
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

**The Transport and Works (Scotland) Act 2007
(Inquiries and Hearings Procedure) Rules 2007**

PART 2

INQUIRIES

Preliminary action to be taken by the Scottish Ministers

5.—(1) Where the Scottish Ministers intend to cause an inquiry to be held, they shall, not later than 3 weeks after the date specified in paragraph (2), give written notice of that intention to the applicant, to each statutory objector, to any statutory body which has submitted an objection (unless such objection has been withdrawn) and to any part of the Scottish Administration which has made an official representation.

(2) The date referred to in paragraph (1) is the date of expiry of the period within which an objection to the application may be made.

Preliminary action where an official representation has been made

6. Where any part of the Scottish Administration has made an official representation it shall (unless it has already done so) serve upon the Scottish Ministers, the applicant and any statutory objector an official case within 4 weeks of the starting date.

Service of statements of case, etc

7.—(1) The applicant shall not later than 4 weeks after the starting date serve a statement of case on the Scottish Ministers and on each statutory objector and each person who is required to serve a statement of case under paragraph (3).

(2) In addition to the statement of case served under paragraph (1), the applicant shall serve—

- (a) upon the Scottish Ministers a copy of every document or the relevant part of any document which the applicant intends to refer to or put in evidence and of the notice mentioned in sub paragraph (b); and
- (b) upon each statutory objector and each person who is required to serve a statement of case under paragraph (3) a notice giving the names of all places, within each area in which the proposals contained in the application are to have effect (or as close as reasonably possible to any such area), where a copy of every document or the relevant part of any document which the applicant intends to refer to or put in evidence may be inspected free of charge at all reasonable hours until the date of commencement of the inquiry.

(3) When required by notice in writing from the Scottish Ministers to do so—

- (a) a statutory objector; or
- (b) any other person who has notified the Scottish Ministers of an intention or wish to appear at the inquiry,

shall within 4 weeks from the date of such notice serve a statement of case on the Scottish Ministers, on the applicant and on any other person specified in such notice and the Scottish Ministers shall, as soon as practicable, notify the applicant of the name and address of each person required to serve a statement of case.

(4) In addition to the statement of case served under paragraph (3), every person mentioned in paragraph (3)(a) and (b) shall serve upon the Scottish Ministers and the applicant a copy of every document or the relevant part of any document which such person intends to refer to or put in evidence unless copies of the document or part of the document are available for inspection pursuant to paragraph (9).

(5) Any person who has served a statement of case in accordance with this rule shall—

- (a) when required by notice in writing from the Scottish Ministers or the reporter provide such further information about the matters contained in the statement as the Scottish Ministers or reporter may specify; and
- (b) at the same time send a copy of such further information to any other person on whom the statement of case has been served.

(6) The Scottish Ministers shall, within 8 weeks from the starting date, serve a statement of matters on the applicant, each statutory objector and any person from whom they have required a statement of case.

(7) The Scottish Ministers may amend a statement of matters served under paragraph (6) at any time up to 4 weeks before the commencement of the inquiry.

(8) Any person who has served a statement of case in accordance with this rule and who wishes to comment on another person's statement of case shall, not later than 4 weeks before the date fixed for the commencement of the inquiry, send further comments in writing to the Scottish Ministers, the applicant and the person whose statement of case is the subject of the comment if that person is not the applicant.

(9) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and subject to payment by that person of a reasonable charge, take copies of any statement or document which, or a copy of which, has been served on or by the applicant in accordance with any of the preceding paragraphs of this rule; and shall specify in the applicant's statement of case the time and place at which the opportunity will be afforded.

Pre-inquiry meetings

8.—(1) The reporter may hold a pre inquiry meeting if the reporter thinks it desirable.

(2) The reporter shall arrange for not less than 2 weeks' written notice of a meeting pursuant to paragraph (1) to be given to the applicant, each statutory objector, any other person known at the date of the notice to be entitled to appear at the inquiry, and any other person whose presence at the meeting appears to the reporter to be desirable.

(3) The reporter shall preside at the pre inquiry meeting and shall determine the matters to be discussed and the procedure to be followed; and the reporter may require any person present at the pre inquiry meeting who, in the reporter's opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or to attend any further pre inquiry meeting, or may permit that person to return or attend only on such conditions as the reporter may specify.

(4) The reporter may at any time hold such other meetings (including pre inquiry meetings) as the reporter considers necessary for the efficient and expeditious conduct of the inquiry and the reporter shall arrange for such notice to be given of such meetings as appears to the reporter to be necessary; and paragraph (3) shall apply to such meetings.

Inquiry timetable

9.—(1) Where a pre inquiry meeting is held pursuant to rule 8 the reporter may arrange a timetable for the proceedings at, or at part of, the inquiry and may at any time vary the timetable.

(2) A reporter may specify in a timetable arranged under paragraph (1) a date by which any precognition and summary required by rule 14(1) to be sent to the reporter shall be so sent.

Notification of appointment of assessor

10. Where the Scottish Ministers appoint an assessor, they shall notify the persons specified in rule 12(1) of the assessor's name and of the matters on which the assessor is to advise the reporter.

Date and notification of inquiry

11.—(1) The date fixed by the Scottish Ministers for the commencement of an inquiry shall be determined in consultation with the applicant but shall be—

- (a) not later than 14 weeks after the starting date;
- (b) in a case where a pre inquiry meeting is held pursuant to rule 8, not later than 6 weeks after the conclusion of the meeting; or
- (c) where the Scottish Ministers are satisfied that in all the circumstances of the case it is impracticable to commence the inquiry within the applicable period mentioned in sub paragraph (a) or (b), the earliest practicable date after the end of that period.

(2) The place at which the inquiry is to be held shall be determined by the Scottish Ministers in consultation with the applicant and where the Scottish Ministers are satisfied, having regard to the nature of the application, that it is reasonable to do so they may direct that it shall be held at more than one place.

(3) Unless the Scottish Ministers agree to a lesser period of notice with the applicant and each statutory objector, they shall give not less than 4 weeks' notice of the date, time and place fixed by them for the holding of an inquiry to every person specified in rule 12(1).

(4) The Scottish Ministers may—

- (a) vary the date fixed for the commencement of an inquiry whether or not the revised date is within the applicable period mentioned in paragraph (1); and
- (b) where a direction has been given under paragraph (2) vary the date of the holding of the inquiry at any place,

and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

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

(6) Unless the Scottish Ministers otherwise direct, and subject to paragraph (7), the applicant shall not later than 2 weeks before the date fixed for the commencement of an inquiry—

- (a) post a notice of the inquiry in a conspicuous place or (in the case of an application for an order making provision for land based linear works more than 5 kilometres in length) at intervals of not more than 5 kilometres on, or as close as reasonably practicable to, the land to which the powers sought in the application relate;
- (b) post a notice of the inquiry in one or more places where public notices are usually posted in the area in which the proposals contained in the application relate; and
- (c) publish a notice of the inquiry by local advertisement in the area in which the proposals contained in the application are to have effect.

(7) Where a direction has been given under paragraph (2), paragraph (6) shall have effect with the substitution—

- (a) for references to the inquiry, of references to the part of the inquiry 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 inquiry.

(8) Any notice posted pursuant to paragraph (6)(a) or (b) shall be readily visible to and legible by members of the public provided that where the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the commencement of the inquiry, 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.

(9) Any notice of the inquiry posted or published pursuant to paragraph (6) shall contain a statement of the date, time and place of the inquiry, and of the relevant section of the Act under which the application has been made, together with a sufficient description of the proposals in the application to identify their location with or without reference to a specified map.

Appearances at inquiry

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

- (a) the applicant;
- (b) any statutory objector; and
- (c) any other person who has served a statement of case under rule 7.

(2) Nothing in paragraph (1) shall prevent the reporter 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 that person's own behalf or be represented by counsel, a solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the reporter may allow one or more persons to appear on behalf of some or all of any persons so interested.

Representation of Scottish Administration at inquiry

13.—(1) Any part of the Scottish Administration which has provided an official case shall arrange for its representative to attend the inquiry if that part of the Scottish Administration has received, not later than 4 weeks before the date fixed for the commencement of any inquiry, a written request for such attendance from the Scottish Ministers, the applicant or a statutory objector.

(2) A person attending an inquiry as a representative in pursuance of this rule shall give evidence and be subject to cross examination to the same extent as any other witness.

(3) Nothing in paragraph (2) shall require a representative of any part of the Scottish Administration to answer any question which in the opinion of the reporter is directed to—

- (a) the merits of government policy; or
- (b) in the case of any inquiry into an application to which section 13(3) of the Act may apply by virtue of section 13(1)(a) of the Act, the merits of the carrying out of work which would be authorised by the order constituting a national development.

Precognitions

14.—(1) A 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 precognition shall send to the reporter a copy of the precognition and (subject to paragraph (2)) a written summary of it.

(2) No written summary shall be required where the precognition which it is proposed to read contains no more than 1500 words.

(3) The precognition and summary shall be sent to the reporter not later than—

- (a) 4 weeks before the date fixed for the commencement of the inquiry;
- (b) where a timetable has been arranged pursuant to rule 9, which specifies a date by which the precognition and summary shall be sent to the reporter, that date; or
- (c) by such other date as the reporter may specify.

(4) Where the applicant sends a precognition and a summary to a reporter in accordance with paragraph (1), the applicant shall at the same time send a copy to every other person specified in rule 12(1); and where any other person so sends such a precognition and summary that person shall at the same time send a copy to the applicant.

(5) Unless paragraph (2) applies, only the summary shall be read at the inquiry unless the reporter permits or requires otherwise.

(6) Subject to paragraph (7), any person required by this rule to send a precognition to any other person shall send with it a copy of the whole, or the relevant part, of any document referred to in it, unless copies of the document or part of the document in question are already available for inspection pursuant to rule 7(9).

(7) Where any person has confirmed to the applicant in writing that that person does not wish to be sent a copy of, or a copy of part of, a precognition, summary or other document that the applicant is required to send, the applicant shall not be required to send that person that document or the relevant part of it.

(8) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of any document sent to or by the applicant in accordance with any of the preceding paragraphs of this rule.

Statement of common ground

15.—(1) Where practicable, the applicant and any other party who wishes to participate in the inquiry may together prepare an agreed statement of common ground, and where this is done the applicant shall send a copy of such statement to the reporter no later than 4 weeks before the date fixed for the commencement of the inquiry.

(2) The applicant shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of any statement of common ground prepared under paragraph (1).

Procedure at inquiry

16.—(1) Except as otherwise provided in these Rules, the reporter shall determine the procedure at an inquiry and shall state at the commencement of the inquiry the procedure the reporter proposes to adopt subject to consideration of any submission by any of the persons specified in rule 12(1).

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

(3) Persons specified in rule 12(1) shall be entitled to call evidence, and the applicant and the statutory objectors shall be entitled to cross examine persons giving evidence, but, subject to paragraphs (2), (4), (5), and (8), the calling of evidence and the cross examination of persons giving evidence shall otherwise be at the reporter's discretion.

(4) The reporter may refuse to permit—

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

which the reporter considers to be irrelevant or repetitious but, where the reporter refuses to permit the giving of oral evidence for these reasons, the person wishing to give evidence may submit to the reporter in writing any such evidence or other matter before the close of the inquiry.

(5) Where a person gives evidence at an inquiry by reading a summary in accordance with rule 14(5), the precognition referred to in rule 14(1) and the documents referred to in rule 14(6) shall, unless the person required to provide the summary notifies the reporter that that person now wishes to rely on the contents of that summary only, be treated as tendered in evidence, and the person whose evidence the precognition contains shall then be subject to cross examination on it to the same extent as if it were evidence that person had given orally.

(6) The reporter may refuse to permit the cross examination of persons giving evidence, or may require such cross examination to cease, if it appears to the reporter that permitting such cross examination or allowing it to continue (as the case may be) would have the effect that the timetable referred to in rule 9 could not be met.

(7) The reporter may direct the applicant to provide facilities so that any person appearing at an inquiry may take or obtain copies of documentary evidence open to public inspection, subject to such a person paying to the applicant a reasonable charge for the use of the facilities.

(8) The reporter may require any person appearing or present at an inquiry who, in the reporter's opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit that person to return only on such conditions as the reporter may specify; but any such person may submit to the reporter in writing any evidence or other matter before the close of the inquiry.

(9) The reporter may proceed with an inquiry in the absence of any person specified in rule 12(1).

(10) The reporter may allow any person to alter or add to a statement of case served under rule 7 so far as may be necessary for the purpose of the inquiry; but the reporter shall (if necessary by adjourning the inquiry) give every other person specified in rule 12(1) an adequate opportunity of considering any fresh matter or document.

(11) The reporter may take into account any written representation or evidence or any other document received by the reporter from any person before an inquiry opens or during the inquiry provided that the reporter discloses it either, where practical, in advance of the inquiry by circulating copies of the documents or otherwise, at the inquiry, by ensuring that copies are available for inspection.

(12) The reporter may from time to time adjourn an inquiry, and

- (a) if at the inquiry the reporter announces the date, time and place for reconvening the adjourned inquiry no further notice shall be required, but
- (b) if the reporter makes no such announcement the reporter shall give such notice as the reporter considers reasonable and appropriate.

(13) Any person who appears at an inquiry and makes a closing submission shall by the close of the inquiry, or by such later time (if any) as the reporter may permit, provide the reporter with a copy of that person's closing submission in writing.

Site inspections

17.—(1) The reporter may make an unaccompanied inspection of any site to which the application relates before or during an inquiry without giving notice of the reporter's intention to the persons specified in rule 12(1).

(2) The reporter may, during an inquiry or after its close, inspect such a site in the company of a representative of—

- (a) the persons specified in rule 12(1); and
- (b) any other person permitted to appear at the inquiry pursuant to rule 12(2),

and the reporter shall make such an inspection if so requested by the applicant or by any statutory objector before or during an inquiry.

(3) In all cases where the reporter intends to make an inspection of the kind referred to in paragraph (2) the reporter shall announce during the inquiry the date and time at which the reporter proposes to make it.

(4) The reporter 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

18.—(1) After the close of an inquiry, the reporter shall make a report in writing to the Scottish Ministers, which shall include the reporter's findings of fact, conclusions and recommendations or the reporter's reasons for not making any recommendations.

(2) Where an assessor has been appointed, the assessor may, after the close of the inquiry, make a report in writing to the reporter in respect of the matters on which the assessor was appointed to advise.

(3) Where an assessor makes a report in accordance with paragraph (2), the reporter shall append it to the reporter's own report and shall state in the reporter's own report how far the reporter agrees or disagrees with the assessor's report and, where the reporter disagrees with the assessor, the reporter's reasons for that disagreement.

(4) When making their decision the Scottish Ministers may disregard any written representations, evidence or any other document received after the close of the inquiry.

(5) If, after the close of an inquiry, the Scottish Ministers—

- (a) differ from the reporter on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the reporter; or
- (b) take into consideration any new evidence or new matter of fact (not being a matter of government policy),

and are for that reason disposed to disagree with a recommendation made by the reporter, they shall not come to a decision which is at variance with that recommendation without first notifying such of the persons specified in rule 12(1) who appear to them to be likely to be affected by that, and who have appeared at the inquiry, of their disagreement and the reasons for it.

(6) The Scottish Ministers shall afford each person to be notified pursuant to paragraph (5) an opportunity either of making written representations to the Scottish Ministers within 3 weeks of the date of the notification, or (if the Scottish Ministers have taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking within that period for the re opening of the inquiry.

(7) The Scottish Ministers may, if they think fit, cause an inquiry to be re opened, and they shall do so if asked by the applicant or a statutory objector in the circumstances and within the period

mentioned in paragraph (6); and where an inquiry is re opened (whether by the same or a different reporter)–

- (a) the Scottish Ministers shall send to the persons specified in rule 12(1) who appeared at the inquiry a written statement of the matters in respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of rule 11 shall apply–
 - (i) as if references to an inquiry were references to a re opened inquiry; and
 - (ii) as if the words “whether or not the revised date is within the applicable period mentioned in paragraph (1)” were omitted from paragraph (4)(a).

Notification of decision

19.—(1) Where the Scottish Ministers have published and given notice of their decision under section 12 of the Act and a copy of the reporter’s report is not sent with the notification of the decision, the notification shall be accompanied by a copy of the reporter’s conclusions and any recommendations made by the reporter.

(2) Subject to paragraph (3) if a person entitled to be notified of the decision under section 12 of the Act has not received a copy of the reporter’s report, that person shall be supplied with a copy of it on written request to the Scottish Ministers.

(3) Any person making a request to the Scottish Ministers under paragraph (2) shall send a request to the Scottish Ministers within 4 weeks of the date of the Scottish Ministers' decision.

(4) In this rule “reporter’s report” includes any assessor’s report appended to it but does not include any other documents so appended, but any person who has received a copy of the reporter’s report may apply to the Scottish Ministers in writing within 6 weeks of the date of the Scottish Ministers' decision, for an opportunity of inspecting any such documents and the Scottish Ministers shall afford that person that opportunity.

Procedure following quashing of decision

20.—(1) Where a decision of the Scottish Ministers on an application in respect of which an inquiry has been held is quashed in proceedings before any court, the Scottish Ministers–

- (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 purpose of the Scottish Ministers further consideration of the application;
- (b) shall afford to those persons the opportunity of making written representations to the Scottish Ministers in respect of those matters or of asking for the re opening of the inquiry; and
- (c) may, if the Scottish Ministers think fit, cause the inquiry to be re opened (whether by the same or a different reporter) and if they do so paragraphs (2) to (9) of rule 11 shall apply–
 - (i) as if references to any inquiry were references to a re opened inquiry; and
 - (ii) as if the words “whether or not the revised date is within the applicable period mentioned in paragraph (1)” were omitted from paragraph (4)(a).

(2) Any persons making representations or asking for the inquiry to be re opened under paragraph (1)(b) shall submit such representations or requests to the Scottish Ministers within 3 weeks of the date of the written statement sent under paragraph (1)(a).