STATUTORY INSTRUMENTS

1968 No. 961 (S.103)

TRIBUNALS AND INQUIRIES

The Compulsory Purchase by the Land Commission (Inquiries Procedure) (Scotland) Rules 1968

Made - - -	12*th June* 1968
Laid before Parliament	27*th June* 1968
Coming into Operation	28*th June* 1968

In exercise of the powers conferred upon me by section 7A of the Tribunals and Inquiries Act 1958(**a**) inserted in that Act by section 33 of the Town and Country Planning (Scotland) Act 1959(**b**) as extended by section 1 of the Tribunals and Inquiries Act 1966(**c**) and the Tribunals and Inquiries (Discretionary Inquiries) Order 1967(**d**) and as amended by section 2(1) of the Tribunals and Inquiries Act 1966, and of all other powers enabling me in that behalf, and after consultation with the Council on Tribunals, I hereby make the following rules :—

Citation and Commencement

1. These rules may be cited as the Compulsory Purchase by the Land Commission (Inquiries Procedure) (Scotland) Rules 1968 and shall come into operation on 28th June 1968.

Application of the rules

2. These rules shall apply to public local inquiries, and to hearings before a person appointed by the Minister as hereinafter defined, held under the provisions of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(**e**) or section 5 of that Act as applied by section 7 of the Land Commission Act 1967(**f**) for the purpose of inquiring into the authorisation by the Minister of any compulsory purchase of land by the Land Commission, and any references in these rules to a public local inquiry or an inquiry shall be construed as references to a hearing as mentioned in this rule.

Interpretation

3.—(1) In these rules, unless the context otherwise requires—

"the Act" means the Land Commission Act 1967 ;

"the Act of 1947" means the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as applied to the Commission by section 7 of the Act ;

"another government department" means a government department other than the Commission ;

(**a**) 1958 c. 66.
(**b**) 1959 c. 70.
(**c**) 1966 c. 43.
(**d**) S.I. 1967/451 (1967 I, p. 1391).
(**e**) 1947 c. 42.
(**f**) 1967 c. 1.

"the Commission" means the Land Commission as established by section 1(1) of the Act;

"draft order" means a compulsory purchase order prepared in draft in accordance with paragraph 7(1) of Schedule 1 to the Act of 1947;

"the land" means the land to which the draft order relates;

"the Minister" has the meaning assigned to that expression in section 7(3) of the Act;

"reporter" means the person appointed by the Minister to hold a public local inquiry to which these rules apply; and "inquiry" means such an inquiry;

"statutory objector" means an owner, lessee or occupier of the land or any part thereof who, being entitled to be served with notice of the draft order, has duly objected to the draft order in accordance with the provisions of Schedule 1 to the Act of 1947 and whose objection has not been withdrawn, or disregarded under paragraph 4(4) of the said Schedule, or section 42(1) of the Town and Country Planning (Scotland) Act 1947(**a**).

(2) The Interpretation Act 1889(**b**) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

Procedure before Inquiry

4.—(1) A date, time and place for the holding of the inquiry shall be fixed and may be varied by the Minister, and the reporter shall give or cause to be given not less than 28 days' notice in writing of such date, time and place to every person who has lodged and has not withdrawn objections in relation to any matters in question at the inquiry and to the Commission:

Provided that—

(i) with the consent in writing of the statutory objectors and of the Commission the Minister may give such lesser period of notice as shall be agreed with the statutory objectors and the Commission, and in that event he may specify a date for service of the statement referred to in paragraph (2) of this rule later than the date prescribed in that paragraph;

(ii) where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the reporter shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

(2) As soon as may be after being given notice of the inquiry as provided in paragraph (1) of this rule and in any event (except where the Minister specifies a later date under proviso (i) to paragraph (1) of this rule) not later than 21 days before the date of the inquiry, the Commission shall, unless they have already done so, serve on each statutory objector a written statement of their reasons for proposing to make an order in terms of the draft order and shall supply a copy of the statement to the Minister.

(3) Where another government department has expressed in writing to the Commission a view with respect to the proposals contained in the draft order and where the Commission propose to rely on such expression of view in their submissions at the inquiry, they shall include it in the statement referred to in the last foregoing paragraph and shall send a copy of their statement to the government department concerned.

(**a**) 1947 c. 53. (**b**) 1889 c. 63.

(4) Where the Commission intend to refer to or put in evidence at the inquiry documents (including maps and plans), the Commission's statement shall be accompanied by a list of such documents, together with a notice stating the times and place at which the documents may be inspected by any statutory objector ; and the Commission shall afford every statutory objector a reasonable opportunity to inspect and take copies of the documents.

(5) The Commission shall afford any other person interested a reasonable opportunity to inspect and to take copies of their statement and the other documents referred to in the last foregoing paragraph.

(6) Where any objection duly made under the Act of 1947 shows that the person making the objection intends to make reference at the inquiry to an alternative site for the purpose envisaged by the draft order that person shall, on being so required by the Minister, give sufficient details of the proposed alternative site to enable it to be identified, and the reporter shall give such notification of this fact and of the time when and the place where the inquiry is to be held to any owner of the land comprising the alternative site as he thinks proper in the circumstances.

Appearances at Inquiry

5.—(1) The Commission and any statutory objectors shall be entitled to appear at the inquiry, and any other person may appear at the discretion of the reporter.

(2) The Commission may appear by any officer or other person appointed by them for the purpose, or by counsel or solicitor, and any other person may appear on his own behalf or be represented by counsel or solicitor or with leave of the reporter, by any other person.

(3) Where there are two or more persons having in the matter under inquiry, interests which do not conflict, the reporter may allow one or more persons to appear for the benefit of some or all persons so interested.

Other Government Departments at Inquiry

6.—(1) Where another government department has expressed in writing to the Commission a view with respect to the proposals contained in the draft order and the Commission have set out such view in the statement referred to in rule 4(2), the Commission or any statutory objector may, not later than 14 days before the date of the inquiry, apply in writing to the Minister for a representative of the government department concerned to be made available at the inquiry.

(2) The Minister shall transmit any application made to him under the last foregoing paragraph to the government department concerned who shall make a representative of the department available to attend the inquiry.

(3) The said representative shall at the inquiry state the reasons for the view expressed by his department and shall give evidence and be subject to cross-examination to the same extent as other witnesses, provided that the reporter shall disallow any questions which in his opinion are directed to the merits of Government policy.

Procedure at Inquiry

7.—(1) Except as otherwise provided in these rules, the procedure at the inquiry shall be such as the reporter shall in his discretion determine.

(2) The reporter shall state at the commencement of the inquiry the procedure which, subject to consideration of any submission by the parties he proposes to adopt and shall inform the parties what he proposes as regards any site inspection arising out of the inquiry.

(3) Unless in any particular case the reporter with the consent of the Commission otherwise determines, the Commission shall be heard first; the other persons entitled or permitted to appear shall be heard in such order as the reporter may determine; and any closing statements shall be made in the same order as that in which the parties were heard, unless the reporter otherwise determines.

(4) The Commission and the statutory objectors shall be entitled to make opening statements, to call evidence and cross-examine persons giving evidence, but any other persons appearing at the inquiry may do so only to the extent permitted by the reporter.

(5) The reporter shall disallow any question proposed to be put to any person called by the Commission to give evidence which in the opinion of the reporter is directed to the merits of government policy.

(6) The reporter shall not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest, but, save as aforesaid and without prejudice to rule 6(3), paragraph (5) of this rule and proviso (*b*) to paragraph 3 and paragraph 4 of Schedule 4 to the Act of 1947, any evidence may be admitted at the discretion of the reporter, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies thereof.

(7) The reporter may allow the Commission to alter or add to the reasons contained in the statement served under rule 4(2) or any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but shall (if necessary by adjourning the inquiry) give every statutory objector an adequate opportunity of considering any fresh reason or document and may make in his report a recommendation as to the payment of any additional expenses occasioned by such an adjournment.

(8) Where during the inquiry any party to the inquiry refers for the first time to an alternative site for the purpose envisaged by the draft order the reporter may, if he thinks fit, adjourn the proceedings in order that he may notify any owner of land comprising the alternative site and that the Commission may seek further information about it.

(9) If any statutory objector does not appear at the inquiry, the reporter may at his discretion proceed with the inquiry and, if he does so, shall be entitled (subject to disclosure thereof at the inquiry) to take into account any previous written representations of such objector in so far as the same appear to him to be proper and relevant to the matters in issue.

(10) The reporter may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

Site Inspections

8.—(1) The reporter may make an unaccompanied inspection of the land before, during or after the inquiry without giving notice of his intention to any person entitled to appear at the inquiry.

(2) The reporter may, and shall if so requested by the Commission or any statutory objector before or during the inquiry, inspect the land during or after the close of the inquiry in the company of such of the parties to the inquiry as desire to do so, and shall, in all cases where he intends to make such an inspection, announce during the inquiry the date and time at which he proposes to do so.

(3) The reporter shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after Inquiry

9.—(1) After the close of the inquiry—

(*a*) the reporter shall prepare the first part of his report comprising a summary of the evidence led at the inquiry together with his findings of fact;

(*b*) the reporter—

(i) shall provide a copy of the first part of his report to every party to the inquiry if so required by any of the parties;

(ii) shall consider any comments received by him from any such party within 14 days from the furnishing of the first part of his report;

(iii) may, after consulting all the other parties to the inquiry, amend the first part of his report, so however that he shall not, except with the consent of all parties, introduce into his report any matter that had not been raised at the inquiry;
and

(*c*) the reporter shall thereafter prepare the second part of his report including any necessary reasoning and his recommendations, if any, or his reason for not making any recommendations and shall submit his report to the Minister.

(2) Where the Minister—

(*a*) differs from the reporter on a finding of fact, or

(*b*) after the close of the inquiry receives any new evidence (including expert opinion on a matter of fact) or takes into consideration any new issue of fact (not being a matter of Government policy) which was not raised at the inquiry,

and by reason thereof is disposed to disagree with a recommendation made by the reporter, he shall not come to a decision which is at variance with any such recommendation without first notifying the Commission and any statutory objector who appeared or was represented at the inquiry (or in whose absence from the inquiry the reporter took into account any such written representation or statement as is referred to in rule 7(9)) of his disagreement and the reasons for it and affording them an opportunity to make representations in writing within 21 days or (if the Minister has received new evidence or taken into consideration any new issue of fact not being a matter of Government policy) of asking within 21 days for the re-opening of the inquiry.

(3) The Minister may in any case, if he thinks fit, cause the inquiry to be re-opened, and shall cause it to be re-opened if asked to do so in accordance with the last foregoing paragraph; and if the inquiry is re-opened rule 4(1) shall apply as it applied to the original inquiry, with the substitution of the words "21 days" for the words "28 days".

Notification of Decision

10.—(1) The Minister shall notify his decision, and his reasons therefor, or cause notification to be sent in writing to the Commission and the statutory objectors and to any other person who, having appeared or been represented at the inquiry (or in whose absence from the inquiry the reporter took into account any such written representation or statement as is referred to in rule 7(9)), has asked to be notified of the decision ; and, where a copy of the report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the reporter's conclusions and recommendations.

(2) If any person entitled to be notified of the Minister's decision under the last foregoing paragraph has not received a copy of the report, he shall be supplied with a copy thereof on written application made to the Minister within one month from the date on which he is notified of the Minister's decision or the date of the first publication of notice of the making of the order, whichever is the later.

(3) Subject to the provisions of paragraph (4) of this rule "report" means the report submitted to the Minister, but does not include documents, photographs or plans appended to the report.

(4) Where any person entitled to be notified under paragraph (1) of this rule is supplied with a copy of the report under paragraph (1) or (2) of this rule, he shall be notified of the time and place at which documents, photographs and plans appended to the report may be inspected and copied.

Service of Notices by Post

11. Subject to the provisions of paragraph 19 of Schedule 1 to the Act of 1947 and section 96 of the Act notices or documents required or authorised to be served or sent to any person under the provisions of any of the foregoing rules may be sent by post addressed to that person at his proper address :

Provided that where any person has furnished an address for service the notice or document may be served or sent to the address furnished.

William Ross,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.
12th June 1968.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These rules prescribe the procedure to be followed at and in connection with public local inquiries and hearings before a person appointed by the Minister held under the provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as applied to the Land Commission by section 7 of the Land Commission Act 1967 for the purpose of inquiring into the authorisation by the Minister of any compulsory purchase of land by the Land Commission.