

## SCHEDULE

Provisions in respect of a request for a direction and the examination of closed evidence

### PART 3

#### Examination of closed evidence

##### **Functions of appointed representative**

5.—(1) The provisions of this paragraph apply to an appointed representative.

(2) The first function of an appointed representative is to represent the interests of the precluded person by—

- (a) taking instructions from the precluded person before receiving copies of closed evidence;
- (b) inspecting, considering and making representations in respect of closed evidence;
- (c) dealing with preliminary matters in relation to closed evidence in connection with any hearing;
- (d) making representations in relation to closed evidence at any hearing; and
- (e) attending site visits.

(3) The second function of an appointed representative is to ensure that the copies of the closed evidence are returned to the person who supplied them as soon as practicable after whichever is the later of—

- (a) the end of the hearing at which closed evidence is considered; or
- (b) notification by the Secretary of State that no such hearing will be held.

(4) The third function of an appointed representative, where a decision is quashed, is to—

- (a) consider and make representations in relation to the matters with respect to which the Secretary of State has invited further representations; and
- (b) make representations in relation to these matters at any hearing.

(5) The fourth function of an appointed representative is to make applications to the Court in relation to any of the appointed representative's other functions.

(6) For the purpose of the exercise of any of the appointed representative's functions, the appointed representative may discuss any matter relating to the closed evidence with—

- (a) the person who supplied the closed evidence to the Secretary of State; or
- (b) a person specified, or of any description specified, in the direction.

##### **Pre-hearing meeting**

6.—(1) The Secretary of State may hold a pre-hearing meeting and shall give the parties, and such other persons as the Secretary of State may invite, not less than 14 days' notice of the date, time and place fixed for the holding of the pre-hearing meeting.

(2) At the pre-hearing meeting the Secretary of State shall—

- (a) identify what are, in the Secretary of State's opinion—
  - (i) the main issues to be considered at the hearing; and
  - (ii) any matters on which the Secretary of State requires further explanation from the parties;

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(b) specify—

- (i) the timetable for the submission and exchange of representations; and
- (ii) any other deadlines the Secretary of State thinks necessary; and

(c) make such other procedural decisions as the Secretary of State thinks appropriate.

(3) When deciding the application the Secretary of State may disregard any written representation, received after the date, or the expiry of the period, specified for their receipt.

(4) The Secretary of State must notify the parties and any other persons invited under paragraph (1) of the timetable.

(5) The Secretary of State may vary the timetable and as soon as is practicable must notify the parties and any other persons invited under paragraph (1) of the variation.

(6) In this paragraph, “procedural decision” means a decision about how the closed evidence is to be examined.

### **Notice of hearing**

7.—(1) Unless the Secretary of State agrees a lesser period of notice with the parties and anyone invited to the pre-hearing meeting, the Secretary of State must give to them not less than 14 days’ notice of the date, time and place fixed for the holding of the hearing.

(2) The Secretary of State may vary the date, time or place for the holding of the hearing and shall give the parties such notice of any variation as appears to the Secretary of State to be reasonable.

### **Hearing procedure**

8.—(1) The Secretary of State shall determine the procedure at the hearing.

(2) Without prejudice to the generality of sub-paragraph (1), the Secretary of State shall determine—

- (a) the order in which oral representations are to be made;
- (b) the amount of time to be allowed for making any oral representation;
- (c) the matters in respect of which there may be oral questioning by persons other than the person making the representation; and
- (d) the amount of time to be allowed for such oral questioning.

(3) The Secretary of State shall be responsible for the oral questioning of a person giving evidence except where the Secretary of State thinks that the oral questioning of a person giving evidence by another person is necessary in order to ensure—

- (a) adequate testing of any representation; or
- (b) that a party has a fair chance to put their case.

(4) The Secretary of State may proceed with a hearing in the absence of a party.

(5) The Secretary of State 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.

### **Appointment of an examiner**

9.—(1) The Secretary of State may appoint an examiner to preside at the hearing.

(2) The Secretary of State must notify all parties if an examiner is appointed.

(3) Where an examiner has been appointed, paragraphs 8 and 12 shall apply in relation to the examiner as if for “the Secretary of State”, there were substituted “the examiner”.

### **Procedure after a hearing**

**10.**—(1) This paragraph applies if an examiner has been appointed.

(2) The examiner must make a report in writing to the Secretary of State setting out the examiner's—

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

(3) The report referred to in paragraph (2) must only be disclosed to the parties and any person specified, or of a description specified, in the direction.

### **Further time**

**11.** The Secretary of State may at any time and in any particular case allow further time for the taking of any step which must or may to be taken virtue of this Schedule.

### **Site inspections**

**12.**—(1) Before or during the examination of the closed evidence, the Secretary of State may make an unaccompanied inspection of any site to which the closed evidence or application relates, without giving notice of his intention to the parties.

(2) The Secretary of State may, as part of the examination of closed evidence and before its completion, inspect such a site in the company of any party.

(3) Where the Secretary of State intends to make an inspection of the kind referred to in subparagraph (2), the Secretary of State shall notify the parties of the date, time and place at which the Secretary of State proposes to make it.

(4) The Secretary of State shall not be bound to defer an inspection of the kind referred to in subparagraph (2) where a party is not present at the time appointed.

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

**13.**—(1) The Secretary of State may disregard any representations received after the completion of the examination.

(2) If, after the completion of the examination, the Secretary of State—

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

and is for that reason disposed to disagree with any recommendation made by the examiner, the Secretary of State shall not come to a decision which is at variance with that recommendation without—

- (i) notifying the parties of the disagreement and the reasons for it; and
- (ii) giving them an opportunity of making written representations to the Secretary of State in respect of the new evidence or new matter of fact.

(3) In the circumstances described in paragraphs (2)(a) and (b) the Secretary of State may re-open the hearing.

(4) Where the hearing is re-opened, the provisions in paragraph 9 shall apply and where an examiner has been appointed paragraph 10 shall apply.

(5) In this paragraph “completion of the examination” means the completion of the examination of the closed evidence.

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**Reasons for decision to grant or refuse development consent**

14.—(1) The Secretary of State may refer to the report of an examiner in the statement of reasons prepared in accordance with section 116 (reasons for decision to grant or refuse development consent) but must not disclose the closed evidence.

(2) The Secretary of State may refer to the closed evidence in the version of the statement of reasons which is sent to the parties in accordance with section 116.

**Procedure following quashing of decision**

15.—(1) This paragraph applies where the Secretary of State’s decision on an application is quashed in proceedings before any court.

(2) The Secretary of State shall—

- (a) send to the parties a written statement of the matters with respect to which further written representations are invited for the purposes of further consideration of the application by the Secretary of State; and
- (b) give the parties the opportunity of making further representations to the Secretary of State in respect of those matters, either in writing or by way of a hearing.

(3) Where a hearing is held pursuant to sub-paragraph (2)(b), paragraph 9 shall apply, and where an examiner is appointed, paragraphs 10(2) and (3) shall apply.