STATUTORY INSTRUMENTS

1977 No. 1317

LONDON GOVERNMENT

The Control of Off-Street Parking in Greater London (Appeals Procedure) Regulations 1977

Made - - - -	*28th July* 1977
Laid before Parliament	*9th August* 1977
Coming into Operation	*30th August* 1977

The Secretary of State for Transport in exercise of the powers conferred by paragraph 17 of Schedule 5 to the Transport (London) Act 1969(**a**) and now vested in him(**b**), and of all other enabling powers, hereby makes the following Regulations:—

Commencement and citation

1. These Regulations shall come into operation on 30th August 1977, and may be cited as the Control of Off-Street Parking in Greater London (Appeals Procedure) Regulations 1977.

Interpretation

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

"the Act" means the Transport (London) Act 1969;

"appeal" means an appeal to which these Regulations apply and "the appellant" shall be construed accordingly;

"appointed person" means the person appointed by the Secretary of State to hold the hearing or inquiry in connection with the appeal;

"the Council" means the Greater London Council;

"hearing" means a hearing by a person appointed by the Secretary of State for the purposes of the appeal;

"interested person" means any person (other than the appellant) who is entitled to any interest in the premises or who is the licence holder or the applicant for, or for a variation of the terms and conditions of, the licence or who, in a case involving an appeal against the revocation of, or the refusal to renew, a licence under section 36 of the Act in relation to the premises, was the holder of that licence;

"the licence" means the licence under section 36 of the Act to which the appeal relates, and "applicant for a licence", "proposed licence" and "licence holder" shall be construed accordingly;

"the local authority", in relation to an appeal, means the local authority whose decision is under appeal; and

"the premises" means the premises to which the licence or proposed licence (as the case may be) relates.

(**a**) 1969 c. 35.

(**b**) S.I. 1970/1681 (1970 III, p. 5551).

(2) References in these Regulations to the decision of the local authority include references to any decision of which the local authority are deemed by paragraph 14(2) of Schedule 5 to the Act to have given notification, and references to notification of the decision of the local authority include references to any notification so deemed to have been given.

(3) Any reference in these Regulations to a numbered Regulation is a reference to the Regulation bearing that number in these Regulations.

(4) The Interpretation Act 1889(**a**) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

Application of Regulations

3. These Regulations apply to appeals under paragraph 14 of Schedule 5 to the Act against decisions of a local authority relating to licences for the operation of public off-street parking places in Greater London and prescribe the procedure to be followed in connection with such appeals.

Notice of appeal and supporting documents

4.—(1) Any person who desires to appeal under the provisions of paragraph 14 of Schedule 5 to the Act against a decision of the local authority referred to in that paragraph shall serve notice of his appeal on the Secretary of State within 42 days from the date of notification of the decision to which it relates or within such longer period from that date as the Secretary of State may (whether before or after the expiration of the said 42 days) allow.

(2) The notice of appeal shall be in writing and shall contain such of the particulars specified in Schedule 1 to these Regulations as are appropriate having regard to the nature of the case.

(3) The appellant shall furnish to the Secretary of State with his notice of appeal copies of such of the documents specified in Schedule 2 to these Regulations as are appropriate having regard to the nature of the case.

(4) At the same time as the appellant serves notice of appeal on the Secretary of State and furnishes to the Secretary of State copies of the documents which he is required by the foregoing provisions of this Regulation to furnish, he shall serve a copy of that notice on, and furnish copies of those documents to—

(*a*) the local authority,

(*b*) the Council, and

(*c*) all interested persons known to the appellant.

Representations by local authority and Council

5.—(1) Not later than 42 days after the receipt by them of the copy of the notice of appeal and of all the documents of which the appellant is required by Regulation 4(4) to furnish copies to them the local authority and the Council shall each submit to the Secretary of State in writing such written representations as they may wish to submit to him in relation to the appeal.

(2) Where the local authority desire to appear before and be heard by a person appointed by the Secretary of State, the local authority shall include in their representations aforesaid a request to this effect, and where the Council desire to appear at any hearing which may be held they shall include in their representations aforesaid a statement of that desire.

(**a**) 1889 c. 63.

(3) At the same time as the local authority or the Council (as the case may be) submit representations to the Secretary of State under paragraph (1) of this Regulation they shall serve a copy of those representations on—

(*a*) the appellant,

(*b*) where the representations are those of the local authority, the Council,

(*c*) where the representations are those of the Council, the local authority, and

(*d*) any other person upon whom a copy of the notice of appeal has been served in accordance with Regulation 4(4).

Request for a hearing

6.—(1) The appellant may include in the notice of appeal a request for an opportunity to appear before, and be heard by, a person appointed by the Secretary of State.

(2) In any case where the appellant has not included such a request in the notice of appeal but does desire such an opportunity, he shall make his request to the Secretary of State in writing within 28 days of being asked by the Secretary of State whether he does so desire.

(3) A copy of the appellant's request as aforesaid shall at the same time be served by the appellant upon the persons on whom copies of the notice of appeal were served.

(4) Any interested person may notify the Secretary of State in writing of his desire to appear at any hearing which may be held in connection with the appeal (such notification stating the name and address for service of the person in question and indicating the nature and extent of his interest (if any) in the premises) and if any such person does so notify the Secretary of State he shall at the same time serve a copy of the notification upon the appellant, the local authority and the Council.

(5) Where a copy of the notice of appeal has been served on an interested person under Regulation 4(4), any notification by that person under paragraph (4) above shall be given within 28 days of the service of that notice.

Deciding an appeal on written evidence only

7.—(1) Where neither the appellant nor the local authority have requested the Secretary of State to afford to each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State, or where any such request has been withdrawn, the Secretary of State may decide the appeal on the basis of the documents and written representations submitted to him, but before so deciding—

(*a*) the Secretary of State may by notice in writing require any one or more of the following, that is to say—

(i) the appellant,

(ii) the local authority,

(iii) the Council,

(iv) any interested person,

to furnish such further documents or information (being documents or information in the possession or control of the person or body in question) as the Secretary of State may specify, and

(*b*) the Secretary of State shall in all cases (whether he requires further documents or information to be furnished as aforesaid or not) give the appellant an opportunity to comment on any representations made by the local authority or the Council under Regulation 5(1).

(2) In its application to an appeal which has been decided by the Secretary of State on the basis of documents and written representations, Regulation 15 shall have effect as if in paragraph (1) for the words "the interested persons who appeared at the hearing" there were substituted the words "any interested person named in the notice of appeal as a person upon whom the appellant was serving a copy of that notice" and all the words after "and the Council" were omitted, and as if paragraphs (2) and (3) were omitted.

Notice of refusal to entertain appeal

8.—(1) At any time before—

(*a*) deciding an appeal on the basis of documents and written representations submitted to him in a case where Regulation 7 applies, or

(*b*) fixing the date, time and place for the hearing in any other case,

the Secretary of State may give notice in writing to the appellant, the local authority, the Council and any interested persons on whom the appellant has served a copy of the notice of appeal, that it appears to the Secretary of State that the appeal is one which, by virtue of paragraph 15 of Schedule 5 to the Act (appeals against necessary decisions), he is not required to entertain in whole or in part.

(2) Upon giving by the Secretary of State of a notice under paragraph (1) above—

(*a*) relating to the whole of the appeal, no further steps shall be taken in connection with the appeal, or

(*b*) relating to a part only of the appeal, no further steps shall be taken in connection with that part, but the other part of the appeal shall thereafter be treated as the appeal for the purposes of these Regulations.

(3) If in any case, before giving notice under paragraph (1) above, the Secretary of State has received any representations from the local authority or the Council under Regulation 5(1), the Secretary of State shall either allow the appellant an opportunity to comment on those representations before he decides to give the notice under paragraph (1) above or shall completely disregard those representations in coming to a decision to give such notice.

Notification of hearing

9.—(1) Where a hearing by a person appointed by the Secretary of State is required by virtue of paragraph 16(1) of Schedule 5 to the Act, a date, time and place for the hearing shall be fixed and may be varied by the Secretary of State, who shall (except as hereinafter provided) give not less than 42 days notice in writing of such date, time and place to—

(*a*) the appellant,

(*b*) the local authority,

(*c*) the Council, if they have notified the Secretary of State of their desire to appear at any hearing,

(*d*) every interested person who has notified the Secretary of State of his desire to appear at any hearing, and

(*e*) any other person upon whom a copy of the notice of appeal has been served in accordance with Regulation 4(4).

(2) With the consent of the appellant, the local authority and (if they have notified the Secretary of State of their desire to appear) the Council, the Secretary

of State may give such lesser period of notice as may be agreed with all of them, and in that event he may specify a date for the service of the statements referred to in Regulation 10(1) later than the date therein prescribed.

(3) Where it becomes necessary or advisable to vary the time or place fixed for the hearing, the Secretary of State shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

Statements to be served before the hearing

10.—(1) Not later than 28 days before the date of the hearing (or such later date as the Secretary of State may specify under Regulation 9(2)) each of the persons and bodies specified in paragraph (2) of this Regulation shall serve upon all the other persons and bodies so specified and upon the Secretary of State—

(*a*) a written statement of any submission which the person or body in question proposes to put forward at the hearing, and

(*b*) a list of any documents (including maps and plans) which the person or body in question intends to refer to or put in evidence at the hearing,

and shall also afford to all the other persons and bodies aforesaid a reasonable opportunity to inspect and, where practicable, to take copies of such documents.

(2) The persons and bodies referred to in paragraph (1) above are—

(*a*) the appellant,

(*b*) the local authority,

(*c*) if they have notified the Secretary of State of their desire to appear at any hearing, the Council, and

(*d*) every interested person who has notified the Secretary of State of his desire to appear at any hearing.

Appearances at hearing

11.—(1) The persons entitled to appear at the hearing shall be—

(*a*) the appellant,

(*b*) the local authority,

(*c*) if they have notified the Secretary of State of their desire to appear, the Council,

(*d*) the interested persons who have notified the Secretary of State of their desire to appear.

(2) Any other person may appear at the hearing at the discretion of the appointed person.

(3) The local authority and the Council may appear by their clerk or by any other officer appointed for the purpose, or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry at the hearing, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested.

Procedure at the hearing

12.—(1) Except as otherwise provided in these Regulations, the procedure at the hearing shall be such as the appointed person shall in his discretion determine.

(2) Unless in any particular case the appointed person with the consent of the appellant otherwise determines, the appellant shall begin and shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine:

(3) The appellant, the interested persons who have notified the Secretary of State of their desire to appear, the local authority and the Council shall be entitled to call evidence and cross-examine persons giving evidence, but any other person appearing at the hearing may do so only to the extent permitted by the appointed person.

(4) 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 any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the hearing and that facilities be afforded him to take or obtain copies thereof.

(5) The appointed person may allow the local authority, the Council, the appellant, an interested person, or all or any of them, to alter or add to the submissions contained in any statement served under Regulation 10(1), or to 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 hearing) give the appellant, the local authority or the Council, as the case may be, and the interested persons who are appearing at the hearing, an adequate opportunity of considering any such fresh submission or document.

(6) If any person entitled to appear at the hearing fails to do so, the appointed person may proceed with the hearing at his discretion.

(7) The appointed person shall be entitled (subject to disclosure thereof at the hearing) to take into account any written representations or statements received by him before the hearing from any person.

(8) The appointed person may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Site inspections

13.—(1) The appointed person may make an unaccompanied inspection of the premises before or during the hearing without giving notice of his intention to the persons entitled to appear at the hearing.

(2) The appointed person may, and shall if so requested by the appellant, the local authority or the Council before or during the hearing, inspect the premises after the close of the hearing and shall, in all cases where he intends to make such an inspection, announce during the hearing the date and time at which he proposes to do so.

(3) The appellant, the local authority, the Council and the interested persons who are appearing at the hearing shall be entitled to accompany the appointed person on any inspection after the close of the hearing; but the appointed person shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after hearing

14.—(1) The appointed person shall after the close of the hearing make a report in writing to the Secretary of State which shall include the appointed person's findings of fact and his recommendations, if any, or his reason for not making any recommendations.

(2) Where the Secretary of State—

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

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

and by reason thereof is disposed to disagree with a recommendation made by the appointed person, he shall not come to a decision which is at variance with any such recommendation without first notifying the appellant, the local authority, the Council (if they appeared at the hearing), and any interested person who appeared at the hearing, of his disagreement and the reasons for it and affording them an opportunity of making representations in writing within 21 days or (if the Secretary of State has taken into consideration any new evidence or any new issue of fact, not being a matter of government policy) of asking within 21 days for the re-opening of the hearing.

(3) The Secretary of State may in any case if he thinks fit cause the hearing 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 hearing is re-opened, Regulation 9 shall apply as it applied to the original hearing, but with the substitution in paragraph (1) of "28" for "42".

Notification of decision

15.—(1) The Secretary of State shall notify his decision, and his reasons therefor, in writing to the appellant, the interested persons who appeared at the hearing, the local authority and the Council and to any person who, having appeared at the hearing, has asked to be notified of the decision; and, where a copy of the appointed person's report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the appointed person's conclusions and recommendations.

(2) If any person entitled to be notified of the Secretary of State's decision under the last foregoing paragraph has not received a copy of the appointed person's report, he shall be supplied with a copy thereof on written application made to the Secretary of State within 28 days from the date of his decision.

(3) For the purposes of this Regulation "report" does not include documents, photographs or plans appended to the report, but any person entitled to be supplied with a copy of the report under paragraph (2) above may apply to the Secretary of State in writing within 42 days of the notification to him of the decision or the supply to him of the report, whichever is the later, for an opportunity of inspecting such documents, photographs, and plans, and the Secretary of State shall afford him an opportunity accordingly.

Service of notices by post

16. Notices or documents required or authorised to be served or sent under the provisions of any of these Regulations may be sent by post.

Inquiries

17.—(1) Where the Secretary of State in exercise of his powers under paragraph 16(2) of Schedule 5 to the Act, appoints a person to hold an inquiry in connection with the appeal—

(*a*) the provisions of Regulations 9 to 16 shall apply to any such inquiry as they apply to a hearing and for that purpose references in those Regulations to a hearing shall be construed as references to such inquiry, and

(*b*) in addition, the provisions of the subsequent paragraphs of this Regulation shall apply to any such inquiry.

(2) Without prejudice to the provisions of Regulation 9 (applied as aforesaid) the Secretary of State may require the local authority to take one or more of the following steps, namely—

(*a*) to publish in one or more newspapers circulating in the locality in which the premises are situated such notices of the inquiry as he may direct;

(*b*) to serve notice of the inquiry in such form and on such persons or classes of persons as he may specify;

(*c*) to post such notices of the inquiry as he may direct in a conspicuous place or places near to the premises;

but the requirements as to the period of notice contained in Regulation 9(1) shall not apply to any such notices.

(3) Where the premises are under the control of the appellant, he shall, if so required by the Secretary of State, affix firmly to some object on the premises, in such a manner as to be readily visible to and legible by the public, such notice of the inquiry as the Secretary of State may specify, and thereafter for such period before the inquiry as the Secretary of State may specify the appellant shall not remove the notice or cause or permit it to be removed.

(4) Any persons on whom the Secretary of State has required notice of the inquiry to be served under paragraph (2)(*b*) of this Regulation shall be entitled to appear at the inquiry.

(5) Where in pursuance of Regulation 14 the Secretary of State decides to re-open the inquiry the provisions of paragraph (2) of this Regulation shall apply as they applied to the original inquiry.

William Rodgers,
Secretary of State for Transport.

28th July 1977.

SCHEDULE 1

PARTICULARS TO BE INCLUDED IN A NOTICE OF APPEAL

1. The name and address of the appellant.

2. The name and address of any solicitor or other person acting on behalf of the appellant.

3. The appellant's address for service of documents, if different from that stated in 1 above.

4. The address and a brief description of the premises.

5. A brief statement of the decision of the local authority under appeal (including the date on which that decision was notified to the appellant) and of the appellant's interest in that decision.

6. A statement of the grounds of appeal.

7. A statement of the decision which the appellant desires the Secretary of State to make.

8. A statement of the names and addresses of all persons upon whom the appellant is serving a copy of the notice and, in the case of any interested person, a statement of the interest of that person (so far as known to the appellant).

SCHEDULE 2

DOCUMENTS OF WHICH COPIES ARE TO BE FURNISHED TO THE SECRETARY OF STATE BY THE APPELLANT

1. Where there is a licence in existence, the licence.

2. Where the appeal relates to an application for a licence or for a variation of the terms and conditions of the licence, the application and all relevant documents submitted to the local authority with the application.

3. Except where the case is one to which paragraph 14(2) of Schedule 5 to the Act applies, the local authority's notification of their decision and of their reasons therefor.

4. All other relevant correspondence with the local authority.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations prescribe the procedure for appeals to the Secretary of State against decisions of local authorities in Greater London in connection with licences for the operation of public off-street parking places in those areas where such operation is controlled under the provisions of section 36 of, and Schedule 5 to, the Transport (London) Act 1969.

The requirements with respect to the notice of appeal and supporting documents are set out in Regulation 4 and Schedules 1 and 2. Regulations 5 and 6 provide for written representations, and for requests for a hearing of the appeal by a person appointed by the Secretary of State, and Regulation 7 deals with the case where an appeal is decided on written representations. Regulation 8

lays down the procedure to be followed in cases where, by virtue of paragraph 15 of Schedule 5 to the 1969 Act, the Secretary of State is entitled to refuse to entertain the appeal.

The provisions with respect to hearings of appeals are contained in Regulation 9 (notification), Regulation 10 (statements to be served), Regulation 11 (appearances), Regulation 12 (procedure at the hearing), Regulation 13 (site inspections) and Regulation 14 (procedure after the hearing).

Regulation 15 provides for the notification of the decision consequent on a hearing of an appeal and for the giving of reasons for the decision.

Regulation 17 adapts the provisions of the Regulations for the cases where, in exercise of his power under paragraph 16(2) of Schedule 5 to the 1969 Act, the Secretary of State decides to hold an inquiry in connection with an appeal, instead of a hearing by a person appointed by him. The Regulation also makes provision for requiring public notice of the inquiry to be given.

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