Commission must appoint Commissioners to the Examining body with a view to securing that, if reasonably practicable, at least one of the members of the Examining body is--

- (a) a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers, or
- (b) a Commissioner who is within paragraph (3).

(3) A Commissioner is within this regulation if, when appointed to be a member of the Examining body, the Commissioner is one notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated for the purposes of this section as being a Commissioner within sub-paragraph (2)(a).

#### **Functions of the Examining body**

**26.**—(1) The Examining body has the functions of—



- (a) examining an application; and
  - (b) where the Commission is the appropriate authority and has delegated to it the function of determining an application, the determination of the application; or
  - (c) where the Commission is the appropriate authority, making a report to the Commission on the application setting out the Examining body's—
    - (i) findings and conclusions in respect of an application; and
    - (ii) recommendation as to the decision to be made on an application; or
  - (d) where the Secretary of State is the appropriate authority, making a report to the Secretary of State on the application setting out the Examining body's—
    - (i) findings and conclusions in respect of an application; and
    - (ii) recommendation as to the decision to be made on an application.
- (2) It is for the Examining body to decide how to examine an application.

### **Initial assessment of issues**

27. The Examining body must make such an initial assessment of the principal issues arising on an application as the Examining body considers appropriate.

### **Preliminary meeting and other meetings**

28.—(1) After the initial assessment of the principal issues the Examining body must hold a preliminary meeting.

- (2) The Examining body must invite to the preliminary meeting—
  - (a) the applicant, and
  - (b) each other interested party.
- (3) The Examining body must give at least 21 days' notice of the date, time and place of the preliminary meeting to all those it is required to invite to the meeting and to any other person it chooses to invite.
- (4) The Examining body must, at the same time as giving notice of the preliminary meeting, notify all those invited to it of the matters to be discussed at the preliminary meeting.
- (5) The purposes of the preliminary meeting are—
  - (a) to enable invitees present at the meeting to make representations to the Examining body about how the application should be examined; and
  - (b) to discuss any other matter the Examining body wishes to discuss.
- (6) The Examining body shall preside at the preliminary meeting and shall determine—
  - (a) the procedure at the preliminary meeting;
  - (b) the matters to be discussed;
  - (c) the amount of time to be allocated—
    - (i) to each matter; and
    - (ii) for making any oral representations.
- (7) As soon as practicable after the end of the preliminary meeting, the Examining body must prepare a note of the proceedings, and make the note available in accordance with regulation 46 to all interested parties and anyone who attended the preliminary meeting.

(8) The Examining body may hold further meetings for the purposes of the examination of an application and where it does so, the Examining body shall arrange for such notice to be given of any meeting as appears to the Examining body to be necessary.

### **Procedural decisions**

**29.**—(1) The Examining body must, either at or after the preliminary meeting or any other meeting, in the light of the discussion at the meeting make such procedural decisions as the Examining body considers appropriate.

(2) As soon as practicable after making any procedural decision, the Examining body must notify all interested parties of the decision.

(3) In this regulation “procedural decision” means a decision about how an application is to be examined.

### **Timetable**

**30.**—(1) At the preliminary meeting, or as soon as practicable after the end of that meeting, the Examining body must set the timetable for its examination of an application specifying in the timetable—

- (a) the date by which written representations must be received by the Examining body;
- (b) the period within which the Examining body will ask questions in writing and seek further written information about—
  - (i) any matter contained in an application or a relevant representation;
  - (ii) any written representation; and
  - (iii) any other matter it considers relevant to its examination of an application;
- (c) the period within which the applicant will have the opportunity to comment in writing on—
  - (i) any relevant or written representations; and
  - (ii) any responses to written questions received from an interested party or others;
- (d) the period within which any interested party will have the opportunity to comment in writing on—
  - (i) any relevant and written representations; and
  - (ii) any responses to written questions received from an interested party or others;
- (e) the period within which the applicant and any interested party must agree a statement of common ground;
- (f) the date by which any interested party must notify the Examining body of their wish to be heard at an open-floor hearing;
- (g) the date by which any affected person must notify the Examining body of their wish to be heard at a compulsory acquisition hearing;
- (h) the date of any issue-specific hearing;
- (i) the date by which any summaries of relevant and written representations must be received by the Examining body; and
- (j) such other deadlines as the Examining body considers necessary.

(2) The Examining body must send the timetable to all interested parties and any other person it has invited to the preliminary meeting.

(3) The Examining body may subsequently vary the timetable; and as soon as practicable after doing so it must notify the variation to all interested parties and any other person it has invited to the preliminary meeting.

### **Written representations**

**31.**—(1) The Examining body’s examination of an application is to take the form of consideration of written representations about the application.

(2) Paragraph (1) has effect subject to—

- (a) any requirement under regulations 33, 34, or 35 below to cause a hearing to be held; and
- (b) any decision by the Examining body that any part of the examination is to take a form that is neither—
  - (i) consideration of written representations, nor
  - (ii) consideration of oral representations made at a hearing.

(3) An interested party must ensure that any written representation that the party may wish to make is received by the Examining body by the date specified in the timetable set under regulation 30, or otherwise under this regulation, by the Examining body.

(4) The Examining body may at any time specify the date (being a date not earlier than the end of a period of 21 days) by which a written representation to be submitted from an interested party must be received by the Examining body.

(5) The Examining body may permit a written representation to be made by any person who is not an interested party.

(6) Any person, other than the applicant, who submits a written representation, must identify in their written representation those parts of the application with which they agree and those parts with which they do not agree, and must state the reasons for such disagreement.

(7) The Examining body must provide all interested parties with the opportunity to comment in writing on any written representation relevant to the examination of the application or specified matters.

(8) The Examining body may in writing request—

- (a) a specified number of additional copies of any representation;
- (b) responses to questions posed by the Examining body about the matters contained in any representation; and
- (c) such further information about the matters contained in any representation as the Examining body may specify,

and shall specify the date by which these must be received by it.

(9) Any person who receives a request in accordance with paragraph (8) above must ensure that the additional copies, responses to written questions or further information are received by the Examining body by the date specified.

(10) The Examining body may disregard any written representations, responses to questions or further information received after the date, or the expiry of the period, specified for their receipt.

(11) The Examining body must make all written representations, responses to written questions and further information received by it available in accordance with regulation 46 as soon as is practicable.

**Relevant representation**

**32.**—(1) An interested party must ensure that their relevant representation is received by the appropriate authority by whichever is the later of the deadlines for receipt of representations included in the notice given in accordance with regulation 19 and the notice published in accordance regulation 20.

(2) Any interested party who submits a written comment on any relevant representation must ensure that it is received by the appropriate authority by whichever is the later of—

- (a) the date on which the preliminary meeting is held; or
- (b) the date specified in the timetable referred to in regulation 30.

(3) The appropriate authority may require in writing any person who has submitted a relevant representation or written comment to provide—

- (a) a specified number of additional copies of the representation or comment; and
- (b) such further information about the matters contained in the representation or comment as the appropriate authority may specify,

and may specify the date by which the copies or information must be received by it.

(4) Any person required to provide additional copies or further information must ensure that the additional copies or further information have been received by the appropriate authority by the date specified.

(5) As soon as practicable after receipt of any relevant representations, written comments on relevant representations or further information requested under paragraph (3)(b), the appropriate authority must make the representations, comments or information available in accordance with regulation 46.

**Hearings about specific issues**

**33.**—(1) Paragraphs (2) and (3) apply where the Examining body decides that it is necessary for the Examining body’s examination of the application to include the consideration of oral representations about a particular issue made at a hearing in order to ensure—

- (a) adequate examination of the issue, or
- (b) that an interested party has a fair chance to put the party’s case.

(2) The Examining body must cause a hearing to be held for the purpose of receiving oral representations about the issue.

(3) At the hearing, each interested party is entitled (subject to the Examining body’s powers of control over the conduct of the hearing) to make oral representations about the issue.

**Compulsory acquisition hearings**

**34.**—(1) This regulation applies where the application includes a request for authorisation to compulsorily acquire land or an interest in or right over land (a “compulsory acquisition request”).

(2) The Examining body must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the appropriate authority that the person wishes a compulsory acquisition hearing to be held.

(3) If the appropriate authority receives notification from at least one affected person before the deadline, the Examining body must cause a compulsory acquisition hearing to be held.

(4) At a compulsory acquisition hearing, the following are entitled (subject to the Examining body’s powers of control over the conduct of the hearing) to make oral representations about the compulsory acquisition request—

- (a) the applicant;
- (b) each affected person.

### **Open-floor hearings**

**35.**—(1) The Examining body must fix, and cause the interested parties to be informed of, the deadline by which an interested party must notify the appropriate authority of the party's wish to be heard at an open-floor hearing.

(2) If the appropriate authority receives notification from at least one interested party before the deadline, the Examining body must cause an open-floor hearing to be held.

(3) At an open-floor hearing, each interested party is entitled (subject to the Examining body's powers of control over the conduct of the hearing) to make oral representations about the application.

### **Notification of hearings**

**36.**—(1) In fixing, and causing persons to be informed of, a deadline under regulation 33, 34 or regulation 35, the Examining body must ensure that the deadline is at least 21 days after the date on which notice of the deadline is given.

(2) The Examining body may disregard any request for an open-floor hearing or for a compulsory acquisition hearing to be held which is received after the deadline.

(3) As soon as practicable after the expiry of the deadline the Examining body must notify—

- (a) all interested parties of the date, time and place fixed for any open-floor hearing or issue-specific hearing; and
- (b) affected persons of the date, time and place fixed for a compulsory acquisition hearing,

and ensure that at least 21 days' notice is given of any hearing.

(4) The Examining body may vary the date, time and place fixed for any hearing and must give such notice of any variation as appears to it to be reasonable.

(5) The place at which a hearing is to be held shall be determined by the Examining body in consultation with the applicant and, where the Examining body is satisfied, having regard to the nature of the application, that it is reasonable to do so, the Examining body may direct that different parts of a hearing shall be held at different locations.

(6) Unless the Examining body otherwise directs, the applicant must not later than 21 days before the date fixed for the commencement of a hearing—

- (a) post and maintain a notice of the hearing in a conspicuous place as close as is reasonably practicable to, the land to which the application relates;
- (b) post and maintain a notice of the hearing in one or more places where public notices are usually posted in the area to which the proposals contained in the application relate;
- (c) publish a notice of the hearing by local advertisement in the area in which the proposals contained in the application are to have effect; and
- (d) where the proposed application relates to development which consists of, or includes, a linear scheme exceeding five kilometres in length the notice of the hearing must be—
  - (i) displayed at intervals of not more than five kilometres along the whole proposed route of the works, except where this is impracticable due to the land in question being covered in water; and
  - (ii) be published for at least two successive weeks in one or more local newspapers circulating in the vicinity of the land along the route to which the development consent order relates.

- (7) In this regulation “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 Examining body maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.
- (8) Where a direction has been given under paragraph (5), paragraph (6) shall have effect with the substitution—
- (a) for references to the hearing, of references to the part of the hearing which is to be held at a place specified in the direction; and
  - (b) for references to the application, of references to that part of the application which is to be the subject of that part of the hearing.
- (9) Any notice posted pursuant to paragraph (6)(a) or (b) must 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 applicant shall be treated as having complied with the requirements of those sub-paragraphs if the applicant has taken reasonable steps for the protection of the notice and, if need be, its replacement.
- (10) A notice of a hearing posted or published pursuant to paragraph (6) must contain a statement of the date, time and place of the hearing, and of the section of the Act under which the application has been made, together with a description of the proposals contained in the application sufficient to identify the location of the proposed development with or without reference to a specified map, and details of a place where a copy of the application can be inspected.

### **Procedure at hearings**

- 37.—**(1) The Examining body shall preside at any hearing and shall determine the procedure at the hearing.
- (2) At the start of the hearing the Examining body shall identify the matters to be considered at the hearing, and any matters on which the Examining body requires further explanation from—
- (a) the persons entitled under regulations 33, 34 or 35 to make oral representations; or
  - (b) any other person permitted by the Examining body to make oral representations.
- (3) Any oral representations must be based on either the relevant or written representations made by the person by whom or on whose behalf the oral representations are made; and where those relevant or written representations exceed 1500 words the person by whom they were made must prepare a summary.
- (4) Without prejudice to the Examining body’s discretion as to the conduct of the hearing, nothing in paragraph (2) or (3) precludes a person from referring to issues which they consider relevant to the examination of an application but which are not issues identified by the Examining body pursuant to paragraph (2) or included in their relevant or written representations.
- (5) The Examining body(3) shall be responsible for the oral questioning of a person giving evidence (“A”) except where, in the view of the Examining body, oral questioning of A by another person (“B”) is necessary in order to ensure—
- (a) adequate testing of any representation; or
  - (b) that B has a fair chance to put B’s case.
- (6) The Examining body may refuse to permit the oral questioning of persons giving evidence, or may require such questioning to cease, if it appears to the Examining body that permitting such

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(3) By virtue of section 101(2), any oral questioning of a person making representations at a hearing may be carried out on the Examining body’s behalf by a barrister, solicitor or advocate appointed under section 101(1) of the Act.

questioning or allowing it to continue (as the case may be) would have the effect that the timetable referred to in regulation 30 could not be met.

(7) The Examining body may proceed with a hearing in the absence of a person entitled to appear at it.

(8) The Examining body 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.

(9) Any person entitled or permitted to make oral representations at a hearing may do so on that person's own behalf or be represented by any other person.

(10) The Examining body may permit any person, in addition to those who are entitled under regulations 33, 34 or 35, to make oral representations at a hearing.

### **Hearings: general provisions**

**38.**—(1) The following provisions of this section apply—

- (a) to a hearing under regulation 33;
- (b) to a compulsory acquisition hearing regulation 34; and
- (c) to an open-floor hearing regulation 35.

(2) The hearing—

- (a) must be in public; and
- (b) must be presided over by one or more of the members of the Examining body.

(3) It is for the Examining body to decide how the hearing is to be conducted.

(4) In particular, it is for the Examining body to decide—

- (a) whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate;
- (b) the amount of time to be allowed at the hearing—
  - (i) for the making of a person's representations; or
  - (ii) for any questioning by another person.

(5) The Examining body's powers under paragraphs (3) and (4) are subject to paragraph (2).

(6) Although the Examining body's powers under paragraphs (3) and (4) may be exercised for the purpose of controlling exercise of an entitlement under regulations 33, 34 or 35 those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.

(7) In making decisions under paragraph (4)(a), the Examining body must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining body except where the Examining body thinks that oral questioning by another person is necessary in order to ensure—

- (a) adequate testing of any representations; or
- (b) that a person has a fair chance to put the person's case.

(8) The Examining body may refuse to allow representations to be made at the hearing if the Examining body considers that the representations—

- (a) are irrelevant, vexatious or frivolous;
- (b) relate to the merits of policy set out in a national policy statement;
- (c) repeat other representations already made (in any form and by any person); or

- (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

### **Hearings: disruption and supervision**

**39.**—(1) Where an interested party or any other person behaves in a disruptive manner at a hearing, the Examining body may decide to do any one or more of the following—

- (a) exclude the person from all, or part, of the remainder of the hearing;
- (b) allow the person to continue to attend the hearing only if the person complies with conditions specified by the Examining body;
- (c) exclude the person from other hearings;
- (d) direct that the person is allowed to attend other hearings only if the person complies with conditions specified by the Examining body.

### **Representations not made orally may be made in writing**

**40.**—(1) Paragraph (2) applies where--

- (a) a person asks the Examining body to be allowed to make oral representations about the application at a hearing;
- (b) the person does not (for whatever reason) make the representations orally at a hearing;
- (c) written representations from the person are received by the appropriate authority before the Examining body completes the Examining body's examination of the application; and
- (d) the written representations state that they are ones that the person asked to be allowed to, but did not, make orally at a hearing.

(2) The Examining body must consider the written representations as part of the Examining body's examination of the application if they are relevant representations.

### **Site inspections**

**41.**—(1) The Examining body may make an unaccompanied inspection of any site to which the application relates before or during its examination of the application without giving notice of its intention.

(2) The Examining body may, before the completion of its examination of the application inspect any site to which the application relates in the company of any interested party or their representative.

(3) Where the Examining body intends to make an inspection of the kind referred to in paragraph (2), it must notify all interested parties of the date, time and place at which it proposes to make the inspection.

(4) The Examining body shall not be bound to defer an inspection of the kind referred to in paragraph (2) where an interested party is neither present nor represented at the time appointed.

### **Completion of examination**

**42.**—(1) When the Examining body has completed its examination of the application, it must inform each interested party of that fact.

(2) The Examining body must complete its examination of the application by the end of the period of 6 months beginning with the day after the start day.

(3) The start day is the day on which the meeting required by regulation 28 is held or, if that meeting is held on 2 or more days, the later or latest of those days.



(4) The appropriate authority may set a date for a deadline under this regulation that is later than the date for the time being set.

(5) The appropriate authority may change the date set for the deadline under paragraph (4) —

- (a) more than once in relation to the same deadline;
- (b) after the date for the time being set for the deadline.

(6) Where the Commission have changed the date set for the deadline—

- (a) the Commission must notify the Secretary of State of what has been done and of the reasons for doing it, and
- (b) the Commission's report under paragraph 17 of Schedule 1 to the Act for the financial year in which the power is exercised must mention and explain what has been done.

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

**43.**—(1) Where the appropriate authority is the Commission, unless the Commission has delegated to the Examining body the function of determining an application, the Examining body must make a written report to the Commission.

(2) Where the appropriate authority is the Secretary of State, the Examining body must make a written report to the Secretary of State by the end of the period of 3 months beginning with the day after the deadline for completion of its examination of the application.

(3) The report must include the Examining body's—

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

(4) If after the completion of the Examining body's examination, the appropriate authority—

- (a) differs from the Examining body on any matter of fact mentioned in, or appearing to the appropriate authority to be material to, a conclusion reached by the Examining body; or
- (b) takes into consideration any new evidence or new matter of fact,

and is for that reason disposed to disagree with a recommendation made by the Examining body, the appropriate authority shall not come to a decision which is at variance with that recommendation without—

- (i) notifying all interested parties of the appropriate authority's disagreement and the reasons for it; and
- (ii) giving them an opportunity of making representations in writing to the appropriate authority in respect of any new evidence or new matter of fact.

### **Further information**

**44.**—(1) The Examining body may at any time before the completion of its examination of an application request further information or written comments from an interested party, who must supply such information by the date and in the manner specified by the Examining body.

(2) The Examining body shall on receiving any further information or written comments within the specified period, consider whether or not a further opportunity to comment in writing should be given to all interested parties and, if so, the Examining body shall specify a period for making any further written comments.

(3) The Examining body may disregard any information or written comments received after the date specified or in a manner other than that specified.

### **Additional copies**

**45.**—(1) The Examining body may at any time before the completion of its examination of an application request from any interested party additional copies of any document sent to the Examining body during the examination and specify the period within which and the manner in which the copies are to be supplied.

(2) The interested party must supply the copies within the period and in the manner specified by the Examining body.

### **Availability and inspection of representations and documents**

**46.**—(1) Relevant representations, written representations or documents must be made available by the Examining body to all interested parties and to anyone who requests an opportunity to inspect and take copies of them.

(2) A relevant representation, written representation or document shall be taken to be available where all interested parties are notified of—

- (a) publication of the representation or document on a website;
- (b) the address of the website;
- (c) the place on the website where the representation or document may be accessed, and how it may be accessed;
- (d) details of where and when copies of representations and documents may be inspected;
- (e) details of where and when representations and documents may be copied; and
- (f) whether a charge will be made for copies of any representation or document available for inspection and if so the amount of any charge.

(3) Where the applicant or an interested party is under an obligation to give to any person who so requests an opportunity to inspect and take copies of any representation or document, the opportunity shall be taken to have been given where that person is notified of—

- (a) publication of the representation or document on a website;
- (b) the address of the website;
- (c) the place on the website where the representation or document may be accessed, and how it may be accessed;
- (d) details of where and when copies of the representation or document may be inspected;
- (e) details of where and when any representation or document may be copied; and
- (f) whether a charge will be made for copies of any representation or document available for inspection and if so the amount of any charge.

(4) In this regulation “document” means any notice, report or other document required or authorised to be sent or prepared under these Regulations.

### **Making the decision**

**47.**—(1) In deciding an application the appropriate authority must have regard to--

- (a) any national policy statement which has effect in relation to development of the description authorised by the development consent order the subject of the application, (a “relevant national policy statement”);
- (b) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;

- (c) any matters prescribed in relation to development of the description authorised by the development consent order the subject of the application; and
  - (d) any other matters which the appropriate authority thinks are both important and relevant to its decision.
- (2) The appropriate authority must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of paragraphs (3) to (7) applies.
- (3) This paragraph applies if the appropriate authority is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.
- (4) This paragraph applies if the appropriate authority is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the appropriate authority being in breach of any duty imposed on it by or under any enactment.
- (5) This paragraph applies if the appropriate authority is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.
- (6) This paragraph applies if the appropriate authority is satisfied that the adverse impact of the proposed development would outweigh its benefits.
- (7) This paragraph applies if the appropriate authority is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.
- (8) The Infrastructure Planning (Decisions) Regulations 2010(4) shall apply in relation to the decision of the appropriate authority, subject to the following modifications—
- (a) each reference to “an application” shall be deemed to be a reference to an application as defined in regulation 9(2);
  - (b) for “decision-maker” substitute “appropriate authority” in each place where the words occur;
  - (c) for “order granting development consent” substitute “order” in each place where the words occur; and
  - (d) in regulation 7, for “Panel or Council” substitute “appropriate authority”.
- (9) In deciding an application the appropriate authority may disregard representations if the appropriate authority considers that the representations—
- (a) do not relate to the application;
  - (b) are vexatious or frivolous;
  - (c) relate to the merits of policy set out in a national policy statement;
  - (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land; or
  - (e) relate to the compensation payable as a consequence of an order being made.
- (10) The appropriate authority may disregard any representations which are received—
- (a) after the date specified for their receipt by the appropriate authority; or
  - (b) in a manner other than that specified in a procedural decision under regulation 29, or otherwise, by the appropriate authority.

**Decision-making by the Examining body**

**48.**—(1) The making of a decision by the Examining body requires the agreement of a majority of its members.

(2) The Commissioner appointed to be the chair of the Examining body has a second (or casting) vote in the event that the number of members of the Examining body agreeing to a proposed decision is the same as the number of members not so agreeing.

**Timetable for decisions**

**49.**—(1) Where the appropriate authority is the Commission, it must decide an application by the end of the period of 3 months beginning with the day after the completion of the examination of the application by the Examining body.

(2) Where the appropriate authority is the Secretary of State, the Secretary of State must decide an application by the end of the period of 3 months beginning with the day after the deadline for the submission of the written report under regulation 43(2).

(3) The appropriate authority may set a date for the deadline under paragraph (1) that is later than the date for the time being set.

(4) The appropriate authority may change the date set for the deadline under paragraph (1) —

- (a) more than once in relation to the same deadline;
- (b) after the date for the time being set for the deadline.

(5) Where the Commission changes the date in accordance with paragraph (4), it—

- (a) must notify the Secretary of State of what has been done and of the reasons for doing it, and
- (b) the Commission’s report under paragraph 17 of Schedule 1 to the Act for the financial year in which the power is exercised must mention and explain what has been done.

(6) Where the appropriate authority change the date in accordance with paragraph 4, it must—

- (a) notify each interested party of what has been done and of the reasons for doing it; and
- (b) lay before Parliament a report explaining what has been done.

(7) A report under paragraph (6)(b) must be published in such form and manner as the Secretary of State thinks appropriate.

**Notification of decisions**

**50.** The appropriate authority must give written notice of its decision on an application to each person who it is required by regulation 52 to provide a copy of the statement of its reasons for its decision on an application.

**Notice of authorisation of compulsory acquisition**

**51.**—(1) This regulation applies if an order under paragraph 3(1) of Schedule 6 to the Act (“the order”) includes provision authorising the compulsory acquisition of land.

(2) In this regulation—

“the order land” means—

- (a) in a case where the order authorises the compulsory acquisition of a right over land by the creation of a new right, the land over which the right is to be exercisable;
- (b) in any other case where the order authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;

“the prospective purchaser” means—

- (c) in a case where the order authorises the compulsory acquisition of a right over land by the creation of a new right, the person for whose benefit the order authorises the creation of the right;
  - (d) in any other case where the order authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.
- (3) After the order has been made, the prospective purchaser must—
- (a) serve a compulsory acquisition notice and a copy of the order on each person to whom paragraph (4) applies, and
  - (b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.
- (4) This paragraph applies to any person who, if the order were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981<sup>(5)</sup> (notice to owners, lessees and occupiers).
- (5) A compulsory acquisition notice which is affixed under paragraph (3)(b) must—
- (a) be addressed to persons occupying or having an interest in the order land, and
  - (b) so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the order is published.
- (6) The prospective purchaser must also publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.
- (7) A compulsory acquisition notice is a notice, which contains the following information—
- (a) a description of the order land;
  - (b) in a case where the order includes provision authorising the compulsory acquisition of a right over land by the creation of a new right, a description of the right;
  - (c) a statement that the order includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land; and
  - (d) a statement that a person aggrieved by the order may challenge the order only in accordance with section 118 of the Act.
- (8) A compulsory acquisition notice which is affixed under paragraph (3)(b) must also name a place where a copy of the order granting development consent may be inspected at all reasonable hours.

### **Statement of reasons**

- 52.**—(1) The appropriate authority must prepare a written statement of its reasons for deciding to make an order under paragraph 3(1) of Schedule 6 to the Act or for refusing to make an order.
- (2) The appropriate authority must provide a copy of the statement to the following—
- (a) the applicant;
  - (b) each person who has the benefit of the development consent order to which the application relates;
  - (c) any statutory party;
  - (d) each relevant local authority;
  - (e) the Greater London Authority if the land is in Greater London;

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(5) 1981 c.67.

- (f) the Marine Management Organisation if the land is in one or more of the areas specified in subsection (1A) of section 102(6);
  - (g) any person who has made a relevant representation; and
  - (h) the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission.
- (3) The appropriate authority must publish the statement in such manner as the appropriate authority thinks appropriate.

### **Effect of decision**

**53.**—(1) Subject to paragraph (2), if a change, which is material, is made to a development consent order under the power conferred by paragraph 3(1) of Schedule 6 to the Act—

- (a) the development consent order continues in force; and
- (b) the change to the development consent order takes effect from the date on which the notice of the appropriate authority's decision is notified under regulation 50, or if the change to the order is required to be made by order contained in a statutory instrument, the date specified in the order making the change.

(2) If under the power conferred by paragraph 3(1) of Schedule 6 to the Act a development consent order is revoked, the revocation shall take effect—

- (a) from the date specified in the order making the revocation; or
- (b) where there is no date specified, the date on which the order making the revocation is made.

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(6) 2008 c.29. Section 102 was amended by section 23(1), (6)(a) and (6)(b) of the Marine and Coastal Access Act 2009 (c.23). There are other amendments which are not relevant to these Regulations.