DEFENCE OF THE REALM

1959 No. 376 (S. 12)

The Land Powers (Defence) Act (Inquiries) (Scotland) Rules, 1959

Made - - - -	*5th March,* 1959
Coming into Operation	*16th March,* 1959

I, the Secretary of State for Scotland, in exercise of the powers conferred on me by paragraph 4, as applied by paragraph 10, of the Second Schedule to the Land Powers (Defence) Act, 1958(a), and of all other powers enabling me in that behalf, after consultation with the Lord President of the Court of Session, hereby make the following Rules:—

Citation and commencement

1. These Rules may be cited as the Land Powers (Defence) Act (Inquiries) (Scotland) Rules, 1959, and shall come into operation on the 16th day of March, 1959.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

" the Act " means the Land Powers (Defence) Act, 1958 ;

" appointed person " means a person appointed by the Secretary of State for Scotland to hold an inquiry pursuant to paragraph 4, as applied by paragraph 10, of the Second Schedule to the Act ;

" Minister " means a Minister who proposes to make an order under section 6, 10, 11, 13, 14 or 19 of the Act ;

" objector " means the owner, lessee or occupier of any land to which a draft order applies (except tenants for a month or any period less than a month) who, being entitled under paragraph 2 of the Second Schedule to the Act to notice of the proposal to make an order, has objected to the making thereof in the manner specified in the said notice and whose objection has not been disregarded in accordance with paragraph 5 of the said Schedule.

(2) The Interpretation Act, 1889(b), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Date and place of inquiry

3. A date, time and place for the holding of the inquiry shall be fixed, and may be varied, by the appointed person in consultation with the Minister, who shall give every objector not less than fourteen days' notice in writing of the date, time and place of the inquiry.

Notice of reasons for proposed order

4. Not later than twenty-one days before the date of the inquiry, the Minister shall serve on every objector and on the appointed person a statement in writing of his reasons for proposing to make the order.

(a) 6 & 7 Eliz. 2. c. 30. (b) 52 & 53 Vict. c. 63.

Notice of modifications

5. After receiving the statement referred to in the last foregoing Rule an objector may serve on the Minister notice of any modification to the proposed order which would meet his objection to it, without prejudice to the objector's right to propose any such modification in the course of the inquiry.

Alternative sites

6. The appointed person may decline to hear evidence or argument by or on behalf of an objector that land other than that to which the draft order applies should be acquired, taken into use, or made subject to a wayleave order, unless the objector has served on the Minister, not later than seven days after service on the objector of the statement referred to in Rule 4, a notice of his intention to produce such evidence or to put forward such argument, and such notice specifies the land which the objector considers should be acquired, taken into use, or made subject to a wayleave order.

Disclosure of additional information to appointed person

7.—(1) The Minister may, before or at the inquiry, disclose to the appointed person, either orally or in writing, upon the condition referred to in paragraph (2) of this Rule, information additional to that contained in the statement referred to in Rule 4 or put forward in evidence at the inquiry, if the Minister is satisfied that it would be contrary to the public interest to disclose such additional information except upon such condition as aforesaid.

(2) The Minister may require the appointed person to undertake, as a condition precedent to the disclosure of the additional information referred to in paragraph (1) of this Rule, not to communicate it at any time to any unauthorised person, and such information disclosed by the Minister shall be deemed to be entrusted by him in confidence to the appointed person.

Procedure at the inquiry

8.—(1) Except as otherwise provided by the Act or this Rule, the procedure at an inquiry shall be such as the appointed person shall in his discretion determine.

(2) Any person entitled to appear and be heard at the inquiry may appear either in person or by counsel or solicitor, or by any other person allowed by leave of the appointed person to appear on behalf of the person so entitled.

(3) The Minister may appear by counsel or solicitor or by any other person authorised by him.

(4) The person appearing on behalf of the Minister shall be heard first unless the appointed person otherwise determines.

(5) The Minister shall make available at the inquiry a representative of his department who shall state the Minister's reasons for proposing to make the order, and either he or other witnesses called on behalf of the Minister shall give evidence on matters of fact and expert opinion in relation to the proposal, and the said representative and any other such witnesses shall be subject to cross-examination by or on behalf of any objector so, however, that the appointed person shall disallow any questions put in cross-examination which in his opinion are directed to matters of Government policy.

(6) Persons giving evidence at the inquiry otherwise than on behalf of the Minister shall be subject to cross-examination on behalf of the Minister.

(7) The appointed person 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 the provisions of Rule 6, paragraph 5 of this Rule, and Rule 10, any evidence may be admitted at the discretion of the appointed person, who may direct that documentary evidence may be inspected by any objector and facilities afforded to him to take or obtain copies thereof.

Findings and recommendations and Minister's decision

9.—(1) The appointed person shall report his findings and recommendations in writing to the Minister and shall not communicate them to any other person.

(2) When the Minister reaches a decision, he shall send to every objector a summary of the appointed person's findings and recommendations, and shall inform the objector of the Minister's decision, giving the reasons for any departure from the said recommendations.

Saving for public interest

10. Nothing in these Rules shall impose on the Minister or on any other person an obligation to communicate any sketch, plan, model, article, note, document or information which, in the opinion of the Minister, it would be contrary to the public interest for him, or, as the case may be, any other person, to communicate.

Dated this 5th day of March, 1959.

John S. Maclay,
Secretary of State for Scotland.

St. Andrew's House,
Edinburgh, 1.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules prescribe the procedure to be followed in Scotland for the purpose of inquiries held to consider objections into the making of orders under section 6, 10, 11, 13, 14 or 19 of the Land Powers (Defence) Act, 1958.