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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 182**

**TRIBUNALS AND INQUIRIES**

**The Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015**

<i>Made</i>	- - - -	<i>28th April 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>30th April 2015</i>
<i>Coming into force</i>	- -	<i>1st June 2015</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 9 of the Tribunals and Inquiries Act 1992(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Rules may be cited as the Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015 and come into force on 1st June 2015.

**Application of Rules**

2.—(1) Subject to paragraph (2), these Rules apply to a local inquiry to be held for the purpose of—

- (a) any application referred to the Scottish Ministers following a direction under section 18 of the Hazardous Substances Act (reference of applications) given on or after 1st June 2015; and
- (b) any appeal made to the Scottish Ministers under—
  - (i) section 19(1) of the Hazardous Substances Act (appeals against refusal of or conditional consent to applications for hazardous substance consent or against refusal of approval required by a condition or against refusal of applications for continuation of consent);
  - (ii) section 19(2) of the Hazardous Substances Act (appeals in default of decision on application for hazardous substance consent); and
  - (iii) regulation 43 of the 2015 Regulations (appeal against hazardous substances contravention notices),

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(1) 1992 c.53. Section 9 was relevantly amended by S.I. 2013/2042. The functions of the Lord Advocate were transferred to the Secretary of State by S.I. 1999/678. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

where notice of appeal is given to the Scottish Ministers on or after 1st June 2015.

- (2) These Rules apply as specified in the Schedule where—
- (a) a security direction has been given in relation to an application or appeal; or
  - (b) a request for a security direction has been made to the Scottish Ministers or the Secretary of State but no determination as to whether or not to give a direction has been made.

### Interpretation

3. In these Rules—

“the 2015 Regulations” means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015<sup>(2)</sup>;

“the Act” means the Town and Country Planning (Scotland) Act 1997<sup>(3)</sup>;

“appellant” means a person who gives notice of appeal under section 19 of the Hazardous Substances Act or regulation 43 of the 2015 Regulations;

“application” means, in the case of an appeal, the application to which the appeal relates;

“appointed person” means—

- (a) in the case of an inquiry session held or to be held under paragraph 6 of the Schedule to the Hazardous Substances Act, the person appointed under paragraph 1 of that Schedule to determine an appeal instead of the Scottish Ministers; and
- (b) in any other case, the person appointed by the Scottish Ministers to hold the inquiry session;

“assessor” has the meaning given in rule 9;

“inquiry session” means a local inquiry held or to be held under—

- (a) section 265 of the Act as applied by section 36(1) of the Hazardous Substances Act; or
- (b) paragraph 6 of the Schedule to the Hazardous Substances Act,

into matters specified in a procedure notice;

“interested party” means—

- (a) in the case of an appeal under section 19 of the Hazardous Substances Act—
  - (i) any person consulted by the planning authority in accordance with regulation 14 of the 2015 Regulations from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application; and
  - (ii) any other person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application;
- (b) in the case of an appeal under regulation 43 of the 2015 Regulations, any person given notice of the appeal in accordance with regulation 45 of the 2015 Regulations from whom representations were received (and not subsequently withdrawn); and
- (c) in the case of an application referred to the Scottish Ministers following a direction under section 18(1) of the Hazardous Substances Act, any person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application;

“the Hazardous Substances Act” means the Planning (Hazardous Substances) (Scotland) Act 1997<sup>(4)</sup>;

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(2) S.S.I. 2015/181

(3) 1997 c.8.

(4) 1997 c.10.

“person” includes authorities and other bodies;

“procedure notice” means a notice given under rule 4(1);

“security direction” means a direction by the Scottish Ministers, or the Secretary of State, under or by virtue of section 265A(3) of the Act (as applied by section 36(1) of the Hazardous Substances Act); and

“specified matters” are in relation to a particular inquiry session, those matters which are set out in the procedure notice.

### **Notice of inquiry session and specified matters**

4.—(1) Where an inquiry session is to be held the appointed person is to give written notice to that effect must be given to—

- (a) the appellant;
- (b) the planning authority;
- (c) any interested party who made representations in relation to specified matters; and
- (d) any person who the appointed person wishes to make representations or to provide information on specified matters at the inquiry session.

(2) The notice given under paragraph (1) is to specify the matters to be considered at the inquiry session.

(3) Only specified matters are to be considered at the inquiry session.

(4) A person given notice under paragraph (1) and who intends to appear at the inquiry session must within 14 days of the date of such notice inform the appointed person in writing of that intention.

### **Appearances at inquiry session**

5. The persons entitled to appear at the inquiry session are—

- (a) the appellant;
- (b) the planning authority; and
- (c) any other person who, in response to a procedure notice, has informed the appointed person of their intention to appear at the inquiry session in accordance with rule 4(4).

### **Date and notification of inquiry**

6.—(1) The date, time and place for the holding of the inquiry session is to be fixed (and may subsequently be varied) by the appointed person.

(2) The appointed person is to give to those persons entitled to appear at the inquiry session such notice of the date, time and place fixed for the holding of the inquiry session (and of any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances.

(3) The appointed person may require the planning authority to take one or more of the following steps:—

- (a) not less than 14 days before the date fixed for the holding of the inquiry session, to publish

- (i) in one or more local newspapers circulating in the locality in which the land to which the inquiry relates is situated; and

- (ii) on a website,

such notices of the inquiry session as the appointed person may direct; or

- (b) to serve notice of the inquiry session in such form and on such persons or classes of persons as the appointed person may specify.

### **Service of inquiry statements, documents and precognitions**

7.—(1) Where required to do so by notice given by the appointed person, a person entitled to appear at the inquiry session must, by such date as is specified in the notice, send to—

- (a) the appointed person—
- (i) an inquiry statement;
  - (ii) a copy of every document (or the relevant part of a document) on the list of such documents comprised in that inquiry statement; and
  - (iii) a precognition in respect of any evidence to be given to the inquiry session by a person included on the list of witnesses comprised in that inquiry statement; and
- (b) the appellant and the planning authority and to such other persons entitled to appear at the inquiry session as the appointed person may specify in such notice—
- (i) an inquiry statement; and
  - (ii) a copy of every document (or the relevant part of a document) and precognition sent to the appointed person under sub-paragraph (a)(ii) or (iii) and which is not already available for inspection under regulation 27, 35(2) or 44(4) of the 2015 Regulations or paragraph (2) of this rule.

(2) The planning authority are, until such time as the appeal is determined, to afford to any person who so requests a reasonable opportunity to inspect any inquiry statement, precognition or other document (or any part thereof) which, or a copy of which, has been sent to them in accordance with this rule.

(3) A precognition must not, unless the appointed person otherwise so agrees, contain more than 2000 words.

(4) Different dates and different persons may be specified for the purposes of paragraph (1).

(5) In this rule—

“inquiry statement” means, and is comprised of—

- (a) a written statement which contains particulars of the case relating to the specified matters which a person proposes to put forward to an inquiry session;
- (b) a list of documents (if any) which the person putting forward such case intends to refer to, rely on or put in evidence; and
- (c) a list of witnesses specifying the persons who are to give, or be called to give, evidence at the inquiry session, the matters in respect of which such persons are to give evidence and the relevant qualifications of such persons to do so; and

“precognition” means a written statement of the evidence which it is proposed that a witness will give to the inquiry session.

### **Procedure at inquiry session**

8.—(1) Except as otherwise provided in these Rules, the procedure at the inquiry session is to be as the appointed person determines.

(2) The appointed person is, having considered any submission by the persons entitled to appear at the inquiry session, to state at or before the commencement of the inquiry session the procedure which the appointed person proposes to adopt and in particular is to state—

- (a) the order in which the specified matters are to be considered at the inquiry session; and

(b) the order in which the persons entitled to appear at the inquiry session are to be heard in relation to a specified matter (a different order may be chosen for different specified matters).

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested.

(5) Subject to paragraph (6), any person entitled to appear at the inquiry session is entitled to call evidence and to cross#examine persons giving evidence and to make closing statements.

(6) The appointed person 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 appointed person considers to be irrelevant or repetitious.

(7) If any person entitled to appear at the inquiry session fails to do so, the appointed person may proceed with the inquiry session at the appointed person's discretion.

(8) The appointed person may from time to time adjourn the inquiry session and, if the date, time and place of the adjourned inquiry session are announced before the adjournment, no further notice is required, otherwise rule 6 applies as it applies to the variation of the date, time or place at which an inquiry session is to be held.

### **Appointment of assessor**

**9.**—(1) The Scottish Ministers may appoint a person to sit with the appointed person at an inquiry session to advise the appointed person on such matters arising as the Scottish Ministers may specify ("an assessor") and where they do so they are to notify every person entitled to appear at the inquiry session of the name of the assessor and of the matters on which the assessor is to advise the appointed person.

(2) Where an assessor has been appointed, the assessor may (and if so required by the appointed person, must), after the close of the inquiry session, make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

### **Called-in applications**

**10.**—(1) These Rules apply to an application referred to the Scottish Ministers following a direction under section 18(1) of the Hazardous Substances Act (reference of applications to Scottish Ministers) with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) the reference in rule 7(2) to the appeal is to be treated as a reference to the application; and
- (b) references to the appellant are to be treated as references to the applicant.

### **Amendment of the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997**

**11.**—(1) The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997(5) are amended in accordance with paragraph (2).

- (2) In rule 2(2) (application of rules)—
- (a) in sub-paragraph (a), after “Listed Buildings Act” insert “or section 18 of the Hazardous Substances Act”;
  - (b) omit “or” following sub-paragraph (ba); and
  - (c) after sub-paragraph (ba) insert—
    - “(ca) “(ca) held for the purposes of an appeal made under—
      - (i) section 19 of the Hazardous Substances Act (appeals against decisions or failure to take decisions relating to hazardous substances); or
      - (ii) regulation 43 of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (appeals against hazardous substances contravention notices),where notice of appeal is given to the Scottish Ministers on or after 1st June 2015; or”.

**Amendment of the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997**

**12.—(1)** — The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997(6) are amended in accordance with paragraph (2).

- (2) In rule 2(2) (application of rules)—
- (a) omit “or” following sub-paragraph (aa); and
  - (b) after sub-paragraph (aa) insert—
    - “(ba) “(ba) held for the purposes of an appeal under—
      - (i) section 19 of the Hazardous Substances Act (appeals against decisions or failure to take decisions relating to hazardous substances); or
      - (ii) regulation 43 of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (appeals against hazardous substances contravention notices),where notice of appeal is given to the Scottish Ministers on or after 1st June 2015; or”.

St Andrew’s House, Edinburgh  
28th April 2015

*MARCO BIAGI*  
Authorised to sign by the Scottish Ministers

SCHEDULE

Rule 2(2)

Closed evidence

**Modification of rules where security direction given**

1. Where a security direction has been given or a request for a security direction has been made in relation to an inquiry session these Rules apply in accordance with paragraphs 2 to 10.
2. Where the appointed person is notified that a security direction has been given—
  - (a) before the appointed person gives notice that an inquiry session is to be held under rule 4(1), the appointed person must include in that notice a statement that a security direction has been given; and
  - (b) after giving that notice, the appointed person must as soon as practicable after being notified of the making of the direction, give notice of the making of the security direction to any person known at that date to be entitled to appear at the inquiry session.
3. While closed evidence is being considered at an inquiry session the persons entitled to appear at the inquiry session is restricted to—
  - (a) specified persons; and
  - (b) any appointed representative.
4. Where any rule requires or permits a document (or other materials or evidence) to be sent to any person that provision is to be read as requiring or permitting—
  - (a) the sending of such documents (or other materials or evidence) which contain or make reference to any closed evidence to specified persons or any appointed representative; and
  - (b) the sending of such documents (or other materials or evidence) to any other person only to the extent that they do not contain or make reference to any closed evidence.
5. Where any rule requires or permits an inquiry statement (including any amended or additional inquiry statement) to be sent to any person that rule is to be read as requiring, or permitting—
  - (a) a closed inquiry statement to be sent to specified persons and any appointed representative; and
  - (b) an open inquiry statement to be sent to any other person.
6. Where any rule requires or permits a precognition (including any amended or additional precognition) to be sent to any person that rule is to be read as requiring or permitting—
  - (a) a closed precognition to be sent to specified persons and any appointed representative; and
  - (b) an open precognition to any other person.
7. Where closed evidence was considered at an inquiry session the assessor, where one has been appointed, if making a report in accordance with rule 9(2) is to set out in a separate part (“the closed part”) of the report any matters which relate to that evidence.
8. Where the appointed person’s reasons for a decision relate to matters in respect of which closed evidence has been given, nothing in these Rules requires notification of those reasons to any person other than a specified person and any appointed representative.
9. Closed evidence must not be published and nothing in these Rules is to be taken to require or permit closed evidence to be disclosed to a person other than—
  - (a) a specified person; and
  - (b) any appointed representative.

**10.—(1) In this Schedule—**

“appointed representative” means a person (who is also a specified person) to represent the interests of any party to the inquiry, under or by virtue of section 265A(5) of the Act (planning inquiries to be held in public subject to certain exceptions);

“closed evidence” means evidence which is subject to a security direction;

“closed inquiry statement” means such part (if any) of an inquiry statement as includes or refers to closed evidence;

“closed precognition” means such part (if any) of a precognition as includes or refers to closed evidence;

“open inquiry statement” means such part (if any) of an inquiry statement as does not include or refer to closed evidence;

“open precognition” means such part (if any) of a precognition as does not include or refer to closed evidence;

“potentially closed evidence” means evidence in respect of which a request for a security direction has been made; and

“specified person” means a person specified in, or a person of such description as is specified in, a security direction as being entitled to hear or inspect closed evidence.

(2) Where a request for a security direction has been made to the Scottish Ministers or the Secretary of State but no determination as to whether or not to give a direction has been made, references in paragraphs 2 to 10(1) to closed evidence are to be treated as references to potentially closed evidence and references to specified persons are to be treated as references to persons who, in terms of the request for a direction, would be permitted to hear or, as the case may be, inspect closed evidence if a security direction is given.

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**EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules set out the procedures to be followed in connection with local inquiries held for the purposes of certain applications and appeals under the Planning (Hazardous Substances) (Scotland) Act 1997 (“the Hazardous Substances Act”). The Rules apply (rule 2) to inquiries held in connection with—

- (a) applications referred to the Scottish Ministers under section 18 of the Hazardous Substances Act on or after 1st June 2015; and
- (b) appeals under section 19 of the Act and regulation 43 of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 on or after 1st June 2015.

In relation to such applications and appeals the Rules replace the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 and the Town and Country Planning (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997. Those Rules are amended accordingly by rules 11 and 12.

Rule 4 makes provision for notice of an inquiry session (as defined in rule 3 (interpretation)) to be given. Rule 5 sets out who is entitled to appear at an inquiry session and rule 6 sets out how the



time and place of the inquiry is to be fixed and notified and published. Rules 7 and 8 respectively make provision in respect of the documents to be produced in connection with the inquiry session and in connection with the conduct of the inquiry session. Rule 9 enables the Scottish Ministers to appoint an assessor.

Rule 10 modifies the application of the Rules as they apply to called-in applications.