

Status: Point in time view as at 21/08/2006.

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SCHEDULES

SCHEDULE 6

Sections 79,175,195,208.

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

Modifications etc. (not altering text)

C1 Sch. 6 excluded (27.5.1997) by 1997 c. 8, ss. 70(4), 278(2), **Sch. 7 para. 7** (with s. 64)

Determination of appeals by appointed person

- 1 (1) The Secretary of State may by regulations prescribe classes of appeals under sections 78 [^{F1}106B], 174, 195 and 208, [^{F2}and paragraphs 6(11) and (12) and 11(1) of Schedule 13 and paragraph 9(1) of Schedule 14 to the Environment Act 1925] which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Those classes of appeals shall be so determined except in such classes of case—
- (a) as may for the time being be prescribed, or
- (b) as may be specified in directions given by the Secretary of State.
- (3) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
- (5) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

Textual Amendments

F1 Words in Sch. 6 para. 1(1) inserted (9.11.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 32, **Sch. 7 para. 54(2)**; S.I. 1992/2831, **art. 2**

F2 Words in Sch. 6 para. 1(1) inserted (1.2.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 44** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

Powers and duties of appointed person

- 2 (1) An appointed person shall have the same powers and duties—
- (a) in relation to an appeal under section 78, as the Secretary of State has under [^{F3}subsections (1), (4) and (6A)] of section 79;

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- [^{F4}(aa) in relation to an appeal under section 106B, as he has under that section]
- (b) in relation to an appeal under section 174, as he has under sections 176(1), (2) [^{F5}to (2A)] and (5) and 177(1) to (4);
- (c) in relation to an appeal under section 195, as he has under subsections (2) and (3) of that section ^{F6}. . . ;
- (d) in relation to an appeal under section 208, as he has under subsections (7) [^{F7}to (8A)] of that section.
- (2) Sections 79(2) [^{F8}106B(4)], 175(3), 196(1) and 208(5) shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the local planning authority whether they wish to appear before and be heard by the appointed person.
- (3) If both the parties express a wish not to appear and be heard the appeal may be determined without their being heard.
- (4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.
- (5) Sub-paragraph (2) does not apply in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.
- (6) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.
- (7) Except as provided by Part XII, the validity of that decision shall not be questioned in any proceedings whatsoever.
- (8) It shall not be a ground of application to the High Court under section 288, or of appeal to the High Court under section 289 ^{F9}. . . , that an appeal ought to have been determined by the Secretary of State and not by an appointed person, unless the appellant or the local planning authority challenge the appointed person's power to determine the appeal before his decision on the appeal is given.
- (9) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating to an appeal to which this Schedule applies or to anything done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal, then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him.

Textual Amendments

- F3** Words in Sch. 6 para. 2(1)(a) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(3\)\(a\)](#) (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)
- F4** Sch. 6 para. 2(1)(aa) inserted (9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(3\)\(b\)](#); S.I. 1992/2831, [art. 2](#)
- F5** Words in Sch. 6 para. 2(1)(b) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(3\)\(c\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#), [Sch. 1](#) (subject to art. 5)
- F6** Words in Sch. 6 para. 2(1)(c) repealed (27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 32, 84(6), [Sch. 7 para. 54\(3\)\(d\)](#), [Sch. 19 Pt. I](#); S.I. 1992/1630, [art. 2](#), [Schs. 1, 2](#) (with art. 3(1))
- F7** Words in Sch. 6 para. 2(1)(d) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(3\)\(e\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#), [Sch. 1](#) (subject to art. 5)

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- F8** Words in Sch. 6 para. 2(2) inserted (9.11.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(3\)\(f\)](#); S.I. 1992/2831, [art. 2](#)
- F9** Words in Sch. 6 para. 2(8) repealed (27.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 32, 84(6), [Sch. 7 para. 54\(3\)\(g\)](#), [Sch. 19 Pt. I](#); S.I. 1992/1630, [art. 2](#), [Schs. 1, 2](#) (with [art. 3\(1\)](#))

Determination of appeals by Secretary of State

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.
- (2) Such a direction shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under ^{F10}any provision of a development order made by virtue of] section 71(2)(a).
- (3) Where in consequence of such a direction an appeal falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) The Secretary of State shall give the appellant, the local planning authority and any person who has made any such representations as mentioned in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if—
- (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
- (b) in the case of the appellant or the local planning authority, either of them was not asked in pursuance of paragraph 2(2) whether they wished to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard, but was not given an opportunity of doing so.
- (5) Sub-paragraph (4) does not apply in the case of an appeal under section 78 if the appeal is referred to a Planning Inquiry Commission under section 101.
- (6) Except as provided by sub-paragraph (4), the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.
- (7) In determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

Textual Amendments

- F10** Words in [Sch. 6 para. 3\(2\)](#) inserted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(4\)](#); S.I. 1992/1491, [art. 2](#), [Sch. 1](#)

- 4 (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

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- (2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under [F11 any provision of a development order made by virtue of] section 71(2)(a).
- (3) Where such a further direction has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.

Textual Amendments

F11 Words in [Sch. 6 para. 4\(2\)](#) inserted (17.7.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 32, [Sch. 7 para. 54\(4\)](#); S.I. 1992/1491, art. 2, [Sch. 1](#)

Appointment of another person to determine appeal

- 5 (1) At any time before the appointed person has determined the appeal the Secretary of State may—
 - (a) revoke his appointment; and
 - (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require—
 - (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person); or
 - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
 - (a) may hold a local inquiry in connection with the appeal; and
 - (b) shall do so if the Secretary of State so directs.
- (2) Where an appointed person—
 - (a) holds a hearing by virtue of paragraph 2(4); or
 - (b) holds an inquiry by virtue of this paragraph,

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an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.

- (3) Subject to sub-paragraph (4), the costs of any such hearing or inquiry shall be defrayed by the Secretary of State.
- (4) Subsections (2) to (5) of section 250 of the ^{M1}Local Government Act 1972 (local inquiries: evidence and costs) apply to an inquiry held under this paragraph with the following adaptations—
- (a) with the substitution in subsection (4) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the Secretary of State; and
 - (b) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appointed person or the Secretary of State.

[^{F12}(5) The appointed person or the Secretary of State has the same power to make orders under section 250(5) of that Act (orders with respect to costs of the parties) in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry].

Textual Amendments

F12 Sch. 6 para. 6(5) omitted (temp.) by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 6, [Sch. 4 paras. 1, 7](#) (which temp. omission falls (2.1.1992 and 6.4.2009) for specified purposes only by virtue of [S.I. 1991/2698](#), [art. 3](#) and [S.I. 2009/849](#), [art. 2](#) (with [art. 3](#)))

Marginal Citations

M1 1972 c. 70.

Supplementary provisions

- 7 If before or during the determination of an appeal under section 78 which is to be or is being determined in accordance with paragraph 1, the Secretary of State forms the opinion mentioned in section 79(6), he may direct that the determination shall not be begun or proceeded with.
- 8 (1) The ^{M2}Tribunals and Inquiries Act [^{F13}1992] shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in [^{F14}section 10(1)] of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (2) Where an appointed person is an officer of [^{F15}the Department for Communities and Local Government] or the Welsh Office the functions of determining an appeal and doing anything in connection with it conferred on him by this Schedule shall be treated for the purposes of the ^{M3}Parliamentary Commissioner Act 1967—
- (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; and

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- (b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.

Textual Amendments

- F13** Word in Sch. 6 para. 8(1) substituted (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(1), 19(2), **Sch. 3 para. 28(a)**
- F14** Words in Sch. 6 para. 8(1) substituted (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(1), 19(2), **Sch. 3 para. 28(b)**
- F15** Words in Sch. 6 para. 8(2) substituted (21.8.2006) by The Secretary of State for Communities and Local Government Order 2006 (S.I. 2006/1926), art. 9, **Sch. para. 3(5)**

Modifications etc. (not altering text)

- C2** Sch. 6 para. 8(2)(b) modified (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

Marginal Citations

- M2** 1992 c. 53.
M3 1967 c. 13.

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