

Procedures for Enforcement Notice, Listed Building Enforcement Notice and Submission Notice Appeals



Planning Appeals
Commission

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Introduction

[1] This publication is intended to inform and assist all those who take part, in whatever capacity, in appeals to the Planning Appeals Commission against enforcement notices, listed building enforcement notices and submission notices. The procedures set out here have been drawn up under powers conferred on the Commissions by Section 204(5) of the Planning Act (Northern Ireland) 2011. They are based on the well established principles of openness, fairness and impartiality. All participants in the appeal process are expected to follow these procedures and to act in a co-operative and reasonable manner.

The Planning Appeals Commission

[2] The Planning Appeals Commission is a statutory tribunal, independent of any government department or agency. It has a wide range of appeal functions which include matters relating to planning, listed buildings, conservation areas, advertisements, trees, roads and the environment.

[3] Members of the Commission are public appointees and are called Commissioners. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. Commissioners study evidence, inspect sites, conduct hearings, write reports and take appeal decisions.

[4] The decision on an appeal to the Commission may be taken by a single Commissioner on behalf of the Commission or collectively by a panel of not fewer than four Commissioners. Having regard to criteria published on the Commission's website www.pacni.gov.uk, the Chief Commissioner will determine whether a particular appeal should be decided by a single Commissioner or collectively. An appeal which was initially assigned to a single Commissioner may be recovered by the Chief Commissioner for collective decision at any time before it is decided.

[5] Administrative staff are responsible for the Commissions' day-to-day work. While they are available to deal with queries from the public about procedures, they are unable to comment on the merits of individual appeals.

General Points about the Appeal Process

[6] Participants are entitled to represent themselves at appeal but they may wish to appoint a professional adviser to act as agent. The Royal Town Planning Institute has an online directory of planning consultants, which may be accessed at www.rtpi.co.uk. Advice may also be sought from Community Places, a not-for-profit voluntary organisation which provides free advice on planning issues to community groups and individuals. It can be contacted at 2 Downshire Place, Belfast BT2 7JQ or by telephone on 028 9023 9444. Its website is www.communityplaces.info.

[7] Participants in appeals should be aware that all information presented to the Commissions at any stage in the appeal process will be processed in accordance with the **Data Protection Act** (see Appendix 1).

[8] The 2011 Planning Act empowers the Commission to make orders as to the costs of the parties in certain appeals, including against enforcement notices and listed building enforcement notices. There is no such provision in respect of appeals against submission notices. The Commission has published guidance explaining how it proposes to use that power. Copies are available on the Commission's website www.pacni.gov.uk and on request from its administrative staff.

Enforcement Notices

[9] The district council or the Department of the Environment may issue an enforcement notice where it appears that there has been a breach of planning control. A breach of planning control occurs when development requiring planning permission is carried out without permission or when conditions or limitations imposed by a planning permission have not been complied with. The provisions relating to enforcement notices are set out in Part 5 of the 2011 Planning Act.

[10] An enforcement notice must:-

- be served on the owner and occupier of the land or buildings in question and on other persons whose property rights in the land would be affected;
- specify the nature of the alleged breach of planning control;
- specify the steps required to rectify the breach or to alleviate any injury to amenity; and
- state the periods within which the specified steps are to be taken.

Listed Building Enforcement Notices

[11] It is an offence to carry out works to a listed building which would require listed building consent or to fail to comply with any condition attached to a listed building consent. Where it appears that there has been a contravention of listed building control, the district council or the Department may issue a listed building enforcement notice. The provisions relating to such notices are set out in Sections 157 to 159 of the 2011 Planning Act. Unless otherwise stated, the procedures described in this booklet relating to enforcement notice appeals also relate to listed building enforcement notice appeals.

Submission Notices

[12] Where the Council considers that development has been carried out without planning permission, it may issue a notice requiring a planning application to be submitted for the development **within 28 days**. Such notices are known as submission notices. A submission notice must specify the nature of the development to which it relates and must be served on the owner and occupier of the land in question. Sections 43 and 44 of the 2011 Planning Act deal with submission notices.

Other Notices

[13] The Council may also serve a **planning contravention notice** seeking information about activities on land or a **breach of condition notice** requiring compliance with a condition of a planning permission. The Council or the Department may serve a **stop notice** requiring certain activities to cease. There is no appeal to the Commission against any of these notices.

The Right of Appeal

[14] Only those persons on whom a copy of a submission notice was served may appeal against it.

[15] Anyone with an estate in the land specified in an enforcement notice or listed building enforcement notice may appeal, whether or not they were served with a copy of the notice. "Estate" includes a legal or equitable interest, such as personal ownership, a lease or a tenancy. A mortgagee or other lender also has an interest in the land as security for the loan. Anyone occupying the land with the owner's written consent also has the right to appeal, whether or not they were served with a copy of the notice.

[16] Sometimes more than one person may have a legal interest in the land to which an enforcement notice relates and their different interests may coincide or conflict. It is up to each person to decide how his or her own interest will best be served. If different people with a legal interest in the land have a common purpose in pursuing an appeal, they may decide that the appeal should be made by one person only. But if only one appeal is made and it is subsequently withdrawn, the enforcement notice will become effective immediately.

[17] Where an appeal is made against an enforcement notice, a listed building enforcement notice or a submission notice, the notice does not take effect until the appeal is decided or withdrawn. However, when issuing an enforcement notice the planning authority may also serve a stop notice which would have the effect of prohibiting the carrying on of activities specified in the enforcement notice while the appeal is under consideration.

Making an Appeal

[18] All appeals against enforcement notices, listed building enforcement notices and submission notices must be made in writing. An enforcement notice must be appealed before the date on which it takes effect. A submission notice must be appealed before the end of the period allowed for compliance. If the last day for appealing is a Sunday or a Public Holiday, the appeal must arrive with the Commission by the following day which is not a Sunday or a Public Holiday. **The Commission has no power to extend the date for receiving these appeals.**

[19] Appeals may be submitted electronically using the Commissions' website www.pacni.gov.uk. Alternatively a paper appeal form, which is available on request from the Commission's administrative staff, should be completed and forwarded to:-

The Chief Administrative Officer
4TH Floor
92 Ann Street
Belfast, BT1 3HH
Telephone: (028) 9024 4710
e-mail address: info@pacni.gov.uk

[20] Before submitting an appeal, the appellant or his or her agent should check that the correct form has been used and completed in full. If the appellant or agent does not have and cannot obtain an appeal form in the time available, the appeal can be made by letter, giving the appellant's full name and contact address, identifying the precise location of the land in question and the planning authority who issued the notice. It is advisable to attach a copy of the notice being appealed against. The letter and attachments may be sent by fax or e-mail.

[21] Each appeal against an enforcement notice, a listed building enforcement notice or a submission notice must be accompanied by a fee. (This is called the appeal fee.) The amount is specified in regulations and is subject to change. At present it is **£126**. Cheques should be made payable to "The Planning Appeals Commission". If an appeal is not accompanied by the appeal fee, the appellant will be asked to pay this within 14 days. Failure to pay is likely to lead to the appeal being dismissed summarily.

Deemed Planning Applications

[22] If an appeal is made against an enforcement notice, then in accordance with Section 145(5) of the 2011 Act the appellant is deemed to have made an application for planning permission for the development in question. It should be noted that this application relates solely to the development described as a breach of planning control in the notice and cannot be extended or amended to include any other development. **There is no deemed planning application in the case of an appeal against a listed building enforcement notice or a submission notice.**

[23] In most enforcement notice appeals an additional fee is payable to the Commission in respect of the deemed planning application. (This is called the deemed planning application fee.) The scale of fees is set out in regulations. Exemptions and reductions apply in certain limited circumstances. The planning authority will provide its assessment of the amount of the deemed planning application fee when it serves the enforcement notice, but appellants and agents can make their own assessment and the Commission will if necessary adjudicate.

[24] The deemed planning application fee should be paid along with the appeal fee at the time the appeal is made. When several people appeal against the same enforcement notice, each is required to pay the deemed planning application fee. If the deemed planning application fee is not paid, the appellant will be asked to do so within 14 days, failing which the deemed planning application will lapse and Commission will be unable to consider whether to grant planning permission. Further information about the deemed planning application fee is given at Paragraphs [28], [78] and [79] below.

Stating the Facts

[25] When appealing against an enforcement notice, a listed building enforcement notice or a submission notice, the appellant must indicate the grounds on which the appeal is brought and state the facts in support of each chosen ground of appeal. The appeal forms have a series of boxes to tick and space for the supporting facts. As some of the grounds are mutually exclusive, **it is clearly inappropriate to tick all the boxes**. The appellant should consider carefully which grounds of appeal are appropriate in the circumstances of the appeal. Failure to specify any grounds could lead to the appeal being dismissed. Only a brief summary of the facts need be given on the appeal form as the appellant will have the opportunity later on in the process to set out his or her evidence in full in a statement of case.

Grounds of Appeal against an Enforcement Notice

[26] An appeal against an enforcement notice may be made on any of the seven grounds in Section 143 (3) of the 2011 Planning Act.

Ground (a): that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted, or as the case may be, the condition or limitation concerned ought to be discharged

[27] **Ground (a)**, like the deemed planning application, is concerned with the planning merits of the development to which the notice relates. Before issuing a notice, the planning authority must have regard to the provisions of the local development plan and to any other material considerations. The statement of facts should give a brief summary of the reasons why, in the appellant's opinion, planning permission ought to be granted for the development in question or, if the notice relates to a planning condition, why that condition should not continue in force. This can be expanded on later in the statement of case.

[28] **The Commission will not consider an appeal under Ground (a) unless the deemed planning application fee has been paid.**

Ground (b): that those matters have not occurred

[29] **Ground (b)** is essentially a matter of fact. It covers a situation where, for example, the notice alleges that a building has been erected but there is in fact no building on the land. Another example is where the change of use of a property to, say, an office use is alleged and the appellant is able to show that there was no office use of the premises at the time the notice was issued. Ground (b) also covers a situation where the planning condition to which the notice relates has been complied with. The statement of facts should specify what was occurring at the site or premises **at the time the notice was issued** and how this differs from the alleged breach of planning control. This can be expanded on later in the statement of case with supporting evidence attached.

Ground (c): that those matters (if they occurred) do not constitute a breach of planning control

[30] **Ground (c)** is essentially a matter of law. It covers the following situations:-

- the development alleged in the notice existed before the introduction of planning control under the Planning (Interim Development) Act (Northern Ireland) 1944;
- the building, mining, engineering or other operations alleged in the notice do not amount to development (as defined in Section 23 of the 2011 Planning Act);
- the change in the use of land or buildings alleged in the notice is not a material change of use;
- the development alleged in the notice was permitted by a development order; or
- the development alleged in the notice was carried out within the terms of an extant planning permission.

[31] The foregoing examples are not a complete list. Whatever the allegation, the statement of facts should explain precisely why the appellant considers there has been no breach of planning control. It should state briefly, with relevant dates, when various building or other operations took place on the land in question, what uses were carried on at the property and what permissions have been granted in respect of the land. This can be expanded on later in the statement of case with supporting evidence attached.

Ground (d): that, at the date when the notice was served, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

[32] **Ground (d)** covers situations where the enforcement action was issued outside the time limits set out in Section 132 of the 2011 Planning Act, which are:-

- In the case of building, engineering, mining or other operations, **five years after the operations were substantially completed;**
- In the case of the change of use of a building to use as a single dwelling house, **five years after the change of use took place;** and
- In the case of any other breach of planning control, **five years after the date of the breach.**

[33] The statement of facts should give precise dates as to when building or other works were carried out and completed or precise details as to what the property was used for over the five years prior to the date of the notice and when that use began. This can be expanded on later in the statement of case with supporting evidence attached.

Ground (e): that copies of the enforcement notice were not served as required by Sections 138 or 139

[34] **Ground (e)** is concerned with whether the notice was served properly. The Commission may disregard a failure to serve someone with a copy of the notice who should have been so served if neither the appellant nor that person has been substantially prejudiced. The statement of facts should give the names and addresses of any such persons and the nature of their interest in the land (for example, joint owner, sub-tenant) and say why it is believed that substantial prejudice has occurred. It should be noted that it is not normally considered necessary to serve a separate copy of a notice on members of the same family living together.

Ground (f): that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or to remedy the injury to amenity caused by the breach.

[35] **Ground (f)** concerns the relationship between the remedial steps specified by the notice and the alleged breach of planning control. An enforcement notice cannot, for example, require the carrying out of work unrelated to the alleged breach or prevent an otherwise lawful use of land. The statement of facts should explain why the appellant considers that any of the steps required by the notice are excessive. This can be expanded on later in the statement of case with supporting evidence.

Ground (g): that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed

[36] **Ground (g)** is concerned with whether sufficient time has been given for carrying out any of the steps required by the notice. The statement of facts should explain briefly why the appellant thinks the time is too short having regard to such matters as the extent of work involved in complying with the notice and the desirability of finding alternative premises. It should also state what period the appellant considers would be adequate and why. This can be expanded on later in the statement of case with supporting evidence.

Grounds of Appeal against a Listed Building Enforcement Notice

[37] An appeal against a listed building enforcement notice may be made on any of the following 11 grounds, which are set out in full in Section 159 of the 2011 Planning Act:-

- (a) that the matters alleged to constitute a contravention of listed building control have not occurred;
- (b) that these matters (if they occurred) do not constitute such a contravention;
- (c) that the contravention alleged in the notice occurred before 9th December 1978;
- (d) that the works were the minimum immediately required to effect urgently necessary measures in the interests of safety or health or for the preservation of the building and that it was not practicable to carry out works of repair, or works for affording temporary support or shelter;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent should be discharged or a different condition substituted;
- (f) that copies of the notice were not served as required;
- (g) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed; and
- (h)-(k) that (depending upon the circumstances of the case) the requirements of the notice exceed what is necessary.

Grounds of Appeal against a Submission Notice

[38] Section 44 of the 2011 Planning Act specifies just three grounds of appeal against a submission notice and the Commission has no power to consider other arguments. The grounds of appeal are:-

- (a) that the matters alleged in the notice do not constitute development;
- (b) that the development alleged in the notice has not taken place; and
- (c) that at the date when the notice was issued five years had elapsed since the development was begun.

Other Grounds of Challenge

[39] The appellant may challenge the validity of an enforcement notice, listed building enforcement notice or submission notice on the ground that there is some fundamental defect in its drafting or authorisation. These issues may be raised separately from the statutory grounds of appeal. The Commission should be informed, when the appeal is submitted, why the appellant considers the notice to be flawed. The challenge can be expanded on later in the statement of case with supporting evidence.

[40] When the validity of a notice is questioned, the Commission will usually ask the planning authority for its comments on the points raised by the appellant. If the notice is found to be a nullity and incapable of correction, the appeal will not proceed any further (although the planning authority may subsequently issue a further notice in respect of the same matter). If the Commission considers that the evidence to support the challenge to the validity of the notice is inconclusive or that more information is needed to support it, the issue will be explored in greater detail through the appeal process.

Environmental Impact Assessment

[41] The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 prohibit the granting of planning permission for certain kinds of developments which are likely to have significant effects on the environment, unless an environmental statement has been submitted and taken into consideration. Such development is known as "EIA development". Where the planning authority concludes that the development to which an enforcement notice relates involves EIA development, it must serve with the enforcement notice a second notice stating why it has reached that conclusion and requiring anyone who appeals against the enforcement notice to submit an environmental statement to the Commission.

[42] If a person who is appealing against an enforcement notice does not agree that the development in question is EIA development, he or she may within **four weeks** of the service of the enforcement notice ask for a hearing before the Commission for the purposes of considering that issue. Following such a hearing, the power to confirm or withdraw the determination that an environmental statement is needed rests with the planning authority.

[43] An environmental statement must be submitted to the Commission within **six months** of the planning authority determining, or following a hearing confirming, that it is required. The Commission has power to extend the period but will do so only if it is satisfied, having considered a written request from the appellant **before the expiry of the six-month period**, that the circumstances warrant doing so. If an environmental statement is not submitted on time, the deemed planning application and any appeal on Ground (a) will lapse and the Commission will not be able to consider whether planning permission ought to be granted.

[44] On receipt of an environmental statement, the Commission will send a copy to the planning authority and to any other authorities likely to be concerned by the development as a result of their specific environmental responsibilities. The Commission may seek further information from the appellant if it considers it necessary. It will publicise receipt of the environmental statement in at least one newspaper circulating in the local area and allow four weeks for any representations to be made.

Withdrawing an Appeal

[45] An appeal may be withdrawn by the appellant or the appellant's agent at any time before the appeal decision is issued. Once it is decided to withdraw an appeal, the Commission should be informed as soon as possible to avoid unnecessary further work by all concerned. Unless the withdrawal takes place publicly at a hearing, it must be confirmed in writing quoting the appeal reference number. The Commission will inform the authority and all other interested parties of the withdrawal. When an appeal is withdrawn, the notice becomes effective immediately. The appeal fee is not returnable and the appeal cannot be reinstated later.

Involvement of Third Parties

[46] The Commission is required to publish notice of appeals against enforcement notices and listed building enforcement notices in the local press. The Commission is also required to notify the occupiers of premises within 90 metres of the appeal site which are located on neighbouring land. To enable the Commission to do this, the planning authority provides it with a list of identified occupiers. People who respond to the press notice or to the Commission's notification within **14 days** will be listed as third parties and their letters will be copied for information to the appellant.

[47] The Commission will write to all third parties and invite them to participate in the appeal process. On receipt of this invitation some people may decide to rely on their letter and take no further part in the appeal process. Others may wish to submit further written evidence and/or to attend any hearing or accompanied site visit that is arranged.

The Choice of Appeal Procedure

[48] Appeals can be considered in either of the following ways:-

- by a **hearing**, whether formal or informal; or
- by exchange of **written representations**, with or without an accompanied site visit.

[49] If either the appellant or the planning authority wishes to appear before and be heard by the Commission, it is required to facilitate that request. Even if it is not been requested, a hearing will normally be arranged where there are complex legal issues and significant factual disputes. **The Commission gives every appeal the same careful consideration whether there is a hearing or not.**

[50] Third parties do not have a statutory right to a hearing and must accept whatever arrangements the Commission makes for considering the appeal. The Commission will ensure, however, that third parties are enabled to participate in whatever proceedings are arranged on an equal footing with the appellant and the planning authority.

Stages in Each Type of Appeal Procedure

[51] The key stages in each type of procedure are summarised below. Illustrative procedural flowcharts are presented in Appendix 3.

Written Representations without an Accompanied Site Visit

Stage 1 - The Commission invites all parties to submit statements of case within four weeks.

Stage 2 - Statements of case are exchanged and two weeks are allowed for the submission of rebuttal evidence. Rebuttal evidence is copied to participating parties for information only.

Stage 3 - The appeal is allocated to a Commissioner who considers all the evidence, carries out an unaccompanied site visit and either issues a decision on the appeal or submits a report to the Commission.

Stage 4 - Where a collective decision is to be made, a panel of Commission members meets to consider the Commissioner's report and a decision is issued.

Written Representations with an Accompanied Site Visit

- Stage 1** - All parties are notified of the date, time and place for the site visit and are invited to submit statement of case within four weeks.
- Stage 2** - Statements of case are exchanged and two weeks are allowed for the submission of rebuttal evidence. Rebuttal evidence is copied to participating parties for information only.
- Stage 3** - The appeal is allocated to a Commissioner who considers all the evidence, conducts an accompanied site visit and either issues a decision on the appeal or submits a report to the Commission.
- Stage 4** - Where a collective decision is to be made, a panel of Commission members meets to consider the Commissioner's report and a decision is issued.

Informal Hearing

- Stage 1** - The Commission normally gives parties eight weeks' notice of the hearing date and invites them to submit statements of case.
- Stage 2** - Statements of case are submitted at least three weeks prior to the hearing and copied to participating parties.
- Stage 3** - The appeal is allocated to a Commissioner who conducts the hearing.
- Stage 4** - The Commissioner considers all the evidence, visits the site with or without the attendance of the parties and either issues a decision on the appeal or submits a report to the Commission.
- Stage 5** - Where a collective decision is to be made, a panel of Commission members meets to consider the Commissioner's report and a decision is issued.

Formal Hearing

- Stage 1** - The Commission normally gives parties 12 weeks' notice of the hearing date and invites them to submit statements of case.
- Stage 2** - Statements of case are exchanged and two weeks are allowed for the submission of rebuttal evidence. Rebuttal evidence is copied to participating parties at least three weeks prior to the hearing.
- Stage 3** - The appeal is allocated to a Commissioner who conducts the hearing.
- Stage 4** - The Commissioner considers all the evidence, visits the site with or without the attendance of the parties and either issues a decision on the appeal or submits a report to the Commission.
- Stage 5** - Where a collective decision is to be made, a panel of Commission members meets to consider the Commissioner's report and a decision is issued.

Making the Arrangements

[52] The Commission will ask the appellant and the planning authority which type of procedure they wish to use. If both select a procedure involving written representations, that will be facilitated unless the Commission decides that a hearing is necessary. If either the appellant or the authority wants an accompanied site visit with a written representations appeal, that will generally be facilitated.

[53] If a hearing is requested, the Commission will decide whether it is to be formal or informal, taking into account the preferences of the appellant and the planning authority, the nature and scale of the subject matter of the appeal, the likely complexity of the legal and technical issues and the number of third parties. The Commissions' experience has been that in the vast majority of appeals, an informal hearing represents an effective and efficient method of gathering information in a non-confrontational atmosphere. Formal hearings are necessary only for particularly complex cases where issues need to be tested by formal questioning between opposing parties.

[54] The Chief Commissioner will appoint a Commissioner to take charge of the appeal. If a hearing is to be held, the Commission will write to all parties indicating a date and venue. Hearings relating to sites in Belfast and the surrounding area will normally be held in the Commission's premises. Other hearings will normally take place in the local authority area.

[55] If the date indicated is not suitable to the appellant or agent, he or she must notify the Commission of at least three alternative dates which are no later than six weeks from the date offered by the Commission. Before selecting these dates the appellant or agent should ensure that each date suits everyone who will be attending on behalf of the appellant. The planning authority is expected to accept the notified date. **Once the arrangements for a hearing have been fixed, any request for a postponement by the appellant or the authority will be granted only in the most compelling circumstances.** As only the planning authority and the appellant have a statutory right of hearing, **hearing dates will not normally be postponed at the request of third parties.** If, as occasionally happens, a hearing is not completed on the appointed day, it will usually continue on the following day. Participants should be alert to this possibility.

[56] **The arrangements for an accompanied site visit will not be changed except in the most compelling circumstances.** At any stage in the written representations process, whether an accompanied site visit is involved or not, the Commission or Commissioner may seek further information from the parties or may decide to arrange a hearing to clarify issues not covered in the written evidence.

[57] If anyone wishing to take part in a hearing or attend an accompanied site visit has special needs such as a requirement for disabled access, the Commission's staff should be told at any early stage. They will do their best to accommodate such needs.

Statements of Case

[58] The submission of written evidence in the form of a statement of case within specified time limits is required for all types of procedure. The time limits will be set so as to allow all written evidence to be circulated to all concerned in advance of any hearing or accompanied site visit. In written representations appeals and appeals involving a formal hearing, parties will be given an opportunity to submit a written rebuttal to the opposing parties' statements of case. The Commission will inform all parties of the deadline for submitting statements of case and rebuttal evidence and the number of copies required. Parties are advised to start preparations early to ensure they meet the deadlines.

[59] Even though jurisdiction will have passed to the Commission, parties are encouraged prior to submitting their statements of case to seek to agree facts and methodologies and to identify areas of agreement. The extent of any agreement should be identified in the statements of case and the evidence should concentrate on the matters still in dispute.

[60] Where, in an appeal against an enforcement notice or listed building enforcement notice, the appellant is arguing that the development or works ought to be approved, **draft conditions, submitted on a without prejudice basis, should be appended to the planning authority's statement of case.** This will provide the authority with an opportunity to suggest mitigation measures in the event that the appeal succeeds. It will not be interpreted as the authority having conceded its case.

[61] As the substance of representations is of more significance than the volume, third parties sharing a common cause are encouraged to join together to present a single statement of case. Third parties are not confined to issues raised by the authority and may raise other matters as long as they are relevant to the appeal. The appellant and the planning authority will be expected to address these concerns and the Commissioner will consider them.

[62] Statements of case should not exceed **1,500 words**, otherwise the main points being made may not be readily identifiable. Statements containing more than 1,500 words should be accompanied by a summary of less than 1,500 words. Statements of case must include **all** the evidence to support the party's case, including the evidence of all its witnesses. Relevant maps or drawings at A3 or A4 size may be included in an appendix to the statement of case. Photographs may be used but the location from which they were taken should be marked on a map. Where documentary evidence is provided in support of legal grounds, originals rather than copies should be produced and will be returned on request after the appeal is decided. Full copies of any case law or previous appeal decisions being relied upon must be provided. Previous Commissioners' reports and Commission decisions are available on the website www.pacni.gov.uk.

[63] Anyone preparing a statement of case is advised to:-

- concentrate on the main arguments;
- deal very briefly with relevant secondary or minor issues;
- avoid issues which are not relevant as these will add nothing;
- avoid lengthy quotations from published policy and guidance documents as the Commissioner will have copies of these; and
- aim for clarity and be succinct while covering all relevant matters.

[64] **The time limits for submission of statements of case and rebuttal evidence will be applied strictly and will be extended only in the most compelling circumstances.** Documents received after the specified date or which are incomplete on the specified date will not be accepted by the Commission and will be sent back. Anyone who fails to submit a statement of case within the specified period will not receive the other parties' statements of case and the appeal will be determined on the basis of the information available to the Commission.

What Happens at an Accompanied Site Visit

[65] The Commissioner always inspects the appeal site before making a recommendation or decision on a written representations appeal. When an accompanied site visit is held, the purpose is to enable representatives of all parties to accompany the Commissioner as he or she carries out the inspection. If someone who was invited to attend is not present at the appointed time, the Commissioner may start the site visit without that person. **An accompanied site visit is not an open-air hearing.** The Commissioner may ask for various things to be pointed out but will not accept documents or permit discussion of legal or policy issues or debate about written evidence.

[66] The Commission has prepared a leaflet "*What to Expect at an Accompanied Site Visit*", which provides further information. Copies are available on the Commission's website www.pacni.gov.uk and on request from its administrative staff.

What Happens at a Hearing

[67] An **informal hearing** takes the form of a round-table discussion led by the Commissioner, who will invite comments on what appear to be the main issues and matters requiring further clarification. Legal issues, including any argument that the notice is a nullity, will be considered before any other issues. In an enforcement notice appeal, Grounds (b) to (f) are legal grounds. In a listed building enforcement notice appeal, Grounds (a), (b), (c) and (f) are legal grounds. In a submission notice appeal, all the statutory grounds are legal grounds.

[68] All parties will have an opportunity to put forward views and may be assisted by an agent or adviser. However, an informal hearing is not a forum for repeating written evidence already available to the parties. Statements of case will be taken as read. Written rebuttal evidence may not be introduced but there will be an opportunity to raise relevant rebuttal points during the discussion. When the Commissioner considers that an issue has been sufficiently clarified, he or she will move on to the next issue. Cross-examination and formal legal submissions are not necessary at informal hearings, but in complex appeals the Commissioner may allow some questioning between parties on issues not already covered in the round-table discussion.

[69] At a **formal hearing** evidence is probed through questioning by opposing parties and by the Commissioner. Legal issues will be dealt with before any other issues. Parties, in turn, may briefly explain their position and address points made by other parties. The usual sequence is that the authority presents its evidence first and is questioned; followed by objectors (or their spokesperson); then the appellant; and finally supporters (or their spokesperson). Parties may be professionally represented (but do not have to be) and may put forward witnesses to answer questions and discuss points arising from their written evidence, which will be taken as read. The Commissioner will take an active role in investigating evidence and may ask questions at any stage of the proceedings. Closing statements will not be required.

[70] As the Commission requires all issues to be identified and all documentary evidence to be contained in the statements of case, it does not expect new issues to be raised at a hearing, whether formal or informal. The Commissioner's attention should however be drawn to any relevant changes that have taken place since the statements of case were submitted. If the parties have reached agreement on technical evidence the Commissioner should be told, but a postponement of the hearing will not be granted for negotiations to be continued.

[71] The introduction of new information at the hearing will be at the Commissioner's discretion. Parties seeking to introduce new issues or materials will be asked to explain why they are relevant and why they were not mentioned in the statement of case. If any documents are accepted, two copies must be given to the Commissioner and at least one copy to each of the other parties. The introduction of late evidence can prolong proceedings and put other parties to unnecessary or wasted expense.

[72] The Commissioner may decide to adjourn a hearing to the site in order to deal with site-specific issues, in which case discussion at the site will be confined to those matters.

[73] Normally no evidence should be submitted after a hearing unless the Commissioner agreed at the hearing that this should be done. Evidence sent to the Commission without the prior agreement of the Commissioner will be returned.

The Commission's Powers

[74] In determining an appeal against an enforcement notice, a listed building enforcement notice or a submission notice, the Commission has the power to quash the notice, vary its terms or uphold it. It may also correct any misdescription, defect or error in the notice or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the planning authority. In an enforcement notice appeal, it may approve the deemed planning application in whole or in part. In an appeal against a listed building enforcement notice, it may grant listed building consent for the works to which the notice relates or for only part of those works.

The Appeal Decision

[75] Having visited the site, the Commissioner will consider all the evidence and prepare either a decision or else a report with a recommendation. A decision taken by a single Commissioner will set out the reasoning which led to the decision.

[76] If the decision is to be collective, the Commissioner's report will be copied to a panel of Commission members. They will study the report and may visit the site. The panel will then meet and take a decision, if necessary by a majority vote. In the event of a tie, the chairperson will have a casting vote. The minutes of the meeting will be placed on the website www.pacni.gov.uk. Where the panel disagrees with the views and recommendation of the appointed Commissioner, the Commission's collective decision will set out clearly the full reasoning which gave rise to that decision.

[77] The appeal decision (together with the Commissioner's report where a collective decision is made) will be sent to all parties who provided a statement of case or participated in the public proceedings. If anyone was represented by an agent, then the decision and report (if any) will go to the agent. A copy of the decision and any report will be made available to anyone on request and may be viewed on the Commission's website www.pacni.gov.uk.

Refund of the Deemed Planning Application Fee

[78] The deemed application fee (but not the appeal fee) will be refunded in the following circumstances:-

- When the Commission declines jurisdiction on the grounds that the appeal does not comply with statutory requirements. Examples include cases where the appeal is not received before the effective date of the notice, no grounds of appeal are specified and no facts have been stated in respect of grounds of appeal.
- When the appeal succeeds on a legal ground. There is, however, one exception. There can be no refund of the deemed application fee in an enforcement appeal involving an allegation that a caravan stationed for the purposes of human habitation on any land is in breach of planning control.
- When the Commission quashes the notice because it is null and void or is invalid or defective to the extent that it cannot be corrected without prejudice to the appellant or the planning authority.
- When notice of withdrawal of the appeal is received by the Commission before the date appointed for its hearing or, in written representations cases, before the date of the site inspection.
- When the planning authority withdraws the enforcement notice at any stage of an appeal against it.

[79] When the Commission varies an enforcement notice so that the description of the development is changed and a lower fee becomes appropriate, the difference between the amount paid and the lower fee will be refunded.

After an Appeal Decision

[80] The Commission cannot reconsider an appeal decision after it has been issued. However, anyone who was involved in the appeal process and is dissatisfied about the way the Commission handled it can make a formal complaint. Details of the Commission's complaints system are provided on its website www.pacni.gov.uk and a leaflet is available on request.

[81] An appeal decision may be challenged on a point of law by applying to the High Court for a judicial review. This must be done promptly or in any event within three months of the decision. Anyone considering such a course will need legal advice.

Appendix 1 – DATA PROTECTION AND FREEDOM OF INFORMATION

The Data Protection Act regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Commissions are fully committed to complying with the Act.

When processing appeals, the Commissions receive a range of personal information from a number of sources, which falls within the remit of the Data Protection Act. This includes letters of support or objection. The information received by the Commissions varies but may include:-

- details of an individual's name, address and occupation;
- information about the health, personal or family circumstances of an individual; and
- an individual's opinions about an application or appeal.

This information is held and considered by the Commissions in accordance with the principles set out in the Data Protection Act. It is only used by the Commissions for considering the issues arising in the appeal. It is only retained as long as reasonably necessary, usually no longer than three years from the completion of the Commission's work. However, all Commission reports and decisions must have clear reasons for the conclusions reached and it may be necessary to refer to an individual's personal or family circumstances in a report or decision, which may be retained indefinitely.

The Commissions are tribunals and must operate openly, fairly and impartially. All documents on casework files can be viewed by any member of the public, under the Commissions' supervision.

An individual should therefore only provide personal or sensitive information that he/she accepts will be available to the public. No-one should present personal information about other people without their consent. Information provided will not be vetted or redacted by the Commission because of its role to carry out its functions as an independent decision maker in an open, fair and transparent manner.

Under the Data Protection Act, an individual can request access to his/her personal information held by the Commissions. Such requests should be in writing and sent to the address below. There is a charge of £10 for requests and the person making the request will also need to send proof of identity.

A request made under the Data Protection Act should include:-

- the specific information which is being sought;
- who you are and how you can be contacted;
- how you would like to receive the information.

Please also identify any accessibility requirements you may have and if you need to receive the information in a particular format, for example, large print, Braille etc.

You are entitled to a response to your request within 40 calendar days. It is in the Commissions' and your interests to hold accurate data. If the data is inaccurate, you can ask us to erase, amend or add to the information though you should note that personal or family circumstances referred to in a Commission report or decision cannot be changed. There will be no charge for this.

Any complaints about how the Commissions dealt with requests about information will be processed in accordance with the Commissions' Complaints System which is published under Publications on the Commissions' website. These complaints will not be reviewed by the Complaints Audit Panel, see below.

If you remain dissatisfied with the Commissions' response to your information request you may contact the Information Commissioner at

51 Adelaide Street
BELFAST BT2 8FE
Telephone number: (028) 9026-9380
Fax number: (028) 9026-9388
email address: ni@ico.gsi.gov.uk; or
website address: www.ico.gov.uk.

Requests for access to personal information should be sent to

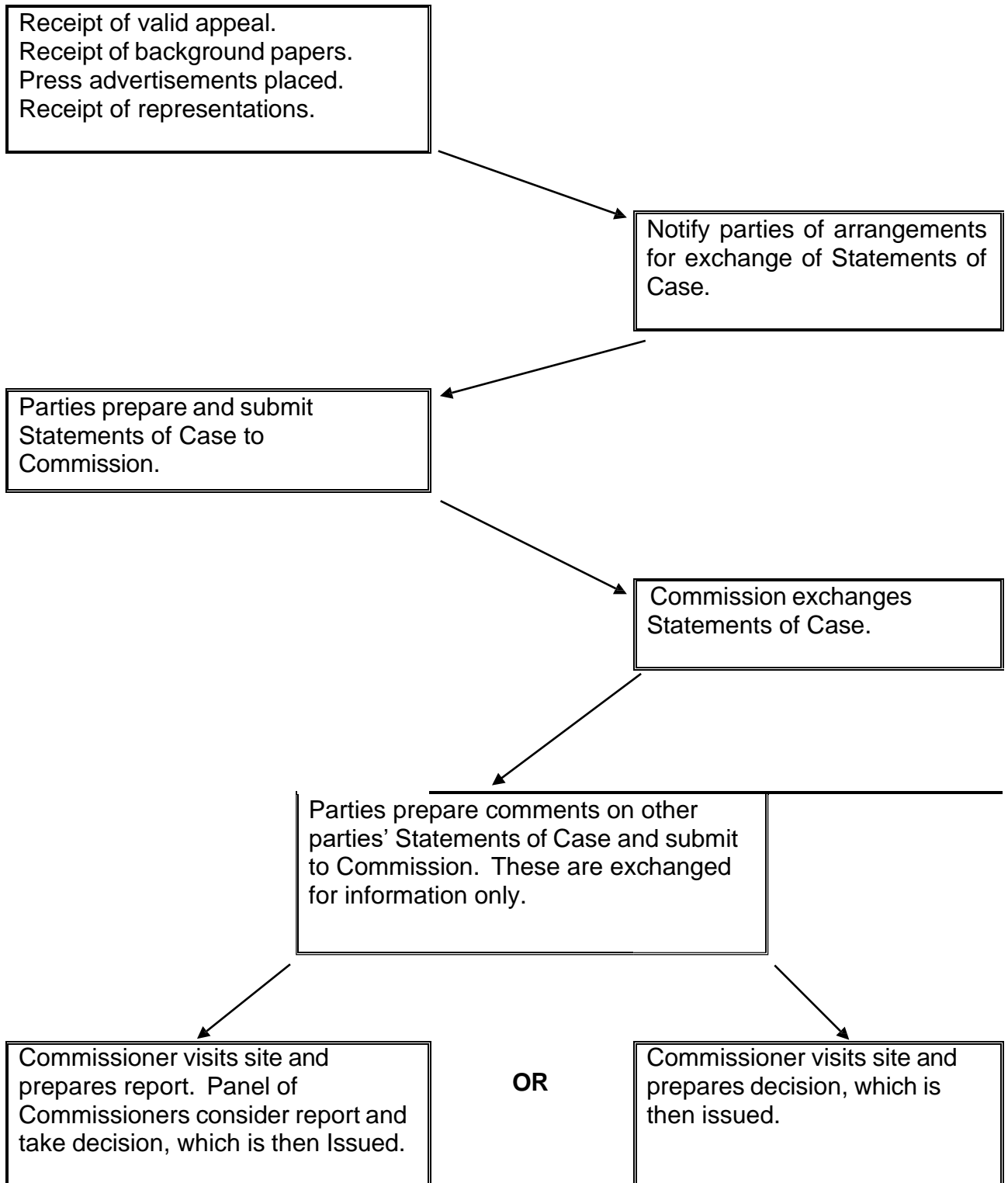
The Chief Administrative Officer
4TH Floor AIB Building
92 Ann Street
Belfast
BT1 3HH
Telephone number: (028) 9024-4710
e-mail address: info@pacni.gov.uk
website address: www.pacni.gov.uk

The Commissions will review their procedures regularly to ensure continued compliance with the Data Protection Act.

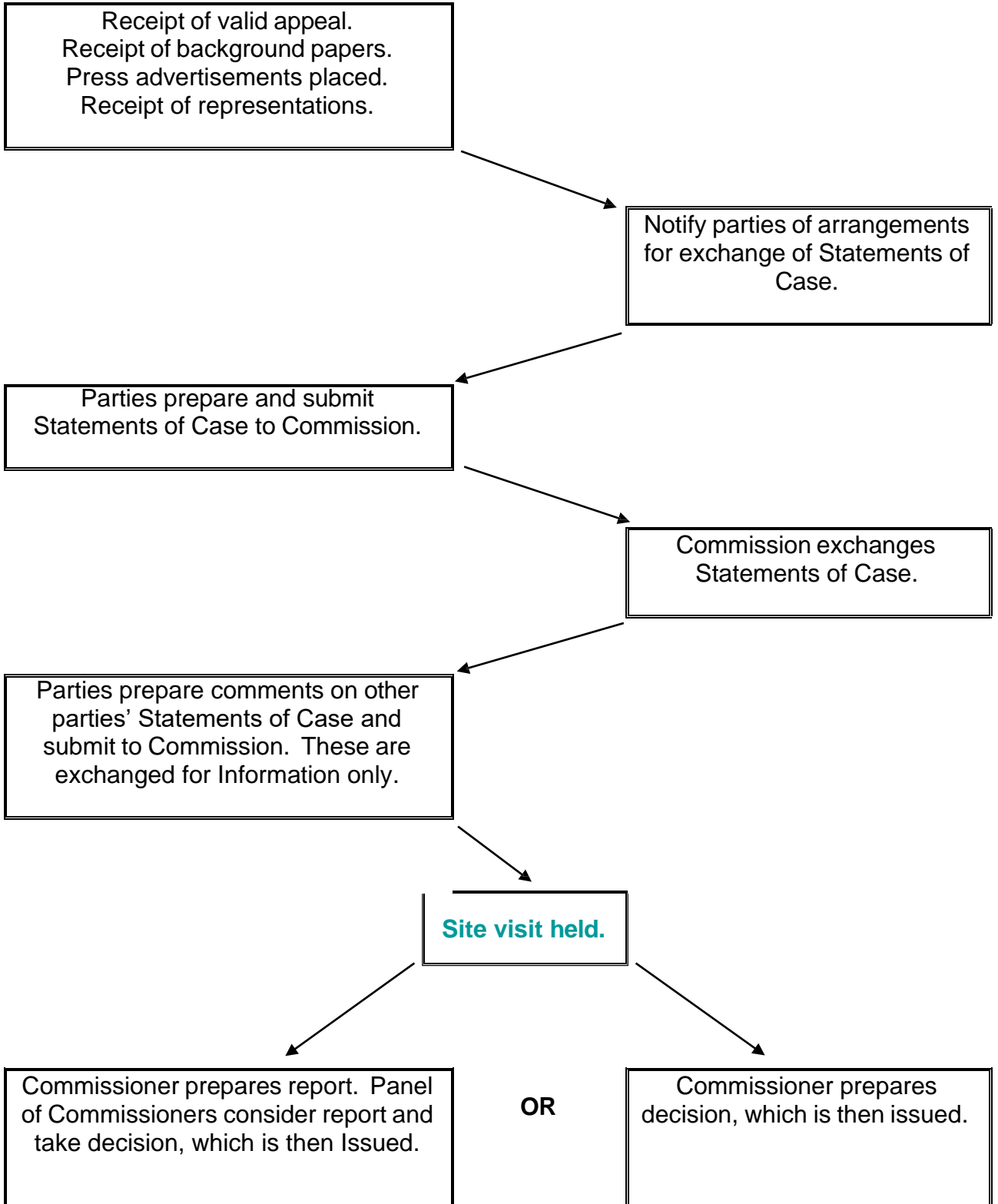
Freedom of Information Act - The Commissions are not identified as Public Authorities under the Act. The Environmental Information Regulations 2004 apply to any body that has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment or provides public services relating to the environment. This could include the Commissions but the Regulations do not apply to the extent that the Commissions are acting in a judicial capacity. Nonetheless, as tribunals which operate openly fairly and impartially, the Commissions seek to comply with the spirit of the Act and Regulations.

Appendix 2 – ILLUSTRATIVE PROCEDURAL FLOWCHARTS

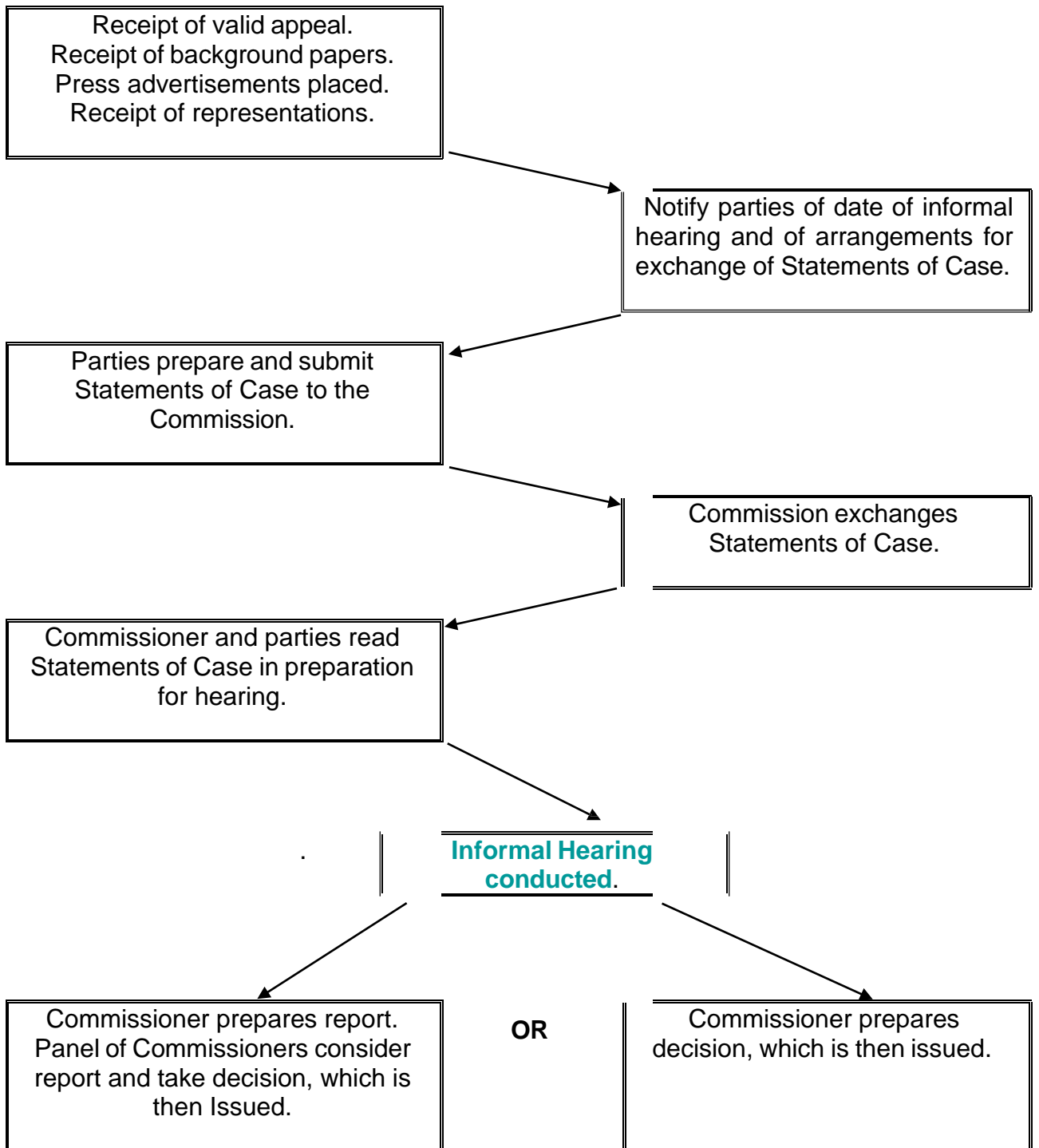
PROCEDURES FOR WRITTEN REPRESENTATIONS WITHOUT AN ACCOMPANIED SITE VISIT



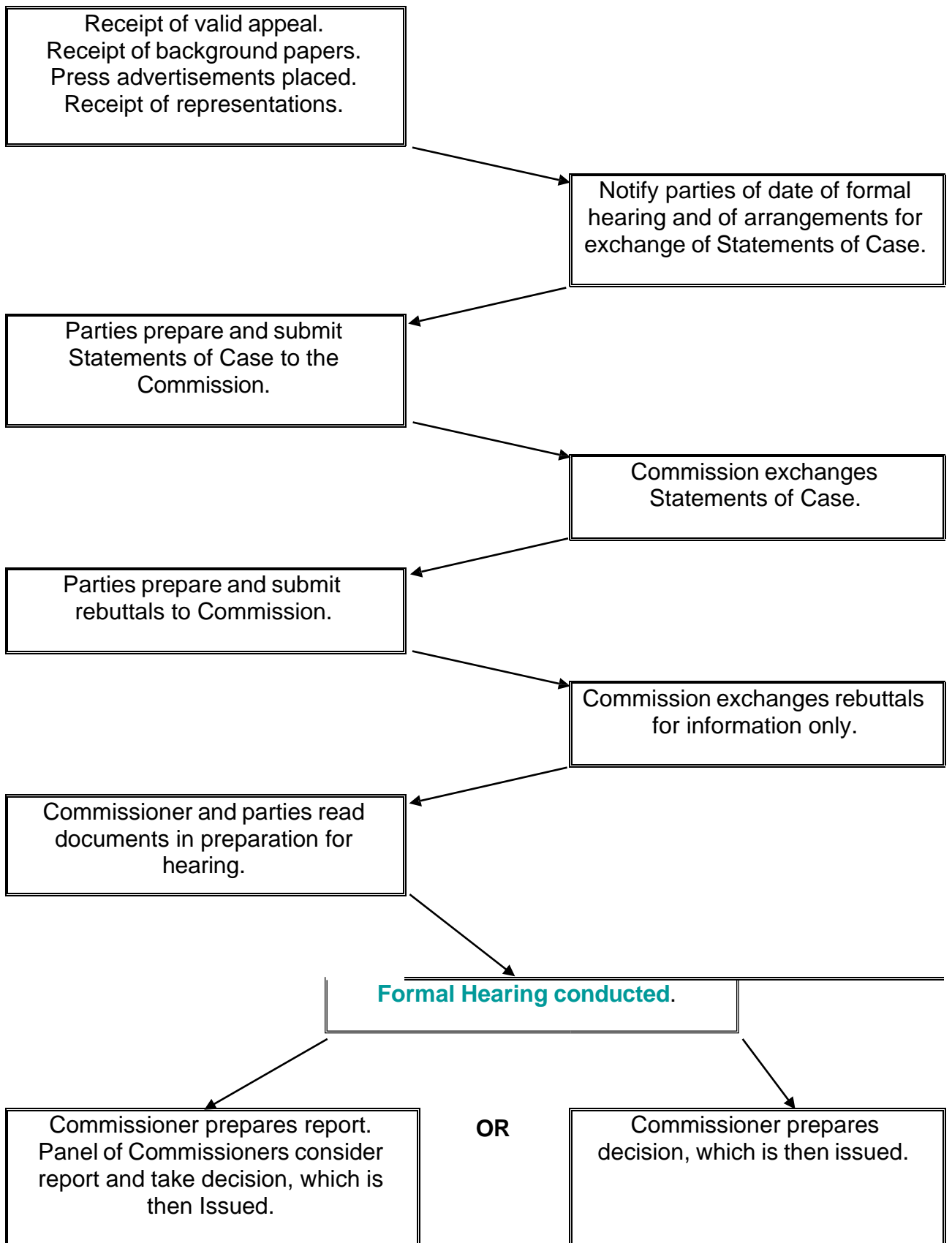
**PROCEDURES FOR WRITTEN REPRESENTATIONS
WITH AN ACCOMPANIED SITE VISIT**



PROCEDURES FOR INFORMAL HEARING



PROCEDURES FOR FORMAL HEARING



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Commission