

# The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007

## Guidance for Participants

URN 07/782

### Introduction

1. This guidance note explains the new procedures for handling inquiries into applications for generating stations with a capacity of greater than 50MW onshore and 1MW offshore (within territorial waters<sup>1</sup>) and for overhead lines that are considered under sections 36 and 37 of the Electricity Act 1989 respectively. The new procedures will be introduced with effect from 6<sup>th</sup> April 2007. These procedures will apply to all inquiries for which the relevant notice that an inquiry is to be held is given on or after 6<sup>th</sup> April 2007. Inquiries that have been announced before this date will continue to be considered under the old procedural Rules.<sup>2</sup>
2. The new Rules have been introduced following commitments given in the July 2006 Command Paper “Our Energy Challenge”<sup>3</sup>. The new procedures take account of the existing best practice inquiry procedures for large infrastructure projects consented under the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005.<sup>4</sup>
3. The purpose of the new inquiry procedures is to achieve significant improvements in the time taken to handle major infrastructure projects by streamlining the process and reducing unnecessary delays whilst continuing to ensure that the inquiry is a forum in which all appropriate interests have a voice and all the relevant issues are fully and fairly considered.
4. This guidance note has been written to show how the inquiry process is likely to happen in practice; for example, the Rules specify that the Secretary of State and the Inspector carry out a number of actions; however in practice, it may often be the case that the Secretary of State (or officials acting on his behalf) would take a decision following a recommendation from the Inspector on the matter. Many of the actions may be carried out by the Planning Inspectorate.

### The Inquiry Process

5. The inquiry process remains firmly grounded in the principles of openness, fairness and impartiality. At the same time, it has become increasingly clear that without impairing either the quality of decisions or participants’ ability to present their case fully and fairly, it is possible for all involved to assist in speeding up the process. The better use of resources should ensure that matters are handled as efficiently

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<sup>1</sup> The limit on offshore proposals outside of territorial waters, in the Renewable Energy Zone is 50MW

<sup>2</sup> The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990 (S.I. 1990/528).

<sup>3</sup> The Energy Challenge. Energy review report 2006 [Cm 6887] Available on [www.dti.gov.uk/energy/review](http://www.dti.gov.uk/energy/review) and can also be obtained through the Stationery Office Publications Centre, PO Box 29, Norwich NR3 1GN, telephone: 0870 600 5522.

<sup>4</sup> S.I. 2005/2115.

as possible. **It is important that all interested parties read this guidance. The following advice is intended to be a guide as to the operation of the Rules. It is not definitive. An authoritative statement of the law can only be made by the Courts.**

## **Key Points**

6. These Rules regulate the procedure to be followed in connection with inquiries held under the Electricity Act 1989 relating to applications for consent under section 36<sup>5</sup> to construct, operate or extend an electricity generating station with capacity of greater than 50MW onshore and 1MW offshore in territorial waters and 50MW offshore in the Renewable Energy Zone and under section 37 to install, or keep installed, overhead electric lines.
7. These Rules contain provision for the situation where additional Inspectors are appointed. Section 182 of the Energy Act 2004<sup>6</sup> introduced powers to appoint multiple Inspectors to a planning inquiry held pursuant to Schedule 8 to the Electricity Act 1989 in order to determine applications for consent under sections 36 and 37 of the Electricity Act 1989.
8. The Rules apply in England and Wales. They replace the existing Rules (Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990), and they reflect, with further enhancements, the best practice introduced in the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005.
9. In summary, the package comprises:

### Qualifying Planning Authority Status

- Relevant planning authorities usually<sup>7</sup> must have registered any objections within the timeframes set out in regulations<sup>8</sup> to become a qualifying planning authority and thereby automatically be entitled to appear at the inquiry. **(Rules 2 and 15).**

### Improved Pre-Inquiry Procedures

- Requiring qualifying objectors to register in order to be automatically entitled to appear at the inquiry and to indicate to the Secretary of State, the extent to which they wish to participate in the inquiry, to allow for better timetabling and information provision to the Inspector. **(Rules 6(4), 15(1)(e)).**

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<sup>5</sup> Where an application for consent under section 36 is accompanied with an application for a declaration under section 36A relating to rights of navigation, the section 36A application is considered as part of the application for consent.

<sup>6</sup> Section 182(1) inserts paragraph 5A into Schedule 8 to the Electricity Act 1989.

<sup>7</sup> In inquiries held under section 62 of the Electricity Act 1989 application notices are not required, so planning authorities would not have been afforded an opportunity to object, therefore they are automatically a “qualifying” planning authority.

<sup>8</sup> Electricity (Applications for Consent) Regulations 1990 S.I. 1990/455 and Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 S.I. 2006/2064.

- i. Requiring that certain documents are circulated to the relevant planning authority, the applicant, and those qualifying objectors who have registered to play a major part in the inquiry. **(Rule 2(3))**. Inquiry documentation would remain available for inspection at the relevant planning authority.
- Enabling the Secretary of State to appoint a Technical Adviser to assess evidence. **(Rule 7)**.
  - Requiring a pre-inquiry meeting to be held **(Rule 9)**, unless holding such a meeting is not thought likely to result in the inquiry being conducted more efficiently and expeditiously. This might be the case where the expected duration of the inquiry is very short and therefore no overall efficiency saving is likely to be made through holding a pre-inquiry meeting **(Rules 4(1)(b), 9(1) and (2))**.
  - Creating requirements for the circulation of Inspector's notes of pre-inquiry meetings and recommendations **(Rule 10)**.
  - Requiring more detail in statements of case submitted before the inquiry, including an obligation on the qualifying planning authority and qualifying objectors (who are playing a major part) to identify in their statements of case which part of the applicant's statement of case they agree or disagree with and give reasons for disagreement **(Rule 11)**.
  - Enabling the Secretary of State to direct that the applicant and relevant planning authority prepare a statement of common ground containing agreed factual information **(Rule 18)**.
  - Requiring the Inspector to propose a timetable for the inquiry, which the Secretary of State may approve. In instances where a pre-inquiry meeting is not held, the Inspector may arrange a timetable for the inquiry, which does not require approval from the Secretary of State. In all cases, the Inspector must specify the dates on which proofs of evidence (and any summaries) and any statement of common ground shall be received by the Secretary of State **(Rule 12)**.

#### Improved Inquiry Procedures

- Requiring that where participants provide written proofs of evidence in excess of 1,500 words, they also provide a written summary (which normally must not exceed 1,500 words), and the Inspector can require that only the summary (as opposed to the full proof) shall be read out at the inquiry (although the full proof can be treated as tendered in evidence) **(Rules 17 and 19)**.
- Enabling inquiries to be held in concurrent sessions by a number of Inspectors. (Commencement of section 182 of the Energy Act 2004 (by separate order), inserting paragraph 5A into Schedule 8 to the Electricity Act 1989 and provision throughout the Rules for this situation).

- Enabling the Inspector to direct that evidence on certain specified issues is given in writing only, although participants may make oral submissions on these issues at inquiry (**Rule 19**).
- Enabling the Secretary of State to set a deadline for the submission of the Inspector's report (**Rule 21**).

#### e-Government

- Enabling the use of electronic communications for notification and circulation of inquiry-related information where the recipient has specified an electronic address for that purpose (**Rules 3 and 26**).
10. There is a 12 week deadline (from the date of the Secretary of State's notice that an inquiry is to be held) for the first pre-inquiry meeting to be held, and, then a further 10 week deadline (from the last pre-inquiry meeting) for the inquiry to start. In instances where a pre-inquiry meeting is not held, the deadline for the start of the inquiry is 18 weeks from the date of the Secretary of State's notice that an inquiry is to be held<sup>9</sup>. These are usual deadlines, which may, in individual cases, be extended.
11. There is a variety of types of projects, with varying sizes and complexity that are considered under sections 36 and 37 of the Electricity Act. To reflect this, many of the Rules do not oblige the Secretary of State or Inspector to act in a certain manner, instead they give the Secretary of State or Inspector powers which should enable the inquiry to be run in a manner, which they consider to be the most appropriate way to explore the issues in the particular case.

#### **Planning Applications and the National Need for Electricity Infrastructure**

12. It is expected that when the Inspector is considering the issues that they consider relevant to the public inquiry that they take due account of Government policy setting out the national importance of electricity infrastructure, in particular:
- "Our Energy Future: Our Energy Future – Creating a Low Carbon Economy", the 2003 Energy White Paper
  - The "Statement of Need for Renewable Generation", published in "The Energy Challenge"
  - The "Renewable Energy Statement of Need for Transmission System Upgrades", made to Parliament on 21 July 2005
  - Planning Policy Statement (PPS) 22: Renewable Energy
  - Technical Advice Note (TAN) 8: Renewable Energy

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<sup>9</sup> Under the old Rules, there was a 22 week deadline for the holding of the inquiry, unless the Secretary of State had caused a pre-inquiry meeting to be held, in which case that meeting had to be held within 16 weeks, with the inquiry within 8 weeks of the last such meeting.

- The forthcoming Planning Policy Statement on Climate Change
- The forthcoming 2007 Energy White Paper.

## Appendix 1: Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007

1. The main body of the guidance should be read in conjunction with this Appendix.

### SCOPE OF THE RULES

2. These Rules apply to any public inquiry caused by the Secretary of State to be held in England or Wales pursuant to Schedule 8 to, or under section 62 of, the Electricity Act 1989 to determine applications made under sections 36<sup>10</sup> or 37 of that Act. These Rules are based mainly on the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005<sup>11</sup> and partly on the old Rules, namely the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1990<sup>12</sup>.
3. This means that the Rules apply to public inquiries caused by the Secretary of State to be held into section 36 applications to construct, operate or extend offshore generating stations, namely those with a capacity of greater than 1MW in territorial waters and 50MW in the Renewable Energy Zone. These Rules, in relation to such applications, generally reflect the approach taken in the Electricity Act 1989 and the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006.

### BACKGROUND TO THE RULES

4. The principle objective of these new Rules is to improve and streamline the handling of large electricity infrastructure inquiries for the benefit of all participants. These Rules are designed to retain the existing high standards of fairness and impartiality while improving process and performance.

#### Rule 2- Interpretation

5. The following terms are some of those defined in Rule 2 (to which reference should be made for the full definition) – Please note, the list is not exhaustive:
  - **lead Inspector** runs the inquiry and **additional Inspector** conducts concurrent sessions. Where the Rules refer to “Inspector”, this includes both types.
  - **inquiry** which includes concurrent sessions.
  - **outline statement** means a written statement of the principle submissions which a person proposes to put forward at an inquiry.
  - **statement of case** should now also include a list of persons whom the participant proposes to call as witnesses, and the subject-matter of the evidence of each such witness.

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<sup>10</sup> Together with any application for a declaration under section 36A of the Electricity Act 1989 relating to rights of navigation.

<sup>11</sup> S.I. 2005/2115.

<sup>12</sup> S.I. 1990/528.

- **qualifying planning authority** usually refers to a relevant planning authority who has notified the Secretary of State of its objections to a proposed development in accordance with the Regulations limiting the time within which notification of objections by relevant planning authorities must be made.<sup>13</sup> It can be helpful for appropriate local planning authority/authorities to participate in inquiries, due to their significance as the balancing body for community interests, their knowledge of local and regional planning policies and as the statutory body dealing with planning conditions which may be imposed if the consent is given.
- **qualifying objector** refers to any person who has notified the Secretary of State of its objections to a proposed development, which usually must have been in accordance with the Regulations limiting the time within which notification of objections must be made.<sup>14</sup>

### Rules 3 (and 26) – Electronic Communications

6. These Rules enable, but do not require, persons to send notices and documents for the purpose of the Rules by means of electronic communication. Not all potential participants may have access to electronic communication means, and the Rules retain the provision for sending documents by post. Documents may be sent to participants electronically where the participant has provided an electronic address for that purpose and has not withdrawn it. This address could be provided at the registration stage.
7. There is also provision for notification of certain matters (such as the date, time and place for the inquiry in rule 14(6)) to be given by referring the person to be notified to a notice of those matters on a website. This method of notification may only be used where the person being notified so agrees.

### Rule 4 – Notice by Secretary of State

8. This rule requires the Secretary of State to notify the applicant and relevant planning authority that an inquiry is to be held, whether or not there will be a pre-inquiry meeting and of the Secretary of State's statement of matters.
9. Rule 4(1)(c) requires the Secretary of State to provide a statement of the matters which in his view should be considered at the inquiry. Its purpose is to provide a clear statement of what, on the information before him, he considers to be the relevant issues. The Secretary of State's statement is intended to assist the participants and Inspector in preparing for the inquiry. It is not intended to be a definitive statement since the Inspector must be free to hear all evidence that he believes is relevant to his consideration of the case. This provision will enable the

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<sup>13</sup> See Electricity (Applications for Consent) Regulations 1990 (S.I. 1990/455) and Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 (S.I. 2006/2064). Where an inquiry is held under section 62 of the Electricity Act 1989 in respect of an application notice of which was not required to be published by these Regulations, any relevant planning authority is a qualifying planning authority.

<sup>14</sup> See footnote 13 above.

Secretary of State to give a steer in the statement of matters towards the issues he considers to be relevant, and in most cases it is expected that this would not include matters of settled Government policy.

10. However, the Inspector may also give an indication of those matters which he considers do not need to be considered, or which need not be considered in great detail during the inquiry process. This does not prevent participants from referring to any matter which they consider to be relevant (whether or not identified as relevant by the Secretary of State or Inspector) (Rule 19).

#### Rule 5 – Preliminary Information to be supplied

11. The Secretary of State will, as soon as practicable after the notice is sent under rule 4, send the applicant and the qualifying planning authority the details of any qualifying objector who has made representations to him.

#### Rule 6 – Registration

12. This rule sets up a registration process so that planning authorities, objectors and others entitled or wishing to appear at the inquiry register their intention or wish to participate, indicating the role they wish to play.
13. The main purpose of the registration procedure is to allow the Inspector to gather information on the participants to allow him to better plan the inquiry and set a timetable.
14. A register of participants from the information contained in the registration forms will be prepared. A copy of the register will be sent to the applicant, the qualifying planning authority and other qualifying objectors who have registered to appear at the inquiry in accordance with rule 6(4)(a), and arrangements will also be made for copies to be available for public inspection.
15. Qualifying objectors must return a registration form in order to be automatically entitled to appear at the inquiry. This provides an incentive for them to provide information about their case at an early stage. The Secretary of State or Inspector has discretion, in relation to various parts of the procedure, to involve other persons, for example the Secretary of State can require any other person who has notified him of an intention or wish to appear at the inquiry to provide a statement of case (rule 11(5)). Similarly, the Inspector has a discretion to permit any person (not being a person entitled to appear) to appear at the inquiry and this discretion must be exercised reasonably (rule 15(2)). These discretionary provisions may facilitate participation by persons who are not automatically entitled to appear and may not have registered at the start, to participate in the inquiry in appropriate circumstances.
16. A qualifying objector who registers an interest in participating in the inquiry (at any level) would be automatically entitled to appear at the inquiry irrespective of the level of participation in the inquiry they had indicated at the registration stage. Similarly, such a qualifying objector would not necessarily be bound by the level of participation indicated at the registration stage.



17. Rule 6(4)(b)(vi) requires the submission of outline statements by all persons registering. A person registering should have received a copy of the Secretary of State's statement of matters, and may wish to consider these matters when preparing an outline statement, although the person registering may refer to any matter which he considers relevant, irrespective of whether it is contained in the statement of matters.
18. Outline statements might also include, if known or relevant:
- an estimate of how long the presentation of the case is likely to take;
  - outline information about witnesses likely to be called
  - an indication of which other witnesses the participant would like to cross-examine
  - a list of any special studies which have been taken into account or are being prepared.
19. The Secretary of State will send copies of outline statements to the applicant, the relevant planning authority and qualifying objectors who have registered to play a major part in the inquiry in accordance with rule 6(4).
20. The outline statements have two functions. First, they provide advance warning of arguments that the various participants are proposing to deploy at the inquiry. It should be possible to identify from these statements the issues that are likely to feature most prominently at the inquiry. Second, the outline statements provide the information that the Inspector requires to structure and programme the inquiry. In the light of what is said in them, the Inspector may wish to invite participants to consider collaborating to present a single case at the inquiry. The outline statement will also help the Inspector to see whether there are any relevant issues which are in danger of not being properly covered at the inquiry, and to consider how to remedy any deficiencies, for example by inviting persons who have expert knowledge of the matter concerned to take part in the inquiry.

#### Rule 7 – Appointment of Technical Adviser

21. A technical adviser may be appointed by the Secretary of State at any point before or during the inquiry, where it appears that the inquiry would be conducted more efficiently and expeditiously if an expert and independent assessment of the technical and scientific evidence were to be made.
22. The technical adviser would usually be appointed at the request of the Inspector and be tasked with assessing the technical or scientific evidence of all participants (at any time before or during the inquiry, but more usefully before the inquiry starts). The technical adviser would engage in discussions with participants, jointly and/or separately, and would produce their own independent report on the technical or scientific issues, identifying the key areas of disagreement, and giving an opinion about the significance of the disagreements.
23. Where a technical adviser has been appointed, rule 7(3) allows the Secretary of State to direct the applicant to publish a notice in one or more local newspapers of the technical adviser's name and the matters on which he is to advise. Technical

advisers may be important in assisting the progress of inquiries towards a quicker understanding of more technical or scientific issues.

24. The Inspector must circulate (see rule 2(3)) copies of the technical adviser's report within seven days of receipt. This report would become an inquiry document and it would be available for questioning by the relevant participants at the inquiry.
25. A technical adviser shall give evidence on their report at the inquiry and may be subject to cross-examination. Rule 7(9) enables the Inspector to allow the technical adviser to add to or amend the report should he wish to do so to clarify his views. The Inspector shall (if necessary by adjourning the inquiry) give every person entitled to appear who is appearing at the inquiry the opportunity to consider any amendment or addition to the technical adviser's report. An Inspector would not be bound by the findings of the technical adviser's report.

#### Rule 8 – Mediation

26. Mediation was introduced to the inquiry process to help to narrow the issues before and during the inquiry. Mediators can be appointed by the Secretary of State, usually at the request of the lead Inspector, and tasked with facilitating agreement between the participants on any issue, whether technical or otherwise. The Rules do not prescribe any particular procedure for the mediation; this is left to the mediator to determine. Therefore, the mediation process may be open and facilitative or confidential, in which case neither the mediator nor the participants may disclose anything which takes place in the course of the mediation, except for the mediator's report at the conclusion of the mediation. This report must describe the procedure and its outcome. It might simply say that nothing has been agreed, or it could be a fully reasoned paper with conclusion which could feed into the Inspector's report. The Inspector would not be bound by the conclusions of the report. Whatever its content, it would become an inquiry document. Any person entitled to appear at the inquiry may address the Inspector on the report, but the mediator would not give evidence about it. Mediators could be appointed at any time before or during the inquiry.
27. Under rule 8(3), the Secretary of State may require the applicant to publish in one or more local newspapers the name of the mediator and the matter in relation to which he will mediate.
28. After the mediation the mediator has seven days to submit their report to the Inspector. Upon receipt the Inspector shall send a copy to every person entitled to appear at the inquiry.
29. It is the intention that mediation would be used alongside other pre-inquiry process, where appropriate, for example, alongside the evidence gathering process by the technical adviser.

#### Rule 9 – Procedure for Pre-Inquiry and other Meetings

- 30. At least one pre-inquiry meeting shall be held, unless the Secretary of State considers that holding a pre-inquiry meeting would not result in the inquiry**

**being conducted more efficiently and expeditiously (rule 9(2)).** It is expected that in most cases a pre-inquiry meeting would be held. It is important that the pre-inquiry phase is used to focus the inquiry and reach as much consensus between participants as possible, to make the most effective use of inquiry time.

31. The Inspector will seek to identify from the outline statements provided under rule 6(4), those areas where facts appear to be capable of agreement between main participants, such as descriptions of the proposal, the site and surroundings, or the facts and methodologies relating to environmental effects. He will do this as soon as possible after the receipt of the outline statements, although in practice it might only be possible once the statements of case have been submitted. He could then, as appropriate, advise the Secretary of State on whether to exercise any of the discretionary powers in the Rules, for example, whether to require the relevant planning authority and applicant to prepare a statement of common ground (rule 18) or whether to appoint a mediator (rule 8).
32. Experience has shown that pre-inquiry meetings and other meetings held pursuant to rule 9(9) can be a very effective means of agreeing facts, and narrowing the extent of disagreements, both before and during the inquiry. Various models have been adopted by Inspectors, but they have in common a format that is non-adversarial and in which a discussion of a specific issue is led by an Inspector or by a chairperson nominated from within the group. The results of these sessions are written up as inquiry documents and form part of the material which informs the Inspector's report.

#### Rule 10 – Publicity for Inspector's notes of Pre-inquiry Meetings and Recommendations

33. This rule places a requirement on the Inspector to prepare a note of any pre-inquiry meeting, send it to the Secretary of State as soon as practicable afterwards and then circulate it (see rule 2(3)). The Inspector's recommendations to the Secretary of State on the timetable and any matters relating to the conduct of the inquiry which he may have been directed to consider, will also be circulated.

#### Rule 11 – Receipts of Statements of Case etc.

34. Under this rule, the applicant must ensure that the Secretary of State receives 2 copies of its statements of case within 4 weeks of the conclusion of the final pre-inquiry meeting, or where no pre-inquiry meeting is held, within 12 weeks from the date of the Secretary of State's written notice that an inquiry is to be held. Qualifying planning authorities, qualifying objectors who have registered to play a major part in the inquiry (rule 6(4)(b)(iv)), and any other person whom the Secretary of State has required to send a statement of case, have a further two weeks to provide their statements of case. These participants must ensure that their statements of case are received within six weeks from the conclusion of the pre-inquiry meeting, or, where none is held, 14 weeks from the date of the Secretary of State's written notice that an inquiry is to be held.
35. Qualifying planning authorities and qualifying objectors who have registered to play a major part in the inquiry should, in their statements of case, identify each part of

the applicant's statement of case with which they agree and those parts with which they do not agree and state the reasons for the disagreement (rule 11(7)).

36. The statement of case should build on the outline statement and should contain the full particulars of the case which a participant proposes to put forward at the inquiry, i.e. it should set out the arguments (planning and legal) that a participant intends to put forward at inquiry, possibly citing any relevant statutory provisions and case law, and describe, but not contain, the evidence which a participant intends to call in support of its arguments. It should also include a list of all the documents, which a participant will rely on when presenting their case at the inquiry and refer to in their proofs of evidence. This enables the participants to know as much as possible about each other's case at an early stage and will help the participants to focus on the matters which are in dispute. It can also help the participants assess whether there is scope for negotiation while there is still time for this to lead to a satisfactory outcome. Starting negotiations early can help avoid late cancellations of inquiries or requests for postponements.
37. To assist in ensuring that adequate information is supplied in advance of the inquiry, Rule 11(10) enables the Secretary of State or Inspector to require the provision of such further information as may be specified. If any participant considers a statement of case produced by another participant to be inadequate or incomplete, this should be drawn to the Inspector's attention at the earliest opportunity.
38. Late statements and supporting documents will only be accepted in extraordinary circumstances. Examples of extraordinary circumstances could include:
  - where representations are delayed because of a postal strike,
  - the ill-health of a participant,
  - to give a third party more time where they have been notified late, or
  - where there has been a last minute change in circumstances which the Inspector ought to know about.
39. Rule 11(13) ensures that copies of statements and relevant supporting documents are available for public inspection. The relevant planning authority must afford a reasonable opportunity to any person who so requests, to inspect and, where practicable, take copies of, statements of case and other documents sent under this rule. The relevant planning authority can make a reasonable charge for this.
40. Under Rule 11(14), if any person required to send a statement of case wishes to comment on another person's statement of case they have 4 weeks from its receipt to ensure that the Secretary of State has received copies of their written comments.

#### Rule 12 – Inquiry Timetable

41. Under Rule 12, the Inspector is required to propose a timetable for the inquiry at the pre-inquiry meeting. The Inspector shall send to every person entitled to appear at the inquiry a copy of the timetable for the proceedings approved by the Secretary of State no later than 4 weeks before the start of the inquiry. The Secretary of State will have to agree any variation in the timetable that would result

in the end date of the inquiry being later than originally arranged. If the inquiry has started, the Inspector will be able to make more detailed changes during the inquiry, for example covering appearances of participants without needing approval from the Secretary of State.

42. Where no pre-inquiry meeting is held, under rule 12(5) the Inspector may arrange a timetable for the inquiry and will give written notice of it to all persons entitled to appear at the inquiry within 10 weeks of the date of the Secretary of State's written notice that an inquiry is to be held.
43. Whether or not a pre-inquiry meeting is held, the Inspector must specify the date by which any proofs of evidence and any summary required by Rule 17 are to be received. This links in with Rule 17(4) requiring a proof and any summary to be sent to the Secretary of State by the date specified under Rule 12.
44. The commencement of section 182 of the Energy Act 2004 (inserting paragraph 5A into Schedule 8 to the Electricity Act 1989) enables inquiries to be held in concurrent sessions by a number of Inspectors, with the lead Inspector running the overall inquiry. The use of additional Inspectors and concurrent sessions should help to achieve overall savings in the length of the inquiry process. However, when considering the timetabling of concurrent sessions, the Secretary of State and Inspector will have due regard to enabling any participants who may wish to participate in concurrent sessions to be able to do so.

#### Rule 13 – Notification of Appointment of Assessor

45. Where an assessor has been appointed, Rule 13 requires the Secretary of State to notify persons entitled to appear at the inquiry of the assessor's name and the matters on which he is to advise. Rules 21 and 22 refer to reports by assessors. An assessor may be important in assisting the progress of an inquiry towards a quicker understanding of more specialised issues. An assessor is defined in Rule 2 as a person appointed by the Secretary of State to sit with an Inspector at an inquiry or re-opened inquiry to advise the Inspector on specified matters.
46. The difference between an assessor and a technical adviser is that the assessor will sit alongside the Inspector during the inquiry and will provide him with advice on specified matters; whereas a technical adviser will prepare a report on a specified matter in consultation with persons entitled to appear at the inquiry. This report is provided to the Inspector and becomes an inquiry document. The technical adviser can also be required to give evidence on his report, whereas the assessor does not give evidence.

#### Rule 14 – Date and Notification of Inquiry

47. Rule 14 specifies that the date for the inquiry must be not later than 10 weeks from the conclusion of the (last) pre-inquiry meeting, or where no pre-inquiry meeting is held, 18 weeks from the date of the Secretary of State's written notice that an inquiry is to be held. Where the Secretary of State considers that it is impractical to start the inquiry within the period specified in this Rule, it must be fixed for the earliest date thereafter which is practicable.

48. The Government's aim, in every case, is to fix as early an inquiry date as possible. Once a date has been fixed, it will be changed only for exceptional reasons. The venue for the inquiry should afford adequate facilities for those with special needs.
49. Under Rule 14(3), the Secretary of State must normally give those entitled to appear at the inquiry at least 4 weeks' written notice of the date, time and place fixed for the holding of the inquiry. In practice, it will normally be possible to give much more notice.
50. The Electricity Act 1989, in paragraph 4 of Schedule 8, already usually imposes obligations on the applicant regarding publicity for an inquiry<sup>15</sup> and therefore the Rules do not cover this matter. Paragraph 4 requires the applicant to publish a notice of the inquiry in two successive weeks in one or more local newspapers circulating in the locality in which the land in question is situated. This notice must state:
- the fact of the application, its purpose and a description of the land to which it relates,
  - a place in the locality where a copy of the application and of the map referred to in it, can be inspected, and
  - the place, date and time of the inquiry.
51. The Act also enables the Secretary of State to require the applicant to take further steps to ensure that the above information is sufficiently made known to persons in the locality. These steps could include:
- sending a notice of the inquiry to specified persons,
  - posting a notice of the inquiry in places near to the location of the place in question, and
  - posting a notice of the inquiry on the land itself where it is in the control of the applicant, so as to be visible and legible to members of the public.
52. Rule 14(7) enables the Secretary of State to require the applicant to give similar notification of the inquiry where the Schedule 8 provisions do not apply.

#### Rule 15 – Appearances at Inquiry

53. Rule 15(1) lists the persons entitled to appear at the inquiry. It includes qualifying planning authorities and qualifying objectors who have registered in accordance with rule 6(4)(a). It also covers certain public authorities who are not the relevant planning authority in the particular case.
54. A person who has been required by the Secretary of State under rule 11(5) to provide a statement of case and has done so in accordance with rule 11(2), is also entitled to appear. Where a person (except for qualifying planning authorities, and qualifying objectors who have registered to play a major role) has registered a wish to appear at the inquiry during the registration process (provided for in rule 6), the Secretary of State (usually on advice from the Inspector) may, at the pre-inquiry

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<sup>15</sup> These provisions are slightly modified where the application relates to a proposed generating station to be located offshore: see paragraph 7A of Schedule 8.

stage, require that person to provide a statement of case, and where that person duly does so, that person becomes automatically entitled to appear at the inquiry under rule 15.

55. Rule 15(2) makes it clear that the Inspector will not unreasonably withhold permission for any other person to appear at an inquiry (i.e. those not listed in Rule 15(1)). In an instance where a person has not registered and decides to participate at a very late stage, the Inspector would consider whether to exercise his discretion to allow such the person to appear. It is good practice for individuals with a similar interest to work together to agree upon a spokesperson to put forward a case on everyone's behalf; this will be expected by Inspectors and should be reflected in their timetables for inquiries.

#### Rule 16 – Representatives of Government Departments at Inquiry

56. Where another government department has expressed a view that the application should not be granted either wholly or in part or subject to conditions, and the Secretary of State included this view in his statement of matters, this rule provides for a person entitled to appear at the inquiry to apply for a representative of that other government department to attend the inquiry. Where such an application is made, a representative of that government department must attend and give reasons for the view, but is not required to answer any question directed to the merits of government policy, although the representative may answer such a question if they are willing to do so.

#### Rule 17 – Proofs of Evidence

57. This Rule contains a number of provisions that are designed to assist improved public participation in the inquiry process and to help achieve savings in inquiry time, without detracting from the fairness of the proceedings or the ability of participants to make their views known.
58. Any person entitled to appear at an inquiry who intends to read, or call another person to read, from a proof of evidence is required to send copies to the Secretary of State within the time periods laid down by the Inspector (Rules 12 and 17).
59. Rule 17(2) requires any proof of evidence containing in excess of 1,500 words to be accompanied by a written summary, which should not contain more than 1,500 words unless the Inspector permits otherwise. Where a summary is provided, in accordance with the Rules, under rule 19(2)(b), the Inspector may direct that only the summary, as opposed to the full proof, shall be read out at the inquiry. This provision, and the discretion it affords to the Inspector, remains a crucial element of the Rules. However, the full written proof will usually be treated as tendered in evidence under Rule 19(9) and cross-examination can normally take place on it to the same extent as if it were evidence that had been given orally.
60. It is recognised that a certain amount of flexibility, and sensible use of discretion by the Inspector, is important in using these provisions effectively to shorten inquiries while ensuring that they remain as thorough as possible, and without making them

difficult to follow. With regard to rule 17(2) it is appreciated that it may be sometimes difficult to summarise complex technical evidence effectively within the 1,500 word limit and this Rule is not intended to prevent witnesses properly explaining their evidence: in this situation the Inspector could exercise his discretion to permit longer summaries. There may also be instances where the Inspector directs that the full proof is read, if they feel it will enable third parties to follow the inquiry.

61. However, summaries of complex evidence can help to make the salient points clearer to interested participants, to focus them on the main issues. They can also save time, which is in the interest of all participants.
62. Under the Rules all the participants are required to facilitate the exchange of relevant information in good time before an inquiry opens, so that everyone has adequate time to prepare properly. Participants should normally provide with their proofs of evidence, the data, methodology and assumptions used to support their submissions unless this material has been agreed and is included as part of a statement of common ground. If extensive tables, graphs, diagrams, maps etc. are not produced until after the inquiry has opened, this can cause unnecessary delay, and the other participants might well need time, by means of an adjournment, to study these. If new material is raised at a very late stage which another participant has not had adequate time to consider, an adjournment may result and, unless there is good reason for the late submission, an award of costs could arise.

#### Rule 18 – Statement of Common Ground

63. This Rule provides for the Secretary of State to direct the relevant planning authority and the applicant to prepare a Statement of Common Ground, outlining factual information on which they agree.
64. In addition to the statement of common ground between the relevant planning authority and the applicant, in practice it is open for other participants to agree matters or prepare statements with the qualifying planning authority and the applicant, together or separately, although they would not be under any obligation to do so.
65. The statement of common ground is expected to be of most use if prepared in the early stages of the process, for example as part of the pre-inquiry procedures.

#### Rule 19 – Procedure at Inquiry

66. Rule 19(2) requires the Inspector, at the start of the inquiry, to identify the matters to be considered and those on which he requires further information. Rule 19(2) also gives the Inspector a discretion to direct that evidence on certain matters shall not be read out (or only a summary provided under rule 17 shall be read out), and/or the persons giving that evidence shall not be subject to cross-examination on it. The written evidence which will have been provided on these matters is treated as tendered in evidence (and participants may be allowed to alter or add to their proof of evidence: rule 19(13)) and participants have the right to address such matters in oral submissions. The kind of issues which the Inspector might, in the



circumstances, consider appropriate to be dealt with in such manner may include issues that were the subject of recently formulated national policy or issues previously considered upon which there is no new evidence, or where other regulatory processes exist, for example health and safety, or where a licence from the Health and Safety Executive is required. Ultimately it will be for the Inspector to decide, in light of the particular circumstances of the case.

67. The applicant shall give evidence first and shall have the right of final reply unless the Inspector in a particular case decides otherwise. Other persons entitled or permitted to appear shall be heard in the order determined by the Inspector (Rule 19(4)).
68. All persons entitled to appear at an inquiry are entitled to call evidence. Only the applicant and the qualifying planning authority have the automatic right to cross-examine, although the Inspector may permit other persons to do so under his general discretion (Rules 19(1) and (5)).
69. Under Rule 19(6), the Inspector may refuse to hear evidence or to permit cross-examination which is, in their view, irrelevant or repetitious and they may require any person behaving in a disruptive manner to leave the inquiry (Rule 19(12)).
70. Rule 19(7) enables the Inspector to refuse to permit the cross-examination of people giving evidence if it appears to them that this could jeopardise the timetable referred to in Rule 12. The Inspector shall act even-handedly in using this Rule and should ensure that the timetable agreed in Rule 12 caters for time for persons to be cross-examined.
71. Rule 19(9) and (10) makes clear that, where evidence is not read out (or only the summary is), the full proof will still normally be treated as tendered in evidence and (unless the evidence is the subject of a direction that there is not to be cross-examination on the matter) open to cross-examination.
72. Rule 19(15) enables the Inspector to take into account written representations, evidence and other documents received before or during the inquiry providing that they are disclosed at the inquiry. However, late representations will normally be disregarded unless there are extraordinary circumstances.
73. It should also be noted that the provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 apply to inquiries to which these Rules apply. One of these provisions gives the Inspector a general power to summons a person to attend to give evidence or produce documents which relate to any matter in question at the inquiry and the Inspector may take evidence on oath.

#### Rule 20 – Site Inspections

74. It is common place for the Inspector to make a site visit in practice, and the Secretary of State would usually expect one to take place for the Inspector to familiarise themselves with the proposed development area.

75. Under rule 20 the Inspector may make an unaccompanied inspection of the land (or place, if offshore) before or during an inquiry without giving notice of their intention to the persons entitled to appear at the inquiry. This rule also allows an Inspector to make accompanied site visits during the inquiry and after its close. The Inspector will refuse to hear evidence or other submissions during any accompanied visit. It is legitimate, however, for people to draw their attention to particular features of the site and its surroundings.

#### Rule 21 – Procedure after Inquiry

76. Rule 21(1) allows the Secretary of State to determine a time by which he should receive the Inspector's report. In practice the Inspector will announce, at the end of the inquiry, the date by which he expects the report will be submitted to the Secretary of State.

77. Where an additional Inspector is appointed he is required by paragraph 5A(4)(b) of Schedule 8 to the Electricity Act 1989 to report to the lead Inspector on the matters allocated to them to consider. The lead Inspector must report to the Secretary of State on their considerations of an additional Inspector's report.

78. Where an assessor has been appointed to sit with an Inspector at an inquiry to advise on certain matters, he may subsequently provide the Inspector with a written report on those matters. The lead Inspector is, however, responsible for the writing of their report to the Secretary of State and for the recommendation made. In Rule 21(4) there is a requirement for any written report made by an assessor to be appended to the Inspector's own report, and for the Inspector to state how far he agree or disagrees with the assessor.

79. Rule 21(6) requires reference back to participants where the Secretary of State is disposed to disagree with the lead Inspector's recommendation for certain reasons. Such disagreement might be because he differs from the Inspector on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the Inspector or he proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy). It is accepted that there may be circumstances other than those set out in Rule 21(6) where the Secretary of State may consider that reference back should take place in the interests of natural justice. These will continue to be identified on a case-by-case basis.

80. Where reference back takes place under Rule 21(6), all persons entitled to appear at the inquiry who appeared at it will be afforded the opportunity of submitting written representations within three weeks. Where reference back is required because it is proposed to take account of some new evidence or new matter of fact, the participants may, alternatively, ask for the inquiry to be re-opened; and if such a request is duly made by the applicant or the qualifying planning authority, the inquiry will have to be re-opened. In other circumstances, the Secretary of State may, at their discretion, cause the inquiry to be re-opened.

81. When making their recommendations the Inspector will normally disregard any written representations or evidence or other documents received after the close of the inquiry unless there are extraordinary circumstances.

#### Rule 22 – Notification of Decision

82. Any persons entitled to appear at the inquiry who did appear are entitled to be notified of the decision in writing, whether or not they have asked to be notified. Any other person, who appeared at the inquiry and asked to be notified will also be notified. Any written reports of assessors or additional Inspectors are appended to the lead Inspector's report. The right to apply to the Secretary of State to inspect inquiry documents extends to 6 weeks from the date of decision.

#### Rule 23 – Procedure following Quashing of Decision

83. This rule relates to the procedure to be followed where the original decision has been quashed by a Court. It ensures that those who were entitled to appear at the inquiry and who did so are given the opportunity to make further comments on the case, following the Court's decision. The Secretary of State will send to those participants a written statement of the matters on which further representations are invited within a 3 week period, for the purposes of the Secretary of State's further consideration of the application, and will afford them the opportunity of asking for the inquiry to be re-opened. The Secretary of State has discretion to cause the inquiry to be re-opened, whether by the same or a different lead Inspector.

#### Rule 24 – Allowing Further Time

84. There may, exceptionally, be circumstances where it would be reasonable to allow further time for the taking of any step in respect of which the Rules specifies a time limit, and this Rule therefore enables the Secretary of State at any time, in any particular case to do so. The Secretary of State will be extremely sparing in the use of this power.

#### Rule 25 – Additional Copies

85. At any time before the close of an inquiry, the Secretary of State can request additional copies of an outline statement, a statement of case, a proof of evidence or any other document or information sent to them before or during an inquiry. The Secretary of State will specify the time within which they should receive the copies.

#### Rule 26 – Sending of Notices and Inspection of Documents

86. Whilst not generally prescribed in the Rules, the Secretary of State will endeavour to publish notices/information on the web where possible and the use of electronic communication is encouraged throughout the inquiry process. This will widen circulation of information that has previously only been available through notices in newspapers/journals or in hard copy. It is desirable that documents/notices published on the internet should be available through a single website, and where the Rules provide for the Secretary of State to publish a notice on the internet, his intention is to do so through a single website. It is recognised that not all potential

participants will have access to electronic communication means, and the Rules retain the provisions for non-electronic communication and hard copies to be available for inspection (see Rule 11(13)).

#### Rule 27 – Generating Stations not within Areas of Relevant Planning Authorities

87. The Rules also apply to inquiries into applications to be located within inland waters, in the territorial sea or renewable energy zone. Rule 27 modifies the Rules when they apply to applications relating to a generating station, part or the whole of which is to be situated in a place which is not within the area of a relevant planning authority. In effect, this means that these modifications apply where any part of the place to which the application relates is located in the territorial sea or renewable energy zone. Rule 27 makes appropriate modifications to the Rules, such as replacing the word “land” in rule 9(6)(a) with the word “place”.

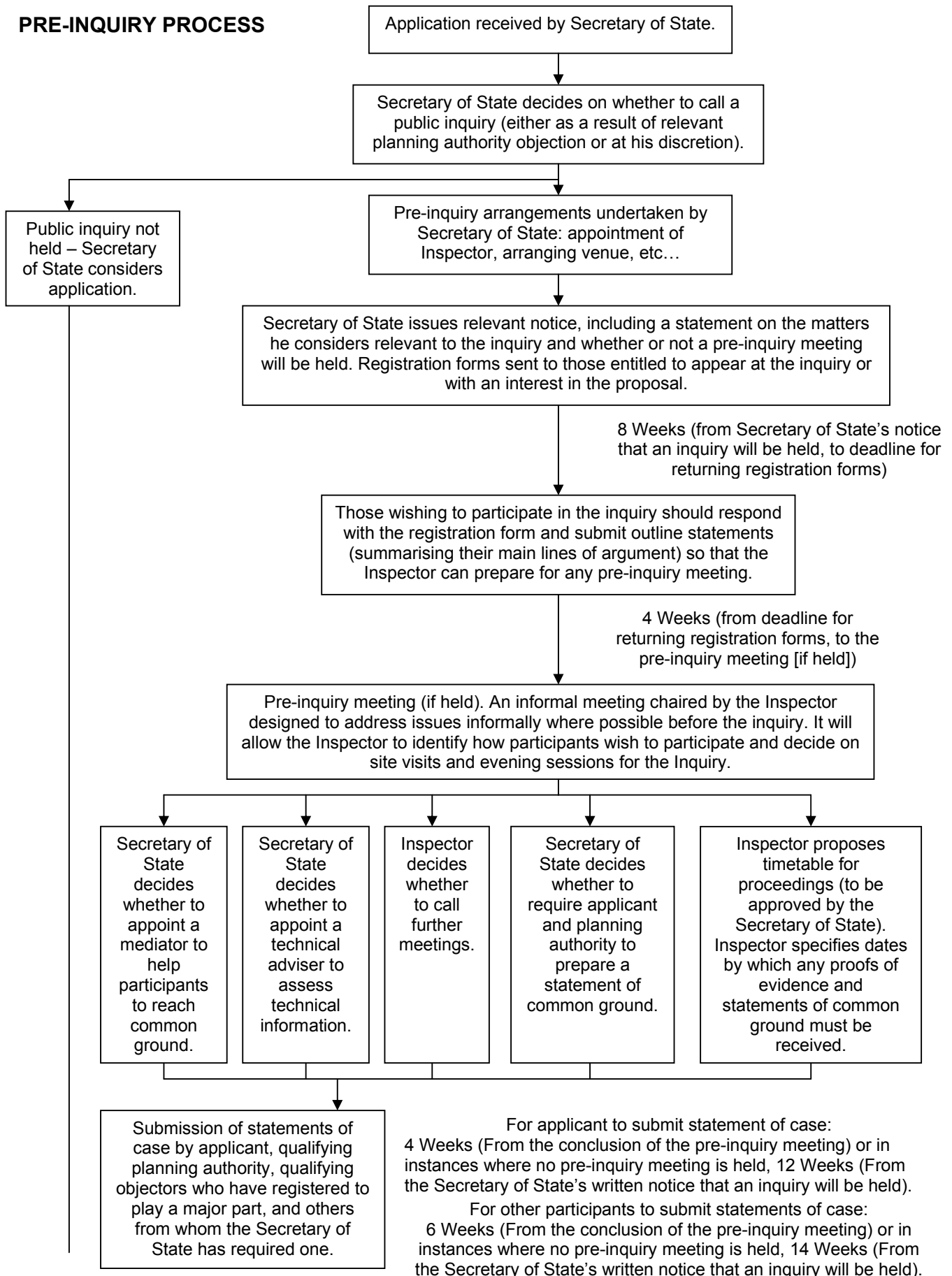
#### **OPERATION OF THE RULES – THE SECRETARIAT**

88. In addition to changes to the Rules, the Planning Inspectorate may wish to appoint a secretariat to support the inquiry. The secretariat could be responsible for programming, administrative support, managing the library, managing IT, arranging accommodation and so on. An Inquiry Manager may head the secretariat. Their primary role is to help the Inspector to drive the process forward as speedily as possible and to keep within the agreed timetable, whilst maintaining constructive relationships with all participants and liaising between the secretariat and the relevant parts of local and central Government. Where a broader Secretariat is not justified, the Planning Inspectorate may nevertheless appoint a Programme Officer to act as the interface between the Inspector, the participants and the public (including the press).

89. The funding of Secretariats or Programme Officers where required would normally be a cost re-charged to the promoters where it has been agreed between the Planning Inspectorate and the promoter that such provision is required. It is envisaged that where there is a hybrid proposal involving an inquiry that would not be wholly re-chargeable, the Department of Trade and Industry would consider contributing to the funding of Secretariat or Programme Office costs agreed to be necessary.

## Appendix 2: Outline Flow Chart of Inquiry Processes

### PRE-INQUIRY PROCESS



## INQUIRY AND DETERMINATION PROCESS

