

2011 No. 2019

COUNTRYSIDE, ENGLAND

**The Access to the Countryside (Appeals against Works Notices)
(England) Regulations 2011**

<i>Made</i>	- - - -	<i>11th August 2011</i>
<i>Laid before Parliament</i>		<i>17th August 2011</i>
<i>Coming into force</i>	- -	<i>1st October 2011</i>

CONTENTS

PART 1

Preliminary

1. Citation, commencement and application
2. Interpretation
3. Use of electronic communications

PART 2

Initial Stages of Appeal

4. Manner and period for appeal
5. Notification of receipt of documents
6. Preliminary information to be supplied by the appropriate authority
7. Notification of start of appeal etc
8. Supply of further information by the appropriate authority
9. Submission of statements of case etc.
10. Copies of documents
11. Comments on statements of case
12. Provision of further information

PART 3

Determination of Appeals

CHAPTER 1

Appeals to be determined on the basis of written representations

13. Site inspections
14. Decision on appeal
15. Notification of a decision

CHAPTER 2

Appeals to be determined by way of a hearing

16. Date and notification of hearing
17. Appearances at hearing
18. Procedure at hearing
19. Evidence at hearing
20. Site inspections
21. Procedure after hearing—appeals determined by the Secretary of State
22. Procedure after hearing—transferred appeals
23. Notification of decision—appeals determined by the Secretary of State
24. Notification of decision—transferred appeals

CHAPTER 3

Appeals to be determined by way of an inquiry

25. Procedure where the Secretary of State or inspector causes a pre-inquiry meeting to be held
26. Inquiry timetable
27. Date and notification of inquiry
28. Proofs of evidence
29. Statement of common ground
30. Appearances at inquiry
31. Procedure at inquiry
32. Evidence at inquiry
33. Site inspections
34. Procedure after inquiry—appeals determined by the Secretary of State
35. Procedure after inquiry—transferred appeals
36. Notification of decision—appeals determined by the Secretary of State
37. Notification of decision—transferred appeals

PART 4

General

38. Consecutive and concurrent hearings and inquiries
39. Notification of appointment of assessor
40. Further time and additional copies
41. Inspection and copying of documents
42. Changes of procedure
43. Recovery of jurisdiction
44. Procedure following quashing of a decision
45. Revocation

The Secretary of State, in exercise of the powers conferred by sections 38(6), 44(2) and 45(1) of the Countryside and Rights of Way Act 2000(a) and section 316(1) of and paragraph 4(5) of Schedule 20 to the Marine and Coastal Access Act 2009(b), makes the following Regulations.

(a) 2000 c.37. Section 45(1) contains a definition of “regulations” for the purposes of Part 1 of the 2000 Act. Schedule 20 of the 2009 Act needs to be read together with Part 1 of the 2000 Act (as well as Part 9 of the 2009 Act). Section 1 of the 2000 Act was modified in its application to land which is coastal margin by Part 4 of the Schedule to S.I. 2010/558, and Schedule 1 to the 2000 Act was modified in its application to land which is coastal margin by Part 1 of the Schedule to SI 2010/558.

(b) 2009 c. 23.

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Access to the Countryside (Appeals against Works Notices) (England) Regulations 2011 and come into force on 1st October 2011.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“the 2000 Act” means the Countryside and Rights of Way Act 2000(a);

“the 2009 Act” means the Marine and Coastal Access Act 2009(b);

“appeal land” means the land which is the subject of the appeal;

“appellant” means the person giving notice of appeal to the Secretary of State under regulation 4;

“appointed person” means a person appointed by the Secretary of State under section 8 of the 2000 Act to determine an appeal or any matter involved in such an appeal and having the powers conferred by paragraphs 3 and 4(c) of Schedule 3 to the 2000 Act;

“appropriate authority” means—

(a) in relation to a Schedule 20 appeal—

(i) in a case within paragraph 3(1)(a) of Schedule 20, Natural England, and

(ii) in a case within paragraph 3(1)(b) of Schedule 20, the access authority in relation to the land in question; and

(b) in relation to a section 38(1) appeal—

(i) where (by virtue of paragraph 1(2) of Schedule 20) the functions of the access authority conferred by Chapter 3 of Part 1 of the 2000 Act are exercised by Natural England for the purposes of the coastal access duty, Natural England, and

(ii) in any other case, the access authority in relation to the land in question.

“assessor” means a person appointed by the Secretary of State under paragraph 4(3) of Schedule 3 to the 2000 Act to sit with an inspector at a hearing or inquiry and advise the inspector on any matter arising;

“document” includes a photograph, map or plan;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(d);

“hearing” means a hearing in relation to which these Regulations apply;

“inquiry” means a local inquiry in relation to which these Regulations apply;

“inspector” means—

(a) an appointed person; or

(b) a person holding a hearing or inquiry in relation to which these Regulations apply;

“interested person” means—

(a) 2000 c.37

(b) 2009 c.23

(c) By virtue of paragraph 4(4) of Schedule 20 to the 2009 Act, section 8 and Schedule 3 to the 2000 Act have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal under section 6 of the 2000 Act.

(d) 2000 c. 7; an amendment to that definition was made by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

- (a) a person who has made representations to the appropriate authority as mentioned in regulation 6(b) and who has not notified the Secretary of State as mentioned in regulation 7(1)(k) that the representation should be disregarded;
- (b) a person who has made further representations to the Secretary of State as mentioned in regulation 7(1)(l); or
- (c) a person who has made representations to the Secretary of State as mentioned in regulation 7(1)(m);

“local access forum” means the local access forum for the area in which the appeal land is situated;

“the notice appealed” means the notice given under section 36(3) or 37(1) of the 2000 Act, or paragraph 3(3) of Schedule 20, as the case may be;

“pre-inquiry meeting” means a meeting held before an inquiry to consider what may be done to ensure that the inquiry is conducted efficiently and expeditiously and, where two or more such meetings are held, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

“relevant website” means a website maintained by the Secretary of State for purposes which include making available for inspection certain notices, decisions and notifications relating to an appeal in these Regulations;

“a section 38 appeal” means an appeal under section 38 of the 2000 Act (appeals against notices under section 36(3) or section 37(1) of that Act concerning works with respect to means of access);

“Schedule 20” means Schedule 20 to the 2009 Act, and “a Schedule 20 appeal” means an appeal under paragraph 4(1) of Schedule 20 (appeals against notices under paragraph 3(3) of Schedule 20 requiring steps to be taken to carry out works for the purposes of the establishment and maintenance of the English coastal route);

“start date” means, in relation to any given appeal, the date specified by the Secretary of State under regulation 7(1)(a);

“statement of case” means a written statement containing full particulars of the case which a person proposes to put forward, at a hearing or inquiry or by written representations, in relation to the appeal and includes copies of any supporting documents which that person intends to refer to or put in evidence;

“transferred appeal” means an appeal or any matter involved in an appeal, in respect of which the Secretary of State has exercised the power conferred by section 8 of the 2000 Act to appoint a person to determine the appeal or the matter (as the case may be) on behalf of the Secretary of State; and

“written representations” includes any supporting documents.

Use of electronic communications

3.—(1) Any requirement imposed under these Regulations as to the giving or sending by one person to another of a notice or other document may be met by means of an electronic communication if—

- (a) the use of such communication results in the information contained in that notice or document being available to the other person in all material respects as it would appear in a notice or document given or sent in printed form; and
- (b) the other person has consented to the information being made available by such means.

(2) Where, under paragraph (1), an electronic communication is used for the purposes of giving or sending a document—

- (a) any requirement for the notice or document to be given or sent by a particular time is met in respect of an electronic communication if the conditions in paragraph (1) are met by that time; and

- (b) any requirement for more than one copy to be sent on any single occasion may be complied with by a single such communication.

(3) For the purposes of paragraph (1)(a) “in all material respects” means in all respects material to an exact reproduction of the content of the information as it would appear in a notice given or sent in printed form.

PART 2

Initial Stages of Appeal

Manner and period for appeal

4.—(1) A section 38 appeal or a Schedule 20 appeal is to be made by giving notice of appeal to the Secretary of State.

(2) Notice of appeal under paragraph (1) is to be given—

- (a) by serving on the Secretary of State within the period specified in paragraph (3) a notice of appeal on a form obtained from the Secretary of State; and
- (b) by serving on the appropriate authority a copy of that notice of appeal at the same time as that notice is served on the Secretary of State under sub-paragraph (a).

(3) The period mentioned in paragraph (2)(a) is—

- (a) where the appeal is against a notice under section 36(3) of the 2000 Act, the period specified in that notice within which the works specified in that notice are required to be carried out;
- (b) where the appeal is against a notice under –
 - (i) section 37(1) of the 2000 Act, or
 - (ii) paragraph 3(3) of Schedule 20,the period specified in that notice after which the appropriate authority intends to carry out the works specified in that notice.

(4) Where the appropriate authority gives notice under—

- (a) section 36(3) of the 2000 Act, or
- (b) paragraph 3(3) of Schedule 20,

to the owner or occupier of any land, the appropriate authority must take such steps as are reasonable to give a copy of that notice to every other owner or occupier of the land.

(5) An appellant may, by giving notice in writing to the Secretary of State, withdraw his appeal at any time before it is determined.

(6) The Secretary of State must, as soon as practicable, send a copy of a notice under paragraph (5) to—

- (a) the appropriate authority;
- (b) every other owner or occupier of the appeal land whose address is known to the Secretary of State; and
- (c) the local access forum.

Notification of receipt of documents

5.—(1) The Secretary of State must, as soon as practicable after having received all the information required in order to be able to entertain the appeal, notify the appropriate authority of this in writing.

(2) The notice to the appropriate authority under paragraph (1) must be accompanied by a questionnaire in respect of the information required by the Secretary of State to determine the appeal.

Preliminary information to be supplied by the appropriate authority

6. The appropriate authority must ensure that, within two weeks of its receipt of the notification in accordance with regulation 5, the appellant receives—

- (a) the questionnaire mentioned in regulation 5(2) duly completed by the appropriate authority (which must also state the date on which it is sent to the Secretary of State) together with a copy of each document referred to in it;
- (b) the name and address of any person who made representations to the appropriate authority in respect of the notice appealed;
- (c) the address of the local access forum; and
- (d) details of the time during which and the place at which the appropriate authority intends to make documents available for the purpose of regulation 41 (inspection and copying of documents).

Notification of start of appeal etc

7.—(1) The Secretary of State must, as soon as practicable after receiving the information to be supplied in accordance with regulation 6, give notice in writing to the appellant, the appropriate authority, any person who has made representations as mentioned in regulation 6(b) and the local access forum stating—

- (a) the start date;
- (b) whether the appeal will take the form of a hearing or inquiry or will be determined on the basis of written representations;
- (c) whether the appeal will be determined by the Secretary of State or an inspector;
- (d) the reference number allocated to the appeal;
- (e) the address (including e-mail address) to which written communications to the Secretary of State about the appeal are to be sent;
- (f) the time and place where documents relating to the appeal are to be made available by the appropriate authority under regulation 41;
- (g) the name of the appellant;
- (h) the location of the appeal land in sufficient detail to enable it to be identified;
- (i) that, as the case may be—
 - (i) the appeal is in respect of a notice given under section 36(3) of the 2000 Act concerning works which the owner or occupier is required to carry out for the purpose of remedying the failure to observe a restriction in an agreement under section 35 of that Act with respect to any means of access,
 - (ii) the appeal is in respect of a notice given under section 37(1) of the 2000 Act that the appropriate authority intends to take all necessary steps for carrying out the works specified in that notice with respect to any means of access, or
 - (iii) the appeal is in respect of a notice given under paragraph 3(3) of Schedule 20 that the appropriate authority intends to take all necessary steps for carrying out the works specified in that notice for the purposes of Natural England's discharging the coastal access duty,

and in each case providing a brief description of those works;

- (j) that the appropriate authority—
 - (i) has sent to the Secretary of State and to the appellant the name and address of any person, other than the appellant, who has made representations to the appropriate authority with respect to the notice appealed, and
 - (ii) is required to send a copy of those representations to the Secretary of State and to the appellant;

- (k) that if any such person wishes his representations to be disregarded by the Secretary of State for the purposes of the appeal, he is to notify the Secretary of State in writing of this within four weeks of the start date;
- (l) that any person who has made such representations may make further representations in writing to the Secretary of State in respect of the appeal provided that the Secretary of State receives them within four weeks of the start date;
- (m) that any other person may also make representations to the Secretary of State in respect of the appeal provided that the Secretary of State receives them within four weeks of the start date; and
- (n) that, if there is to be a hearing or an inquiry—
 - (i) the appellant and the appropriate authority are entitled to appear, and
 - (ii) the inspector may permit any other person to appear and such permission may not be unreasonably withheld.

(2) The Secretary of State must ensure that a copy of the notice given under paragraph (1) is made available for inspection on a relevant website until the appeal is determined.

Supply of further information by the appropriate authority

8. The appropriate authority must ensure that, within two weeks of the start date, the Secretary of State and the appellant have received copies of—

- (a) any representations made to them as mentioned in regulations 6(b) and 7(1); and
- (b) any correspondence between the appellant and the appropriate authority relating to the issue of the notice under sections 36(3) or 37(1) of the 2000 Act or paragraph 3(3) of Schedule 20, as the case may be.

Submission of statements of case etc.

9.—(1) The appropriate authority, the appellant and any other person who wishes to make representations to the Secretary of State must each ensure that, within six weeks of the start date, the Secretary of State receives the relevant documents.

(2) For the purposes of paragraph (1), the relevant documents are—

- (a) in the case of the appropriate authority, two copies of its statement of case;
- (b) in the case of the appellant, two copies of the appellant's statement of case; and
- (c) in the case of any other person, three copies of the representations in question.

Copies of documents

10. The Secretary of State must, as soon as practicable after receiving copies of the documents referred to in regulation 9—

- (a) send to the appellant a copy of the statement of case submitted by the appropriate authority;
- (b) send to the appropriate authority a copy of the statement of case submitted by the appellant; and
- (c) send to the appellant and the appropriate authority a copy of any representations submitted by any other person mentioned in that regulation.

Comments on statements of case

11.—(1) Where the appellant or the appropriate authority wish to make any comments on the other's statement of case or any representations made by any interested person, they must ensure that the Secretary of State receives those comments within nine weeks of the start date.

(2) The Secretary of State must, as soon as practicable after receiving the comments referred to in paragraph (1), send—

- (a) to the appropriate authority, a copy of the comments received from the appellant under paragraph (1); and
- (b) to the appellant, a copy of the comments received from the appropriate authority under paragraph (1).

Provision of further information

12.—(1) The Secretary of State or the inspector may require such further information as either may specify from—

- (a) the appellant;
- (b) the appropriate authority; or
- (c) any interested person.

(2) All such information must be provided in writing within such period as the Secretary of State or the inspector may reasonably require.

(3) The Secretary of State must, as soon as practicable after receiving any further information required under paragraph (1), send a copy of the documents received—

- (a) in the case of information received from the appellant or the appropriate authority, to the other party; and
- (b) in the case of information received from any interested person, to the appellant and the appropriate authority.

PART 3

Determination of Appeals

CHAPTER 1

Appeals to be determined on the basis of written representations

Site inspections

13.—(1) Where it appears to the Secretary of State necessary or expedient to do so, the Secretary of State may arrange for an inspection of the appeal land to be made by the inspector.

(2) Where the inspector intends to make an inspection under paragraph (1), the Secretary of State must ask the appellant and the appropriate authority whether they wish to be present or represented.

(3) Where the appellant or the appropriate authority has indicated a wish to be present or represented, the inspector must afford the appellant and the appropriate authority, or their representatives, the opportunity to be present during the inspection.

(4) The inspector is not bound to defer an inspection if the appellant or the appropriate authority, or their representative, is not present at the appointed time.

Decision on appeal

14. The Secretary of State or, as the case may be, the inspector may proceed to a decision on the appeal taking into account only such statements of case, representations and comments as have been provided within the time limits specified by or under these Regulations.

Notification of a decision

15.—(1) The Secretary of State or, as the case may be, the inspector, must as soon as practicable notify the decision on an appeal and the reasons for reaching it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every interested person;
- (d) every other owner or occupier of land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the 2000 Act; and
- (e) the local access forum.

(2) The Secretary of State must ensure that, as soon as practicable after such decision has been made, a copy of the decision is made available for inspection on a relevant website for a period of three months.

CHAPTER 2

Appeals to be determined by way of a hearing

Date and notification of hearing

16.—(1) The date fixed by the Secretary of State for the holding of a hearing must be not later than eighteen weeks from the start date, unless the holding of the hearing on that date is not practicable.

(2) The Secretary of State must give the appellant, the appropriate authority and every interested person, not less than four weeks' written notice of the date, time and place fixed for the holding of a hearing.

(3) But the Secretary of State may agree with the appellant and the appropriate authority that a lesser period of notice may be given.

(4) The Secretary of State may—

- (a) change the date fixed for the holding of a hearing (whether or not the date as changed is within the period mentioned in paragraph (1)); or
- (b) change the time or place for the holding of a hearing.

(5) Where, under paragraph (4)(a), the Secretary of State changes the date for the holding of a hearing, paragraphs (2) and (3) apply to the new date as they applied to the date originally fixed.

(6) Where, under paragraph (4)(b), the Secretary of State changes the time or place for the holding of a hearing, the Secretary of State must give reasonable notice of such change.

(7) The Secretary of State—

- (a) may require the appropriate authority to publish, not less than two weeks before the date fixed for the hearing, a notice of the hearing in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the appropriate authority to affix a notice of the hearing firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and
- (c) must ensure that a notice of the hearing is made available for inspection on a relevant website until the appeal is determined.

(8) Where a notice is affixed pursuant to paragraph (7)(b), the appropriate authority may not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify.

(9) Every notice of a hearing under paragraph (7) must contain—

- (a) a statement of the date, time and place of the hearing and of the powers enabling the Secretary of State to determine the appeal; and
- (b) a brief description of the appeal land and of the grounds of appeal.

(10) A notice under paragraph (7) may relate to more than one hearing.

Appearances at hearing

17.—(1) The persons entitled to appear at the hearing are—

- (a) the appellant; and
- (b) the appropriate authority;

but the inspector may permit any other person to appear at a hearing, and such permission may not be unreasonably withheld.

(2) Any person entitled or permitted to appear may appear in person or be represented by any other person.

Procedure at hearing

18.—(1) Except as otherwise provided in these Regulations, the inspector is to determine the procedure at a hearing.

(2) At the start of the hearing—

- (a) the inspector's name and appointment must be announced by the inspector; and
- (b) the inspector must identify—
 - (i) what are, in the inspector's opinion, the main issues to be considered at the hearing, and
 - (ii) any matters on which further information is required from any person appearing at the hearing.

(3) A hearing is to take the form of a discussion led by the inspector.

(4) Paragraph (2)(b) does not preclude the addition in the course of the hearing of other issues for consideration or preclude any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

(5) The inspector may—

- (a) require any person appearing at a hearing who, in the inspector's opinion, is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return or permit the person to return only on such conditions as the inspector may specify.

(6) The inspector may—

- (a) proceed with a hearing in the absence of any person entitled to appear at it; and
- (b) from time to time adjourn a hearing.

(7) Where a hearing is adjourned, no further notice is required, provided that the date, time and place of the adjourned hearing are announced at the hearing before the adjournment.

Evidence at hearing

19.—(1) The appellant and the appropriate authority are entitled to give, or to call another person to give, oral evidence, and any other person may give, or call another person to give, oral evidence if so permitted at the discretion of the inspector.

(2) But the inspector may, at any stage in the proceedings, refuse to permit the giving of evidence or presentation of any matter which the inspector considers to be irrelevant or repetitious.

(3) Where the inspector refuses to permit the giving of oral evidence, the person wishing to give, or call any other person to give, oral evidence may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(4) Cross-examination is not permitted at the hearing unless the inspector considers that it is required to ensure a thorough examination of the main issues.

(5) Where under paragraph (4) the inspector considers that cross-examination is required, the inspector must consider, after consulting the appellant and the appropriate authority, whether the hearing should be closed and an inquiry should be held instead.

(6) Where, under sub-paragraph (a) of regulation 18(5), the inspector has required a person to leave and, under sub-paragraph (b) of that regulation, the inspector refuses to permit that person to return, or permits that person to return only on conditions, that person may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(7) The inspector may allow the appellant or the appropriate authority to alter or add to a statement of case received by the Secretary of State and submitted under regulation 9 so far as may be necessary for the purposes of the hearing.

(8) The inspector may take into account any written representations, or evidence or any other document received by the inspector in connection with a hearing before the hearing opens or during the hearing provided it is disclosed at the hearing.

Site inspections

20.—(1) Where it appears to an inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the site of the appeal land, the inspector may adjourn the hearing to that site and conclude the hearing there provided the inspector is satisfied that—

- (a) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
- (b) all parties present at the hearing would have the opportunity to attend the adjourned hearing; and
- (c) neither the appellant nor the appropriate authority have raised any reasonable objections to the hearing being continued at the site of the appeal land.

(2) Unless the hearing is to be adjourned to the appeal land pursuant to paragraph (1), the inspector may, where it appears necessary or expedient to do so, arrange to make an inspection of the appeal land in the company of the appellant and the appropriate authority or their representatives at any time before or during the hearing in relation to an appeal.

(3) Before making a site inspection the inspector must announce the date and time of the inspection during the hearing.

(4) The inspector is not bound to defer an inspection if the appellant or the appropriate authority or their representatives are not present at the appointed time.

Procedure after hearing—appeals determined by the Secretary of State

21.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) After the close of the hearing, the inspector must make a report in writing to the Secretary of State which includes conclusions and recommendations or reasons for not making any recommendations.

(3) When making a determination the Secretary of State may disregard any written representations, evidence or other document received after the close of the hearing.

(4) Paragraph (5) applies where, after the close of the hearing, the Secretary of State—

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

and is, for that reason, disposed to disagree with a recommendation made by the inspector.

(5) Where this paragraph applies, the Secretary of State may not come to a decision which is at variance with the recommendation made by the inspector without first—

- (a) notifying the appellant, the appropriate authority and any other person who appeared at the hearing of the disagreement and the reasons for it, and
- (b) affording them an opportunity of making written representations, or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, of asking for the re-opening of the hearing.

(6) Those persons making written representations or asking for the re-opening of the hearing pursuant to an invitation under paragraph (5)(b) must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under paragraph (5)(b).

(7) The Secretary of State may, if appropriate, cause the re-opening of a hearing, and must do so if asked by the appellant or the appropriate authority under paragraph (5)(b), in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (6).

(8) Where a hearing is re-opened—

- (a) the Secretary of State must send to the appellant, the appropriate authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of regulation 16 apply as if the references to a hearing were references to a re-opened hearing.

Procedure after hearing—transferred appeals

22.—(1) This regulation applies where a hearing has been held for the purposes of a transferred appeal.

(2) Where an assessor has been appointed, the assessor must, after the close of the hearing, make a report in writing to the inspector of the matters on which the assessor was appointed to advise, and the inspector must state in the notification of the decision on the appeal pursuant to regulation 24 that such a report was made.

(3) When making a decision, the inspector may disregard any written representations, evidence or any other document received after the close of the hearing.

(4) If, after the close of the hearing, the inspector proposes to take into account any new evidence or new matter of fact which was not raised at the hearing and which the inspector considers is material to the decision, the inspector may not come to a decision without first—

- (a) notifying the appellant, the appropriate authority and any other person who appeared at the hearing; and
- (b) affording them an opportunity of making written representations or of asking for the re-opening of the hearing.

(5) Any person making written representations or asking for the re-opening of the hearing pursuant to an invitation under paragraph (4)(b) must ensure that such written representations or request to re-open the hearing are received by the Secretary of State within three weeks of the date of the notification.

(6) An inspector may, if appropriate, cause a hearing to be re-opened and must do so if asked by the appellant or the appropriate authority under paragraph (4)(b), in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5).

(7) Where a hearing is re-opened—

- (a) the inspector must send to the appellant, the appropriate authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of regulation 16 apply as if the references to a hearing were references to a re-opened hearing.

Notification of decision—appeals determined by the Secretary of State

23.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) The Secretary of State must, as soon as practicable, notify the decision on the appeal and the reasons for reaching it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the 2000 Act; and
- (e) the local access forum.

(3) Where a copy of the inspector's report is not sent with the notification of the decision, the notification must be accompanied by a statement of the inspector's conclusions and of any recommendations made by the inspector in the report.

(4) If a person entitled to be notified of the decision has not received a copy of the inspector's report, the Secretary of State must, upon an application made by that person in writing, supply a copy of the inspector's report within four weeks of the receipt of the notification of the decision on the appeal under paragraph (2).

(5) In paragraphs (3) and (4), "report" does not include any documents appended to the inspector's report.

(6) But any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any documents appended to the report, and the Secretary of State must afford that person that opportunity.

(7) The Secretary of State must ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a relevant website for a period of three months.

Notification of decision—transferred appeals

24.—(1) This regulation applies where a hearing has been held for the purposes of a transferred appeal.

(2) An inspector must, as soon as practicable, notify the decision on the appeal and the reasons for it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector's decision under paragraph (2) may apply in writing to the Secretary of State for an opportunity to inspect any documents referred to in the notification, and the Secretary of State must afford that person that opportunity.

(4) Any person making an application under paragraph (3) must ensure that it is received by the Secretary of State within six weeks of the receipt of the notification of the decision on the appeal under paragraph (2).

(5) The Secretary of State must ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a relevant website for a period of three months.

CHAPTER 3

Appeals to be determined by way of an inquiry

Procedure where the Secretary of State or inspector causes a pre-inquiry meeting to be held

25.—(1) The Secretary of State or the inspector must hold a pre-inquiry meeting if it appears to be necessary, and any such meeting (or, where there is more than one, the first such meeting) must be held within twelve weeks of the start date.

(2) Where the Secretary of State or the inspector decides to hold such a meeting, the Secretary of State must notify the appellant and the appropriate authority in writing of the intention to hold such a meeting.

(3) The Secretary of State or the inspector must give not less than two weeks' written notice of the pre-inquiry meeting to—

- (a) the appellant and the appropriate authority; and
- (b) any other person whose presence at the pre-inquiry meeting the Secretary of State considers to be desirable.

(4) The inspector—

- (a) is to preside at the pre-inquiry meeting;
- (b) is to determine the matters to be discussed and the procedure to be followed;
- (c) may require any person present at the pre-inquiry meeting who the inspector considers is behaving in a disruptive manner to leave; and
- (d) 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 inspector may specify.

(5) Where a pre-inquiry meeting is held pursuant to paragraph (1), the inspector may hold a further pre-inquiry meeting, and in that case must arrange for such notice to be given of the further pre-inquiry meeting as appears to be necessary.

(6) Paragraph (4) applies to any further pre-inquiry meeting held pursuant to paragraph (5).

(7) If the Secretary of State or the inspector (“the requesting authority”) requests any further information at the pre-inquiry meeting from the appellant, the appropriate authority or any other person present at that meeting, the person required to provide the information must ensure that two copies of it have been received by the requesting authority within any reasonable time specified by the requesting authority of the conclusion of the pre-inquiry meeting.

(8) The Secretary of State must, as soon as practicable after receipt of any such information, send a copy of it to the other parties entitled to appear at the inquiry.

Inquiry timetable

26.—(1) Where a pre-inquiry meeting is held pursuant to regulation 25, the inspector must arrange a timetable for the proceedings of the inquiry.

(2) The inspector must specify in the timetable arranged pursuant to this regulation a date by which any proof of evidence mentioned in regulation 28 is to be sent to the Secretary of State.

Date and notification of inquiry

27.—(1) The date fixed by the Secretary of State for the holding of an inquiry must be—

- (a) where a pre-inquiry meeting is held pursuant to regulation 25, not later than eight weeks after the conclusion of that meeting; and
- (b) in any other case eighteen weeks from the start date, unless the holding of the inquiry on that date is not practicable.

(2) The Secretary of State must give the appellant, the appropriate authority and every interested person not less than four weeks' written notice of the date, time and place fixed for the holding of an inquiry.

(3) But the Secretary of State may agree with the appellant and the appropriate authority that a lesser period of notice may be given.

(4) The Secretary of State may—

- (a) change the date fixed for the holding of an inquiry (whether or not the date as changed is within the relevant period mentioned in paragraph (1)); or
- (b) change the time or place for the holding of an inquiry.

(5) Where, under paragraph (4)(a), the Secretary of State changes the date for the holding of an inquiry, paragraphs (2) and (3) apply to the new date as they applied to the date originally fixed.

(6) Where, under paragraph (4)(b) the Secretary of State changes the time or place for the holding of an inquiry, the Secretary of State must give reasonable notice of such change.

(7) The Secretary of State—

- (a) may require the appropriate authority to publish, not less than two weeks before the date fixed for the inquiry, a notice of the inquiry in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the appropriate authority to affix a notice of the inquiry firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and
- (c) must ensure that a notice of the inquiry is made available for inspection on a relevant website until the appeal is determined.

(8) Where a notice is affixed pursuant to paragraph (7)(b), the appropriate authority may not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify.

(9) Every notice of an inquiry under paragraph (7) must contain—

- (a) a statement of the date, time and place of the inquiry and of the powers enabling the Secretary of State to determine the appeal; and
- (b) a brief description of the appeal land and of the grounds of appeal.

(10) A notice under paragraph (7) may relate to more than one inquiry.

Proofs of evidence

28.—(1) Where the appellant or the appropriate authority propose to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, the appellant or the appropriate authority, as the case may be, must send two copies of the proof of evidence, together with any written summary accompanying it, to the Secretary of State.

(2) The Secretary of State must, as soon as practicable after receiving the documents specified in paragraph (1), send a copy of that proof of evidence together with any written summary accompanying it to the other party.

(3) A written summary is required where the proof of evidence in question exceeds one thousand five hundred words.

(4) The appellant and the appropriate authority must ensure that the proof of evidence and any written summary is received by the Secretary of State no later than—

- (a) four weeks before the date fixed for the holding of the inquiry; or
- (b) where pursuant to regulation 26 a timetable has been arranged which specifies a date by which the proof of evidence and any summary are to be received by the Secretary of State, that date.

(5) Where a written summary is provided in accordance with paragraphs (1) and (3), only that summary is to be read at the inquiry, unless the inspector permits or requires otherwise.

(6) Any person required by this regulation to send copies of a proof of evidence to the Secretary of State must send with them the same number of copies of the whole (or the relevant part) of any document referred to in the proof of evidence.

Statement of common ground

29.—(1) The appellant and the appropriate authority must together prepare a statement of common ground.

(2) The appropriate authority must ensure that the Secretary of State receives the statement of common ground not less than four weeks before the date fixed for the holding of the inquiry.

Appearances at inquiry

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

- (a) the appellant; and
- (b) the appropriate authority;

but the inspector may permit any other person to appear at an inquiry, and such permission may not be unreasonably withheld.

(2) Any person entitled or permitted to appear may appear in person or be represented by any other person.

Procedure at inquiry

31.—(1) Except as otherwise provided in these Regulations, the inspector is to determine the procedure at an inquiry.

(2) At the start of the inquiry –

- (a) the inspector's name and appointment must be announced by the inspector; and
- (b) the inspector must identify—
 - (i) what are, in the inspector's opinion, the main issues to be considered at the inquiry, and
 - (ii) any matters on which further information is required from any person appearing at the inquiry.

(3) Paragraph (2)(b) does not preclude the addition in the course of the inquiry of other issues for consideration or preclude any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

(4) Unless in a particular case the inspector otherwise determines, the appropriate authority is to begin and the appellant has the right of final reply.

(5) Any other persons appearing at the inquiry are to be heard in such order as the inspector may determine.

(6) The inspector may—

- (a) require any person appearing at an inquiry who, in the inspector's opinion, is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return or permit the person to return only on such conditions as the inspector may specify.

(7) The inspector may—

- (a) proceed with an inquiry in the absence of any person entitled to appear at it; and
- (b) from time to time adjourn an inquiry.

(8) Where an inquiry is adjourned, no further notice is required, provided that the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment.

Evidence at inquiry

32.—(1) A person appearing at an inquiry is entitled to give, or call any other person to give, oral evidence.

(2) The appellant, the appropriate authority, and any other person if so permitted by the inspector, may cross-examine any person giving evidence.

(3) But the inspector may at any stage in the proceedings refuse to permit—

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

which the inspector considers is irrelevant or repetitious.

(4) Where the inspector refuses to permit the giving of oral evidence, the person wishing to give or call any other person to give, oral evidence may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(5) Where a person gives evidence at an inquiry by reading a summary of a proof of evidence referred to in regulation 28(1) —

- (a) the proof of evidence is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that that person now wishes to rely on the contents of that summary alone; and
- (b) the person whose evidence the proof of evidence contains is then to be subject to cross examination on it to the same extent as if it were evidence that person had given orally.

(6) Where, under sub-paragraph (a) of regulation 31(6), the inspector has required a person to leave and, under sub-paragraph (b) of that regulation, the inspector refuses to permit that person to return or permits that person to return only on conditions, that person may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(7) The inspector may allow any person to alter or add to a statement of case received by the Secretary of State under regulation 9 or a proof of evidence or summary sent to the Secretary of State under regulation 28(1) so far as may be necessary for the purposes of the inquiry, but must (if necessary by adjourning the inquiry) give every other person appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

(8) The inspector may take into account any written representations, or evidence or any other document received by the inspector in connection with an inquiry before the inquiry opens or during the inquiry, provided it is disclosed to the inquiry.

Site inspections

33.—(1) During an inquiry or after its close, the inspector may, where it appears necessary or expedient to do so, arrange to make an inspection in relation to an appeal.

(2) Where the inspector intends to make an inspection under paragraph (1), the inspector must ask the appellant and the appropriate authority whether they wish to be present or be represented.

(3) Where the appellant or the appropriate authority has indicated a wish to be present, or represented, the inspector must give the appellant and the appropriate authority reasonable notice of the date and time of the inspection, and must afford the appellant and the appropriate authority, or their representatives, the opportunity to be present during the inspection.

(4) The inspector is not bound to defer an inspection if the appellant or the appropriate authority or their representatives are not present at the appointed time.

Procedure after inquiry—appeals determined by the Secretary of State

34.—(1) This regulation applies where an inquiry has been held for the purposes of any appeal determined by the Secretary of State.

(2) After the close of the inquiry the inspector must make a report in writing to the Secretary of State which includes conclusions and recommendations or reasons for not making any recommendations.

(3) When making a determination the Secretary of State may disregard any written representations, evidence or other document received after the close of the inquiry.

(4) Paragraph (5) applies where, after the close of the inquiry, the Secretary of State—

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

and is, for that reason, disposed to disagree with a recommendation made by the inspector.

(5) Where this paragraph applies, the Secretary of State may not come to a decision which is at variance with the recommendation made by the inspector without first—

- (a) notifying the appellant, the appropriate authority and any other person who appeared at the inquiry of the disagreement and the reasons for it, and
- (b) affording them an opportunity of making written representations or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, of asking for the re-opening of the inquiry.

(6) Those persons making written representations or asking for the re-opening of the inquiry pursuant to an invitation under paragraph (5)(b) must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under paragraph (5)(a).

(7) The Secretary of State may, if appropriate, cause the re-opening of an inquiry and must do so if asked by the appellant or the appropriate authority under paragraph (5)(b), in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (6).

(8) Where an inquiry is re-opened—

- (a) the Secretary of State must send to the appellant, the appropriate authority and any other person who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of regulation 27 apply as if the references to an inquiry were references to a re-opened inquiry.

Procedure after inquiry—transferred appeals

35.—(1) This regulation applies where an inquiry has been held for the purposes of a transferred appeal.

(2) Where an assessor has been appointed, the assessor must, after the close of the inquiry, make a report in writing to the inspector of the matters on which the assessor was appointed to advise, and the inspector must state in the notification of the decision on the appeal pursuant to regulation 37 that such a report was made.

(3) When making a decision, the inspector may disregard any written representations, evidence or other document received after the close of the inquiry.

(4) If, after the close of the inquiry, an inspector proposes to take into account any new evidence or new matter of fact which was not raised at the inquiry, and which the inspector considers is material to the decision, the inspector may not come to a decision without first—

- (a) notifying the appellant, the appropriate authority and any other person who appeared at the inquiry; and
- (b) affording them an opportunity of making written representations or of asking for the re-opening of the inquiry.

(5) Any person making representations or asking for the re-opening of the inquiry pursuant to an invitation under paragraph (4)(b) must ensure that such written representations or request to re-

open the inquiry are received by the Secretary of State within three weeks of the date of the notification.

(6) An inspector may, if appropriate, cause an inquiry to be re-opened, and must do so if asked by the appellant or the appropriate authority under paragraph (4)(b), in the circumstances mentioned in paragraph (4) and within the period specified in paragraph (5).

(7) Where an inquiry is re-opened—

- (a) the inspector must send to the appellant, the appropriate authority and any other person who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (2) to (9) of regulation 27 apply as if the references to an inquiry were references to a re-opened inquiry.

Notification of decision—appeals determined by the Secretary of State

36.—(1) This regulation applies where an inquiry has been held for the purposes of any appeal to be determined by the Secretary of State.

(2) The Secretary of State must, as soon as practicable, notify the decision on the appeal and the reasons for reaching it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the 2000 Act; and
- (e) the local access forum.

(3) Where a copy of the inspector’s report is not sent with the notification of the decision, the notification must be accompanied by a statement of the inspector’s conclusions and of any recommendations made by the inspector in the report.

(4) If a person entitled to be notified of the decision has not received a copy of the inspector’s report, the Secretary of State must, upon an application made by that person in writing, supply a copy of the inspector’s report within four weeks of the receipt of the notification of the decision on the appeal under paragraph (2).

(5) In paragraphs (3) and (4), “report” does not include any documents appended to the inspector’s report.

(6) But any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any documents appended to the report, and the Secretary of State must afford that person that opportunity.

(7) The Secretary of State must ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a relevant website for a period of three months.

Notification of decision—transferred appeals

37.—(1) This regulation applies where an inquiry has been held for the purposes of a transferred appeal.

(2) The inspector must, as soon as practicable, notify the decision on the appeal and the reasons for reaching it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every other person who appeared at the inquiry or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the 2000 Act; and

(e) the local access forum.

(3) Any person entitled to be notified of the inspector's decision under paragraph (2) may apply to the Secretary of State in writing for an opportunity to inspect any documents referred to in the notification and the Secretary of State must afford that person that opportunity.

(4) Any person making an application pursuant to paragraph (3) must ensure that it is received by the Secretary of State within six weeks of the notification of the inspector's decision on the appeal under paragraph (2).

(5) The Secretary of State must ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a relevant website for a period of three months.

PART 4

General

Consecutive and concurrent hearings and inquiries

38. The Secretary of State may arrange for two or more appeals to be heard consecutively or concurrently where they relate to the same area, or areas, of appeal land which the Secretary of State considers to be in such proximity as to make it expedient for the hearing or inquiry to be held consecutively or concurrently.

Notification of appointment of assessor

39. Where the Secretary of State has appointed an assessor in respect of a hearing or inquiry, the inspector must, at the start of the hearing or inquiry, announce the appointment and the name of the assessor.

Further time and additional copies

40.—(1) The Secretary of State may, at any time and in any particular case, give directions setting later time limits than those prescribed in these Regulations for the taking of any step or the doing of anything which is required or enabled to be taken or done by virtue of these Regulations, and references in these Regulations to a period within which any step or thing is required or enabled to be taken or done are to be construed accordingly.

(2) The Secretary of State or the inspector may, at any time before the point at which the consideration of evidence is closed, require any person making written representations or appearing at the hearing or inquiry (as the case may be) to supply copies of—

- (a) a statement of case or comments sent in accordance with regulations 9 or 11.
- (b) a proof of evidence sent in accordance with regulation 28; or
- (c) any other document or information sent to the Secretary of State or inspector before or during a hearing or inquiry.

(3) In paragraph (2) “the point at which the consideration of evidence is closed” means—

- (a) in the case of an appeal to be determined by written representations, the notification of a decision; and
- (b) in the case of an appeal to be determined by way of a hearing or inquiry, before the close of that hearing or inquiry.

(4) The Secretary of State may specify a reasonable time within which the copies referred to in paragraph (2) are to be received.

(5) Any person who is required to supply copies under paragraph (2) must ensure that the copies are received within the period specified.

Inspection and copying of documents

41. The appropriate authority must afford any person who so requests an opportunity, at such time and place as the appropriate authority may reasonably determine, to inspect and, where practicable, take copies of—

- (a) the notice of appeal given by the appellant pursuant to regulation 4(1);
- (b) the questionnaire completed by the appropriate authority pursuant to regulation 6(a) together with any documents referred to in it;
- (c) the notice given by the Secretary of State pursuant to regulation 7;
- (d) the representations, correspondence, statements of case and comments submitted by the appropriate authority pursuant to regulations 8, 9 and 11 respectively;
- (e) any further information provided by the appellant, the appropriate authority or an interested person pursuant to regulation 12;
- (f) any proof of evidence (together with any written summary) sent by or to the appropriate authority pursuant to regulation 28; or
- (g) any statement of common ground prepared by the appellant and the appropriate authority pursuant to regulation 29.

Changes of procedure

42.—(1) If, at any time before the Secretary of State or the inspector notifies a decision on the appeal under regulation 15, the Secretary of State or inspector wishes the appeal to be determined no longer by way of written representations but instead by way of a hearing or inquiry, the Secretary of State must arrange for the appeal to proceed by way of a hearing or inquiry.

(2) Paragraph (3) below applies at any time before the Secretary of State, under regulation 23 or 36, or an inspector, under regulation 24 or 37, notifies a decision on the appeal.

(3) Where the appeal procedure is changed by the Secretary of State or inspector under this regulation—

- (a) the Secretary of State must—
 - (i) notify the appellant, the appropriate authority, the local access forum and any interested person of such change, and
 - (ii) ensure that a copy of such notice is made available for inspection on a relevant website until the appeal is determined;
- (b) any step taken or thing done under these Regulations in relation to the former appeal procedure which could have been taken under any corresponding provision of these Regulations relating to the new appeal procedure is to be treated as if taken or done under that corresponding provision; and
- (c) the Secretary of State may give such consequential directions as to the procedure to be applied in relation to the appeal as may be considered necessary.

Recovery of jurisdiction

43. Where the appointment of an appointed person is revoked under paragraph 2(c) of Schedule 3 to the 2000 Act and no new appointment is made at the time of such revocation, the appeal is to proceed as an appeal which falls to be determined by the Secretary of State instead of as a transferred appeal, and any step taken or thing done in relation to an appeal which falls to be determined by the Secretary of State is to be treated as if it had been taken or done in relation to such an appeal.

Procedure following quashing of a decision

44.—(1) Where the decision of the Secretary of State or an inspector in respect of an appeal is quashed in proceedings before any court, the Secretary of State—

- (a) must send to the appellant, the appropriate authority and any interested person a written statement of the matters with respect to which further representations are invited for the purposes of the Secretary of State's further consideration of the appeal;
- (b) must afford to those persons the opportunity of making written representations to the Secretary of State in respect of those matters or of asking for the re-opening of the hearing or the inquiry; and
- (c) may, where appropriate, cause the hearing or inquiry to be re-opened.

(2) Where the hearing or inquiry is re-opened, paragraphs (2) to (9) of regulation 16 and paragraphs (2) to (9) of regulation 27, as the case may be, apply as if the references to a hearing or inquiry were references to a re-opened hearing or inquiry respectively.

(3) Those persons making representations or asking for the hearing or inquiry to be re-opened pursuant to an invitation under paragraph (1)(b) must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the written statement sent under paragraph (1)(a).

Revocation

45. The Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004(a) are revoked.

11th August 2011

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Chapter 3 of Part 1 (sections 34 - 39) of the Countryside and Rights of Way Act 2000 ("the 2000 Act") makes provision in relation to means of access in connection with access to the countryside under Chapter 1 of that Part.

Section 35 of the 2000 Act relates to agreements between access authorities and owners and occupiers of land with respect to the means of access to access land.

Section 36(3) of the 2000 Act provides that, if an owner or occupier fails to observe any restriction in an agreement under section 35 of the 2000 Act, the access authority may give notice to carry out works to remedy the breach of the restriction.

Section 37 of the 2000 Act enables an access authority to carry out works to provide means of access to access land where the authority are satisfied that they are unable to conclude on reasonable terms an agreement under section 35 of the 2000 Act. Before carrying out those works the access authority must, under section 37(1) of the 2000 Act, give notice to the owner and occupier that the authority intends to carry out the works specified in the notice.

Section 38(1) of the 2000 Act gives the owner and occupier the right to appeal against a notice under section 36(3) or 37(1) of the 2000 Act.

Part 9 of and Schedules 19 and 20 to the Marine and Coastal Access Act 2009 ("the 2009 Act") make provision for access to the English coast.

(a) S.I. 2004/3305.

Paragraph 2 of Schedule 20 relates to agreements between Natural England or access authorities and the owner and occupiers of land with respect to works relating to the establishment and maintenance of the English coastal route.

Paragraph 3(3) of Schedule 20 enables Natural England or the access authority (the relevant authority) to carry out works required for the establishment or maintenance of the English coastal route if they are unable to conclude on reasonable terms an agreement with the owner or occupier of the land. Before carrying out those works, the relevant authority must give notice to the owner or occupier that it intends to carry out the works in the notice.

Paragraph 4 of Schedule 20 gives the owner or occupier the right to appeal against notices under paragraph 3(3) of Schedule 20.

These Regulations provide for the period within which, and the manner in which, appeals under section 38(1) of the 2000 Act and paragraph 4 of Schedule 20 to the 2009 Act are to be brought, and also make provision for the advertising of those appeals and for the appeal procedures. In particular—

- (a) Part 2 (regulations 4-12) of these Regulations relates to the initial stages of appeal and include provision as to how appeals are to be made and the period within which they are to be brought;
- (b) Part 3 (regulations 13-37) of these Regulations relates to the determination of these appeals and set out the procedures for—
 - (i) appeals to be determined on the basis of written representations (Chapter 1, regulations 13-15);
 - (ii) appeals to be determined by way of a hearing (Chapter 2, regulations 16-24);
 - (iii) appeals to be determined by way of an inquiry (Chapter 3, regulations 25-37); and
- (c) Part 4 (regulations 38-45) of these Regulations contains general provisions, including provision for allowing further time for taking any step required by these Regulations (regulation 40) and provision for the inspection and copying of documents (regulation 41).

These Regulations revoke the Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004 (regulation 45).

A separate Impact Assessment has not been prepared in respect of these Regulations, because the Impact Assessment which was prepared for Part 9 of Marine and Coastal Access Act 2009 (Coastal Access) examined the impact of the implementation of Part 9 of which these Regulations form part. In so far as these Regulations have effect in relation to the right of access under Part 1 of the 2000 Act as it applies in relation to land which is open country or registered common land (as defined by section 1(2) and (3) of the 2000 Act), no burden on the private, voluntary or public sector is foreseen.

© Crown copyright 2011

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2011 No. 2019

COUNTRYSIDE, ENGLAND

The Access to the Countryside (Appeals against Works Notices)
(England) Regulations 2011

£5.75

E1133 08/2011 111133T 19585

ISBN 978-0-11-151465-8



9 780111 514658