
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

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

PART 3

HEARINGS

Preliminary action to be taken by the Scottish Ministers

21.—(1) Where the Scottish Ministers intend to cause a hearing 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 and to each person whose objection is or representations are to be dealt with at the hearing 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

22. 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 each other person whose objection is or representations are to be dealt with at the hearing an official case within 4 weeks of the starting date.

Service of hearing statements, etc

23.—(1) The applicant shall not later than 4 weeks after the starting date serve a hearing statement on the Scottish Ministers and on each person whose objection is or representations are to be dealt with at the hearing.

(2) In addition to the hearing statement 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 person whose objection is or representations are to be dealt with at the hearing 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 hearing.

(3) If required by notice in writing from the Scottish Ministers to do so any person whose objection is or representations are to be dealt with at the hearing shall within 4 weeks from the date of such notice serve a hearing statement 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 hearing statement.

(4) In addition to the hearing statement served under paragraph (3), every person who is required under that paragraph to serve a hearing statement 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 (7).

(5) Any person who has served a hearing statement 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 hearing statement has been served.

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

(7) 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 hearing statement the time and place at which the opportunity will be afforded.

Notification of appointment of assessor

24. Where the Scottish Ministers appoint an assessor, they shall notify the persons specified in rule 26(1) of the assessor's name and of the matters on which the assessor is to advise the reporter.

Date and notification of hearing

25.—(1) The date fixed by the Scottish Ministers for the commencement of a hearing shall be determined in consultation with the applicant but shall be—

- (a) not later than 14 weeks after the starting date; or
- (b) where the Scottish Ministers are satisfied that in all the circumstances of the case it is impracticable to commence the hearing within the period mentioned in sub paragraph (a), the earliest practicable date after the end of that period.

(2) The place at which the hearing 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 a hearing to every person specified in rule 26(1).

(4) The Scottish Ministers may—

- (a) vary the date fixed for the holding of a hearing 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 hearing 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 a hearing 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 a hearing—

- (a) post a notice of the hearing 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 hearing 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 hearing 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 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.

(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 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.

(9) Any notice of the hearing posted or published pursuant to paragraph (6) shall contain a statement of the date, time and place of the hearing, 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 hearing

26.—(1) The persons entitled to appear at a hearing are—

- (a) the applicant; and
- (b) any other person whose objection is or representations are to be dealt with at the hearing.

(2) Nothing in paragraph (1) shall prevent the reporter from permitting any other person to appear at a hearing, 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 issues being considered at the hearing, 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 hearing

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

(2) A person attending a hearing 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 hearing dealing with an objection or representations in relation to 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.

Procedure at hearing

28.—(1) Except as otherwise provided in these Rules, the reporter shall determine the procedure at a hearing and shall state at the commencement of the hearing the procedure the reporter proposes to adopt subject to consideration of any submission by any of the persons specified in rule 26(1).

(2) A hearing shall take the form of a discussion led by the reporter and cross examination shall not be permitted unless the reporter considers that cross examination is required to ensure a thorough examination of the main issues.

(3) Where the reporter considers that cross examination is required under paragraph (2) the reporter shall consider, after consulting the persons specified in rule 26(1), whether the hearing should be closed and a public local inquiry pursuant to section 9 of the Act held instead and if so the reporter shall advise the Scottish Ministers accordingly.

(4) At the start of the hearing the reporter shall identify what are, in the reporter's opinion, the main issues to be considered at the hearing and any matters on which the reporter requires further explanation from any person entitled or permitted to appear.

(5) Nothing in paragraph (4) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the application but which were not issues identified by the reporter pursuant to that paragraph.

(6) A person entitled to appear at a hearing shall be entitled to call evidence but, subject to paragraphs (7) and (9), the calling of evidence shall otherwise be at the reporter's discretion.

(7) The reporter may refuse to permit—

- (a) the giving or production of evidence; or
- (b) 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 hearing.

(8) The reporter may direct the applicant to provide facilities so that any person appearing at a hearing 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.

(9) The reporter may require any person appearing or present at a hearing 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 hearing.

(10) The reporter may proceed with a hearing in the absence of any person specified in rule 26(1).

(11) The reporter may allow any person to alter or add to a hearing statement served under rule 23 so far as may be necessary for the purpose of the hearing; but the reporter shall (if necessary by

adjourning the hearing) give every other person specified in rule 26(1) an adequate opportunity of considering any fresh matter or document.

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

(13) The reporter may from time to time adjourn a hearing, and

- (a) if at the hearing the reporter announces the date, time and place for reconvening the adjourned hearing 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.

Site inspections

29.—(1) The reporter may make an unaccompanied inspection of any site to which the application relates before or during a hearing without giving notice of the reporter’s intention to the persons specified in rule 26(1).

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

- (a) the persons specified in rule 26(1); and
- (b) any other person permitted to appear at the hearing pursuant to rule 26(2),

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

(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 hearing 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 hearing

30.—(1) After the close of a hearing, 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 hearing, 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 hearing.

(5) If, after the close of a hearing, 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 26(1) who appear to them to be likely to be affected by that, and who have appeared at the hearing, 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 hearing.

(7) The Scottish Ministers may, if they think fit, cause a hearing 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 a hearing is re opened (whether by the same or a different reporter)–

- (a) the Scottish Ministers shall send to the persons specified in rule 26(1) who appeared at the hearing a written statement of the matters in respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of rule 25 shall apply–
- (i) as if references to a hearing were references to a re opened hearing; 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

31.—(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

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

- (a) shall send to the persons entitled to appear at the hearing 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 hearing; and
 - (c) may, if the Scottish Ministers think fit, cause the hearing to be re opened (whether by the same or a different reporter) and if they do so paragraphs (2) to (9) of rule 25 shall apply—
 - (i) as if references to any hearing were references to a re opened hearing; 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 hearing 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).