



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise a Principal or Assistant Chief Reporter so issues emerging can be considered for future case work.

<b>Guidance note:</b>	<b>Summary of main changes introduced by the Town and Country Planning (Appeals)(Scotland) Regulations 2013</b>
<b>Relating to:</b>	This note relates to the Town and Country Planning (Appeals)(Scotland) Regulations 2013
<b>Background/ legislative and policy framework:</b>	<p>The Town and Country Planning (Appeals)(Scotland) Regulations 2013 came into force on 30 June 2013 and replaced the 2008 Appeals Regulations and subsequent amendments to them.</p> <p>The main purpose of the 2013 Regulations is to consolidate the various amendments that have been made to the Appeals Regulations. They also make some important changes in that they:</p> <ul style="list-style-type: none"> <li>• Brought advertisement consent appeals, advertisement enforcement notice appeals, and discontinuance notice appeals within the scope of the Appeals Regulations</li> <li>• Introduced an 'opt-in' procedure which requires, in appropriate cases, interested parties to confirm that they wish to take an active part in the appeal</li> <li>• Clarifies the regulation on Procedure Notices</li> <li>• Made some minor changes such as permitting reporters to ask for further information without using a formal procedure notice; and imposed an obligation on the appellant to provide a copy of the decision notice when lodging the appeal</li> <li>• Amended the Hearing Session Rules to make it clear that hearing statements must fully set out a party's case</li> <li>• Brought applications for urgent Crown development within the scope of the Appeals Regulations</li> <li>• Introduced a new procedure in national security cases for dealing with 'closed evidence' to which only specified parties and appointed representatives have access</li> </ul> <p><b><u>Advertisement appeals</u></b></p> <p>The 2013 Appeals Regulations apply to advertisement appeals lodged on or after 30 June 2013. Where the decision notice was issued (or the right</p>

to appeal against non-determination arose) before 30 June 2013 the time limit for appeal is 6 months. For other cases it is 3 months.

Advertisement appeals are dealt with in Part 6 of the Regulations. This is divided into two sections: the first deals with appeals in relation to consent for the display of advertisements (ADA) and the second relates to appeals in relation to discontinuance notices (ADD).

Advertisement enforcement notice appeals (ADE) fall within the scope of Part 4 of the regulations.

***Appeals in relation to consent for the display of advertisements***

Part 6 applies to the following types of appeal:

- applications for a consent to display an advertisement
- a condition attached to a consent to display an advertisement
- an application for consent, agreement or approval required by a condition attached to a consent to display an advertisement

Part 2 of the regulations (submission of appeals, responses by the planning authority and interested parties) applies to these appeals with some modifications:

- the period prescribed for determining the application for consent or approval is two months from the date of receipt by the planning authority of the application
- in regulation 4 (the planning authority's response) the reference to the report on handling is not relevant
- the planning authority must give notification of the appeal to interested parties (the references to development being replaced by references to the advertisement; and the references to the land to which the development relates are replaced by a reference to the site where the advertisement is to be displayed)

Part 1, Part 3 (Choice of procedure/Method of determination), Part 9 (General), Part 10 (Transitional provisions and revocations), the Hearing Session Rules and the Inquiry Session Rules apply to appeals in this category.

For the purpose of these appeals an interested party is any authority or person from whom the planning authority received representations (that were not withdrawn) in connection with the application.

***Discontinuance notices***

A discontinuance notice is a notice served under regulation 14 of the Town and Country Planning (Control of Advertisements) Regulations 1984. The notice specifies a period at the end of which the notice takes effect and the advertisement must be removed.

A notice of appeal must be served on DPEA before the expiry of the period specified in the notice, i.e. before the notice comes into effect. A planning authority may vary a discontinuance notice by extending the period before the notice comes into effect. In those cases the appeal must be made before the expiry of the extended period.

The notice of appeal must include:

- all the matters that the appellant intends to raise in the appeal
- the name and address of the appellant
- a copy of the notice against which the appeal is made
- the name and address of the appellant's representative (if any) and whether correspondence should be sent to the representative instead of the appellant
- a note of the procedure (or combination of procedures) by which the appellant wishes the appeal to be determined.

The statement of appeal must be accompanied by all the documents, material and evidence upon which the appellant intends to rely.

The planning authority must within 14 days of receipt of notification of the appeal give notice of the appeal to each person on whom the discontinuance notice was served.

The notice must:

- state the name of the appellant and specify the advertisement or the site to which the appeal relates
- describe the steps required by the discontinuance notice
- state the period within which representations may be made to DPEA (not less than 14 days)
- state where a copy of the notice of appeal and the PARF may be inspected

Part 1, Part 3 (Choice of procedure/Method of determination), Part 9 (General) (except for notification and consultation under the Development Management Regulations), Part 10 (Transitional provisions and revocations), the Hearing Session Rules and the Inquiry Session Rules apply to appeals in this category.

Regulation 15 (notification of the appeal to the planning authority and the planning authority's response) applies with some modifications:

- The appellant does not require to submit a statement of appeal (as well as a notice of appeal)

For the purpose of these appeals an interested party is any person who received notification of the appeal and who submitted representations (that were not withdrawn) to DPEA in connection with the appeal.

### **Opt-in procedure**

Regulation 8 enables the reporter to send a notice to interested parties asking them to confirm if they wish to be involved in any further procedure. The 'opt-in' letter will explain to interested parties that if they wish to participate in further procedure they must send an opt-in notice within a period of not less than 14 days. The letter will explain that their representations will be taken into account even if they do not wish to participate and that they will be informed when the appeal decision is issued. It must be explained that if they do not respond to the letter they may lose the opportunity to participate in any further procedure. An opt in letter can be sent to all interested parties or only some of them.

In cases in which the opt-in procedure is used only those interested parties who have opted in will be treated as 'interested parties' for the purpose of

- sending notices informing parties of a pre-examination meeting
- informing parties of the arrangements for a site inspection
- issuing a Procedure Notice under the Hearing Session or Inquiry Session Rules.

In cases in which an inquiry session is held there is a requirement in primary legislation for those who have made representations about the specified matters to be given notice of the date and venue of the inquiry. However, this can be done by means of a letter rather than a formal procedure notice issued under Rule 1.

### **Procedure Notices**

The regulation on procedure notices has been redrafted and is now regulation 11. The representations made or information given in response to the procedure notice are known as 'procedure notice responses' and the amended regulation clarifies who is entitled to comment on those responses.

### **Hearing Session Rules**

The definition of a 'hearing statement' has been amended to clarify that this must fully set out a party's case. The previous reference to an 'outline' case had, in some instances, resulted in the submission of documents in skeletal form which did not give the reporter or other parties

adequate notice of the matters to be discussed.

### **Applications for urgent Crown development**

Where an appropriate authority (i.e. the Crown Estate Commissioners, a government department or Scottish Ministers) certifies that a development is of national importance and that it is necessary for it to be carried out as a matter of urgency it may, instead of making an application to the planning authority, apply to Scottish Ministers for planning permission. The authority must advertise the fact that it proposes to make such an application and describe the proposed development.

As soon as practicable after receipt of the application and any additional information requested by Scottish Ministers a copy of the application and other material must be made available for inspection by the public in the locality of the proposed development. Notice of the application must be published and the fact that it is available for inspection.

Scottish Ministers must consult the planning authority about the application.

The provisions relating to publication do not apply in cases where a national security direction has been given.

Regulation 25 applies to applications for urgent Crown development made on or after 30 June 2013.

Part 1, Part 3 (Choice of procedure/Method of determination), Part 9 (General) (except for notification and consultation under the Development Management Regulations), the Hearing Session Rules and the Inquiry Session Rules apply to applications for urgent Crown development, with some modifications:

- references to the appeal and appellant are to be treated as references to the application and the applicant
- references to the reporter in Part 3 (Choice of procedure/Method of determination) and 9 (General) are to be treated as references to Scottish Ministers apart from the provisions relating to appointment of assessors (regulation 30) and the issuing of Procedure Notices under Rule 1(1) of the Hearing Session and Inquiry Session Rules.

### **National Security**

The usual rule is that planning inquiries are to be held in public. However, in cases where giving evidence or making it available for inspection would (a) result in disclosure of information about national security or the measures taken or to be taken to ensure the security of any premises or property; and (b) such disclosure would be contrary to the national interest, Scottish Ministers may make a direction

(a 'national security direction') that evidence shall only be given or made available for inspection by persons specified in the direction.

The validity of an appeal is not affected by failure to disclose information as to national security and the measures taken or to be taken to ensure the security of any premises or property. The notice of appeal must be accompanied by a written statement by the appellant that the information falls into these categories and that public disclosure would be contrary to the national interest.

The Lord Advocate may appoint a person to represent the interests of anyone who is prevented from hearing or inspecting evidence that is subject to a national security direction.

Schedule 4 to the Appeals Regulations applies where a security direction has been made or has been applied for but not yet determined. It applies the Regulations and the Inquiry Session Rules subject to some modifications. Evidence which is subject to a security direction is known as 'closed evidence'.

Regulations requiring documents or other material or evidence to be sent to parties are to be read, where they contain or make reference to 'closed evidence', as only permitting these to be sent to persons specified in the direction ('specified persons') and any person appointed by the Lord Advocate ('appointed representative').

Where closed evidence is to be discussed at a pre-examination meeting only specified persons and appointed representatives may attend while closed evidence is being discussed. The notice telling parties when and where the pre-examination meeting is to take place must state that this restriction will apply when closed evidence is being discussed.

The usual rules on notification of and attendance at site inspections do not apply. The reporter may inspect the land in the company of specified persons and any appointed representative.

In giving notice of an inquiry session the reporter must advise parties that a security direction has been made. If the security direction is made after the procedure notice calling the inquiry session has been issued then the reporter must inform those entitled to appear at the inquiry session that a security direction has been made.

While closed evidence is being considered at an inquiry session only specified persons and any appointed representative are entitled to appear.

Inquiry Session Rules requiring inquiry statements to be sent to parties are to be read as permitting a 'closed inquiry statement' to be sent only to specified persons and any appointed representative. A 'closed inquiry statement' is one which includes or refers to closed evidence. An 'open inquiry statement' is one that does not contain or refer to such evidence

	<p>and it may be sent to parties entitled to attend when evidence other than closed evidence is being considered. Similar provision is made for closed and open precognitions. Rule 4 (service of inquiry statements, documents and precognitions) applies only to open inquiry statements, open precognitions and open documents.</p> <p>In cases where an assessor has been appointed, the assessor must set out his/her views in relation to any closed evidence in a separate part ('the closed part') of the report.</p> <p>Where the reporter's reasons for a decision relate to matters in respect of which closed evidence has been given then nothing in the Regulations requires notification of those reasons to any person other than a specified person and any appointed representative. In such cases it will be necessary to prepare a 'closed decision' for issue to the specified person(s) and any appointed representatives and an 'open decision' for publication.</p> <p>Closed evidence must not be published or disclosed to anyone other than a specified person and any appointed representative.</p>
<p>DPEA practice:</p>	<p>The new opt in procedure is available in all appeals but it is anticipated that it will be used mainly in cases in which there are a significant number of interested parties and/or where representations take the form of pro forma letters or signatures to a petition. The purpose of the procedure is to enable the reporter to clarify which interested parties wish to have the opportunity to take part in further procedure.</p>
<p>Process:</p>	<ul style="list-style-type: none"> <li>• on allocation of an appeal the reporter should make an early assessment of whether it is likely that there will be a hearing or inquiry session. If there is a reasonable prospect of this being required then the reporter should, having regard to the number of interested parties, discuss with one of the Section Managers whether the appeal is one in which the opt-in procedure should be used. It is not necessary at this stage for the reporter to have identified the specified matters for those sessions</li> <li>• the opt in procedure can be used in advance of a pre-examination meeting and, in cases in which a pre-examination meeting is likely to be held, the reporter should discuss with one of the Section Managers whether the opt-in procedure should be used in advance of the PEM</li> <li>• the reporter should consider whether the opt-in notice should be sent to some or all interested parties. For example, it may be clear from correspondence that certain interested parties will wish to participate in further procedure</li> <li>• if interested parties do not opt in then they are no longer treated as interested parties for the purposes of sending notification of a PEM or a site inspection; nor do they require to be sent a procedure</li> </ul>

	<p>notice under Rule 1 of the Hearing or Inquiry Session Rules. However, in cases in which an inquiry session is held there is a legal obligation to inform those who have made representations on the specified matters of the date and venue of the inquiry session. This will be done by the administration team by letter rather than a formal procedure notice.</p> <ul style="list-style-type: none"><li>• If the opt-in procedure is to be of value it needs to be carried out an early stage of the appeal. Reporters should bear this in mind and, in planning the management of the case, should build in sufficient time for opt-in letters to be issued and for interested parties to respond.</li></ul>
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