

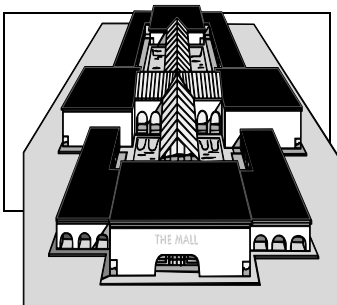


Planning Appeals Commission

Water Appeals Commission



Procedures for Planning and Water Appeals



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Introduction

- [1] Although this booklet is not an exact statement of the law relating to appeals, the information it contains will assist those taking part in planning appeals as either appellants, agents or as objectors/supporters (sometimes called 'third parties').

These procedures have been drawn up under Article 111(5) of the Planning (NI) Order 1991 (for appeals to the Planning Appeals Commission) and Article 293(13) of the Water and Sewerage Services (NI) Order 2006 (for appeals to the Water Appeals Commission). They are based on the principles of openness, fairness and impartiality by which the Commissions operate. As there are no statutory rules for the conduct of appeals this document sets out Commission procedures. All are required to follow these procedures and have a duty to act in a fair and reasonable way and to respect rulings by the Commission and/or Commissioner.

- [2] This booklet specifically relates to appeals about decisions on planning applications made by the Department of the Environment's Planning Service but the procedures outlined are generally applicable to other types of appeals dealt with by the Planning Appeals Commission (PAC). Appeals such as those against refusals of listed building consent, conservation area consent, advertisement consent and roads approvals are very similar to planning appeals. The same procedures, modified as appropriate, apply to appeals which are made to the Water Appeals Commission (WAC). Enforcement Notices appeals are significantly different and a separate booklet sets out procedures for this type of appeal. There is also a booklet setting out procedures for appeals about Lawful Development Certificates.

All information presented to the Commissions will be processed in accordance with the Data Protection Act (see Appendix I).

- [3] If you need help about a planning appeal you may wish to contact a professional adviser. Planning Aid Northern Ireland has been set up by the Royal Town Planning Institute for those who cannot afford professional advice and can be contacted at PO Box 69, Carrickfergus, Co Antrim BT38 8WX.

The Planning Appeals Commission

- [4] The PAC exists under the Planning (Northern Ireland) Order 1991. It is an independent body which decides appeals made in respect of various decisions and notices issued mainly by the Department of the Environment (DoE). The PAC is not part of the DoE or any other Assembly department.
- [5] Members of the PAC are called Commissioners and they are public appointees. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. They make decisions on appeals on behalf of the PAC and recommendations to the PAC on the outcome of appeals after studying written submissions from the parties involved and after conducting hearings and site visits, some accompanied, into the case.

Commissioners appointed to the PAC also deal with appeals to the Water Appeals Commission.

- [6] The PAC aims to make the best possible appeal decisions in an efficient manner through the most effective procedures appropriate to each appeal. This requires the co-operation of all involved. The PAC is committed to ensuring that the appeals process is as user friendly as possible and involves the best possible use of resources.
- [7] Administrative staff are responsible for the day to day operation of the PAC's work. While they are available to deal with enquiries from the public about procedures, they are unable to comment on the merits of individual appeals or offer advice or guidance on the possible outcome of any case.

PAC Decision Making

- [8] The PAC decision on an appeal may be made by a single Commissioner (called an individual decision) or by a panel of not fewer than four Commissioners (called a collective decision). Based on criteria published on the PAC website www.pacni.gov.uk the Chief Commissioner decides if the decision in the appeal should be an individual or a collective decision. A single Commissioner appeal may also be recovered by the Chief Commissioner for a collective decision at any point before it is issued by the PAC. The DoE and the appellant will be informed of the type of decision to be made.

The Right of Appeal

- [9] Appeals to the PAC may only be made by the original applicant for the planning permission or other approval and may be made in the following circumstances:
 - (i) if an application to the DoE has been:
 - (a) refused planning permission;
 - (b) given permission but with conditions considered unreasonable;
 - (c) refused approval of the details of a proposal (called 'reserved matters') for which the DoE or the PAC has already granted outline permission; or
 - (d) given reserved matters approval but with conditions considered unreasonable;
 - (ii) if the DoE has rejected any proposal arising from a consent, agreement or approval required by a condition imposed on a grant of planning permission; or
 - (iii) if the DoE has failed to decide the application within the normal time period which is two months beginning with the date on which a valid application was received by the DoE. These are known as 'non-determination appeals'.

For non-determination appeals the DoE should, within **three weeks** of being notified of the appeal, inform the appellant, third parties (if any) and the PAC of its views on the proposal. If its view is that the permission should be refused it should provide draft reasons for refusal. If its view is that permission should be granted, it should set out draft planning conditions and the reasons for seeking to have them imposed.

Time Limits for Submitting an Appeal

- [10] An appeal, using the appropriate form, must be lodged with the PAC within **six months** from the date of receipt of the DoE's decision on the application. If it is a non-determination appeal then the six months period starts from the date the DoE should have given its decision. The PAC has no power to extend the six months period.

Submitting the Appeal Forms

- [11] **To make an appeal you should complete the correct form. This may be downloaded from the PAC's website www.pacni.gov.uk or may be obtained from:-**

The Chief Administrative Officer
Park House
87-91 Great Victoria Street
BELFAST BT2 7AG
Telephone number: (028) 9024-4710
Fax number: (028) 9031-1338
e-mail address: info@pacni.gov.uk
website address: www.pacni.gov.uk

or the local Divisional Planning Office of the DoE

- [12] By law a completed certificate of land ownership must accompany an appeal, to ensure that all owners of the site know an appeal has been made so that they have an opportunity to comment. Section I of the Appeal Form sets out four different types of certificate covering varying circumstances and the appellant should indicate on this form which one is applicable to the appeal site. It is the responsibility of the appellant to ensure that the appropriate certificate is completed since the PAC is not responsible for ensuring the accuracy of certificates. Care should be exercised since an incorrect certificate may invalidate any subsequent decision.
- [13] The correct fee must accompany the appeal and all cheques should be made payable to 'The Planning Appeals Commission'. At present the fee is **£126**. Up-to-date information on planning appeal fees and fees for other types of appeal can be obtained from the current Planning (Fees) Regulations (Northern Ireland), from the PAC staff or from the PAC's website. If the 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. No fee is payable for an appeal under Regulation 12(1) of the Control of Advertisement Regulations

against a refusal or conditional grant of consent to display an advertisement or for certain specialised appeals.

- [14] Before sending an appeal to the PAC appellants should check that the appeal form has been fully completed including Section I about land ownership, and that the appeal fee has been included.

Appellants should also submit copies of the application forms and drawings and a copy of the decision notice issued by the DoE as this will assist in processing the appeal.

Can an Appeal be Withdrawn?

- [15] An appeal may be withdrawn by the appellant at any time before the appeal decision is issued. If you wish to withdraw your appeal you should contact the PAC at once by telephone and must then confirm the withdrawal in writing quoting the appeal reference number. This is especially important where a hearing has been arranged. When an appeal is withdrawn the fee is not returnable. An objector or supporter who has registered with the PAC as wishing to take part in the appeal process will be notified by the PAC if an appeal is withdrawn.
- [16] Withdrawing an appeal causes the PAC administrative problems and has implications for the re-scheduling of Commissioners' workload and appellants should therefore carefully consider whether or not to appeal in the first instance. They should also carefully think through their proposals from the outset and not seek to change the proposal at the last moment, just before or during the appeal hearing.

Can Objectors or Supporters take part in an Appeal?

- [17] If you wrote to the PAC about the appeal within **14 days** of it being advertised in the local press by the PAC or to the DoE about the original planning application and the DoE subsequently sent your letter to the PAC, you will be invited take part in the appeal and your letter of objection/support will be copied to the appellant. When you receive this invitation you may decide to rely on your initial letter and take no further part in the appeal process or you may wish to submit a Statement of Case and take part in any hearing or accompanied site visit that is arranged. For information on Statements of Case see paragraph 31 and Appendix IV.

As the substance of representations is of more significance than the volume, objectors and supporters sharing a common cause are encouraged and expected to join together to present a single Statement of Case and to appoint one or two people to represent and speak for them at a hearing or site visit. They may obtain names and addresses of other objectors/supporters from the PAC.

- [18] Objectors and supporters who wish to take part in the appeal process will be sent a copy of the appellant's and the DoE's Statements of Case and the appellant and DoE will be sent a copy of their Statements of Case. They may raise other

issues in relation to the proposal even if the DoE did not raise these issues in the refusal notice that is being appealed. The other parties should be prepared to

deal with these additional concerns and the Commissioner will have to consider them if they are relevant.

- [19] Objectors or supporters making representations outside the specified 14 day period will be too late to participate in the exchange of Statements of Case before the hearing or site visit and will be expected to join together with other participating third parties. However, in exceptional circumstances and provided it is practicable in terms of the timetable, the PAC may permit third parties responding outside the 14 day period to participate in the exchange of Statements. In any event objectors or supporters who are too late to exchange Statements may attend the hearing and participate as permitted by the Commissioner.

The Choice of Appeal Procedure

- [20] The time and cost involved in pursuing an appeal will depend on the procedure to be followed, the complexity of the appeal and the level of representation which the parties wish to engage in the conduct of the appeal.

- [21] There are two types of appeal procedure:

Written Representation (WR) - two options

1. Written representation; or
2. Written representation with an accompanied site visit.

Hearing - two options

1. Informal hearing; or
2. Formal hearing

- [22] At the outset both the DoE and the appellant are asked by the PAC which type of appeal procedure they wish to use. The PAC encourages appeals to be dealt with by the WR procedure and if the appellant and DoE select that, then that is generally facilitated, although the PAC may decide that a hearing is required. If either the appellant or the DoE want an accompanied site visit with a WR appeal then that is facilitated by the PAC. If either of them request a hearing then by law they have a right to a hearing. Where a hearing is chosen by the appellant or the DoE the PAC encourages them to select an informal hearing when the issues are straightforward as this represents a more effective and efficient method of gathering information in a less intimidating atmosphere. The PAC then chooses the type of hearing which it considers most appropriate, taking into account what the appellant and the DoE have indicated as their preference, the scale and nature of the proposal, the complexity of the legal and technical issues and the amount of public response. The PAC expects the DoE and the appellant, in the appeal form, to specifically identify the complex issues that justify a request for a formal hearing. The critical test will be the need for the issues to be tested by formal questioning from opposing parties. Objectors and supporters must comply with whatever procedure is decided upon by the PAC.

- [23] Informal hearings are as user friendly as possible and avoid the intimidatory atmosphere which some appellants and third parties feel is present in the more

adversarial formal hearings. The PAC recognises that they must comply with the principles of openness, fairness and impartiality to which it is committed. Informal hearings must not, therefore, be so relaxed that lack of structure undermines the essential requirement that all critical issues are examined adequately.

The Commission or the appointed Commissioner, whether requested or not to do so by the parties, may abandon an informal hearing at any stage, having regard to the criteria set out above if it becomes apparent that it would be more appropriate to proceed by way of a formal hearing. In these circumstances alternative arrangements will be made for a formal hearing and all parties will be advised of this.

[24] In choosing the procedure which is most appropriate to the case, an appellant and the DoE should note:

- Submission of advance written evidence (Statements of Case) within specified time limits is required for all types of procedure.
- The WR procedure is generally quicker and less costly than an appeal by way of hearing.
- At any stage in the WR process the PAC or the Commissioner may seek further information by requesting additional written submissions from the parties or by arranging a hearing to clarify issues which can not be properly covered by written submissions.
- Informal hearings have a less intimidating atmosphere.
- Formal hearings are only necessary for complex cases.

No matter which type of procedure is used, the PAC gives the case the same careful consideration.

Stages in Each Type of Procedure

[25] **Written Representation Procedure without Accompanied Site Visit**

Stage 1 - Submission of Statements of Case by all parties within four weeks of the request by the PAC.

Stage 2 - All submitted documents are exchanged as appropriate through the PAC and two weeks allowed for the submission of any comments. These are copied to participating parties for information only.

Stage 3 - The case is considered by the Commissioner, who carries out a site visit and issues a decision on the appeal or reports to the PAC, normally within two weeks.

Stage 4 - If applicable) the PAC considers the case and normally issues its decision no later than two weeks from the presentation of the report to the PAC meeting.

[26] **Written Representation Procedure with Accompanied Site Visit**

Stage 1- All parties are notified of the date, time and place for the site visit and are required to submit their Statement of Case within four weeks.

Stage 2 - All submitted documents are exchanged as appropriate through the PAC and two weeks allowed for the submission of any comments. These are copied to participating parties for information only.

Stage 3 - The case is considered by the Commissioner, who carries out the accompanied site visit and issues a decision on the appeal or reports to the PAC, normally within two weeks.

Stage 4 - (If applicable) the PAC considers the case and normally issues its decision no later than two weeks from the presentation of the report to the PAC meeting.

[27] **Informal Hearing Procedure**

Stage 1 - The PAC normally gives parties eight weeks notice of the hearing date and sets out arrangements for submission and exchange of Statements of Case between relevant parties.

Stage 2 Statements of Case are submitted by all participating parties at least two weeks prior to the hearing and circulated by the PAC to be read by all parties in preparation for the hearing.

Stage 3 - The hearing is conducted by the Commissioner.

Stage 4 - The case is considered by the Commissioner who visits the site with or without the attendance of the parties and issues a decision on the appeal or reports to the PAC normally within four weeks of the hearing.

Stage 5 - [If applicable] the PAC considers the case and normally issues its decision no later than two weeks from the presentation of the report to the PAC meeting.

[28] **Formal Hearing Procedure**

Stage 1 - The PAC normally gives the parties twelve weeks notice of the hearing date and sets out arrangements for submission and exchange of Statements of Case.

Stage 2 - Statements of Case are submitted by all participating parties and these are exchanged by the PAC and two weeks allowed for the submission of rebuttals. These are copied to participating parties. All documents should be read prior to the hearing.

Stage 3 - The hearing is conducted by the Commissioner.

Stage 4 - The case is considered by the Commissioner who visits the site with or without the attendance of the parties and issues a decision on the appeal or reports to the PAC normally within five weeks of the hearing.

Stage 5- [If applicable] the PAC considers the case and normally issues its decision no later than two weeks from the presentation of the report to the PAC meeting.

The Chief Commissioner appoints a Commissioner (called the appointed Commissioner) to deal with appeals on the basis of whatever procedure is most appropriate.

The Arrangements before a Hearing or an Accompanied Site Visit

[29] For a Hearing:

- When the PAC writes to the appellant setting out the date for the submission of the Statement of Case, the letter will also indicate a date and venue for the hearing. If the date is acceptable there is no need to reply and the allocated date is confirmed without further notice and cannot be subsequently changed. If the date is unacceptable the appellant must notify the Commission, giving alternative dates, and the PAC will then choose one of these as the accepted date of the hearing. Before selecting these dates the appellant should ensure that each date suits everyone he/she wishes to attend. Once the PAC arrangements have been fixed, any request for a postponement will ONLY be granted in the most compelling circumstances.
- The DoE is expected to accept the notified date and will only be granted a postponement in the most compelling circumstances. Objectors and supporters will be informed of the time, date and venue arranged for the hearing and sent a proforma asking what further involvement they want in the hearing and if they wish to make a Statement of Case.

Given that appeals are initiated by the appellant and that only the DoE and the appellant have a statutory right of hearing, hearing or site visit dates will not be postponed at the request of third parties.

- All parties will be informed of the timetable for the submission of their Statements of Case and the number of copies that will be required. It is advisable to appoint representatives or witnesses early so as to give them sufficient time to gather the evidence necessary to support the case being made.
- Hearings within the Council areas of Belfast, Lisburn, Carrickfergus, Castlereagh, Newtownabbey and North Down will be heard at the PAC's Offices in Belfast. Other hearings are normally conducted in a venue in the District Council area of the appeal site. Alternatively the appellant may choose to use the PAC's offices in Belfast.
- If, as occasionally happens, the hearing is not completed on the day it was arranged, it will normally continue on the following day. Parties should be

alert to this possibility, particularly when a large volume of complex evidence has been submitted.

If you or anyone you know wishes to take part in a hearing or site visit and you have special needs such as a requirement for disabled access, please contact the PAC at any early stage so that we can seek to make appropriate arrangements.

[30] **For an Accompanied Site Visit:**

All parties will be informed of the date of the accompanied site visit normally at least eight weeks before this takes place. The arrangements cannot be changed except in the most compelling circumstances.

Statements of Case

- [31] Statements of Case must be submitted by all parties participating in appeals. You must arrange for the required number of full copies to be sent to the Commission by the specified date. The number of copies you need to submit will be indicated to you by letter. Copies received after the specified date or which are incomplete on the specified date will not be accepted by the PAC and will be sent back.

Your Statement of Case should not exceed 1500 words and should include:-

all the evidence to support your case, including the evidence of all your witnesses;

a list of documents referred to; and

any relevant maps at A3 or A4 size only.

If you are referring to other cases or appeal decisions then full copies of the case or appeal decision must be included. Advice for both appellants and third parties on preparing a Statement of Case is available in Appendix IV. **IT MUST BE SUBMITTED ON TIME.**

Parties, mainly the appellant and the DoE, should seek to agree facts/methodologies and identify areas of agreement and areas of dispute. These should be set out in the Statement of Case and evidence should concentrate on the matters in dispute. Draft conditions, submitted on a without prejudice basis, should be appended to the DoE's Statement of Case.

Parties seeking to introduce new issues at a hearing or WR site visit will have to persuade the Commissioner that they are relevant issues and that they could not have been dealt with in the Statement of Case. The introduction of such late evidence is to be avoided as it could result in delays.

- [32] The time limits for submission of Statements of Case and the exchange of documents will be applied strictly and will only be extended in the most exceptional circumstances. If anyone fails to submit within the specified period they will not receive the documentation supplied by the other parties and the

appeal will proceed to determination on the basis of the information available to the PAC.

- [33] Site visits and hearings are open to the public and anyone can attend. If anyone did not submit a Statement of Case within the appropriate time, they will only be allowed to take part in the hearing or site visit as permitted by the Commissioner.

Preparing for the Appeal

- [34] There is a considerable amount of preparatory work to be carried out for an appeal and it is advisable to give yourself sufficient preparation time in order to be able to submit your Statement of Case on time. The PAC will send appellants a copy of a completed questionnaire and all papers provided by DoE. Copies of these papers will be available to other parties on payment of a charge.
- [35] Copies of previous Commissioners' reports and PAC decisions are available on the PAC website: www.pacni.gov.uk.

What Happens at an Informal Hearing

- [36] Statements of Case are not read out and the hearing takes the form of a discussion led by the Commissioner who identifies the main issues and sets out the issues requiring further clarification. The hearing is conducted on the basis of a round table discussion of these issues, led by the Commissioner. All parties are given an opportunity to get involved in the round table discussion. Formal rebuttal evidence may not be introduced at informal hearings but there will be an opportunity to raise relevant rebuttal points during the exploration of issues in the course of discussion led by the Commissioner.
- [37] When the Commissioner considers that there has been sufficient investigation and clarification of an issue he/she will indicate that discussion should move on to the next issue. All parties may be assisted in the discussion by an agent or adviser but any representatives must accept that there is no formal questioning at such hearings. During the hearing the Commissioner may decide to adjourn it to the site in order to deal with site specific issues. If this is done, discussion at the site will be confined to those site-specific matters.

What Happens at a Formal Hearing

- [38] Documents are not read out at the hearing. The Commissioner may set out the main issues on which he/she requires further clarification. Parties may be professionally represented (but do not have to be so) and witnesses may be available to answer questions and discuss points arising from their Statement of Case. Parties, in turn, may briefly explain their current position and address points made by opposing parties. Evidence is probed through questioning by the other parties and by the Commissioner. The usual order of presentation is that the DoE presents its evidence first and is questioned; followed in order by objectors (or their spokesperson), the appellant and finally supporters (or their spokesperson). There are no formal closing statements.

- [39] Keep the opening remarks precise. As the Commission requires all issues and relevant material to be contained in the documents, it is not expected that new issues will be raised by you at the hearing, although the Commissioner's attention should be drawn to changes that have taken place since your documents were sent in. Further documents will only be accepted at the discretion of the Commissioner. Any new maps or plans must be available at A3 and/or A4 size. If any documents are accepted two copies must be given to the Commissioner and enough copies made for the other parties. If the parties have reached some common agreement on technical evidence this should be identified to the Commissioner, but a postponement of the hearing will not be granted in order for negotiations on such agreement to be continued.
- [40] Questioning of evidence assists the Commissioner in deciding what weight to give to that evidence. It is most useful to the Commissioner when it tests the validity of facts, assumptions, opinions and conclusions and exposes any defects in the witnesses' statements. Don't raise issues through questioning which can be more clearly and concisely covered in direct evidence. Questions to a witness should be clear and brief and witnesses should not be interrupted when replying. If anyone wishes a witness to comment on a document they should give reasonable advance notice of the document and if a comment is requested on an extract from a document, the entire document should be produced at the hearing. Persistent and repetitive questions seeking to change the mind of a witness should be avoided. All witnesses must answer the question and can be pressed about their evidence and expert witnesses should expect to face robust questioning. However, bullying tactics are out of place and questioning should not be aggressive. Non-expert witnesses should be questioned sensitively. While genuine wit and humour are not out of place, irrelevant asides and sarcasm are unhelpful and must be avoided.
- [41] The Commissioner takes an active role in investigating evidence relating to the issues raised and will generally ask questions throughout the proceedings.

What Happens at Site Visits

The Commissioner always visits the site before making a decision or a recommendation on a WR appeal case.

A WR Site Visit

- [42] When an accompanied site visit is held the purpose is to address site specific issues raised by the Commissioner but occasionally clarification of other matters may be sought by the Commissioner. **THE SITE VISIT IS NOT AN OPEN AIR HEARING.** If the Commissioner arrives on the site to find one of the parties invited to attend is not present, the site visit will nevertheless proceed.

Site Visits for Hearings

- [43] The Commissioner always visits the site and the parties are offered the opportunity to attend if they wish. The Commissioner will indicate at the hearing if he/she requires the parties to attend and this must be arranged at the hearing. Parties cannot simply turn up at the site visit without having indicated their

intention to the Commissioner at the hearing. The Commissioner controls the site visit.

Evidence Submitted after the Hearing or Site Visit

- [44] Normally no evidence should be submitted after the hearing or site visit unless this has been agreed at the hearing or site visit by the Commissioner. Any evidence sent to the PAC, which was not agreed by the Commissioner will be returned.

Powers of the PAC

- [45] Under the provisions of Article 32(4) of the Planning (Northern Ireland) Order 1991 the PAC may consider an appeal as if the application had been submitted to it in the first instance. It is not, therefore, constrained simply to consider the reasons which the DoE has advanced for refusing permission or attaching conditions or the points raised by objectors. As the Commission is an independent appellate body, and not a “second planning authority”, it exercises this power sparingly to address matters of significant public interest. If new considerations are to be taken into account, the Commissioner or the PAC will identify such issues and give the parties an opportunity for comment.

The PAC Decision

- [46] After the appeal hearing and/or the appropriate site visit has taken place the Commissioner considers the evidence. If the decision is by an individual Commissioner, that Commissioner prepares a decision which is issued by the PAC to all parties. If the decision is collective the Commissioner prepares a report with a recommendation which is copied to a panel of Commissioners. They study the report and recommendation and may visit the site, if that has been agreed to by the parties at the hearing. After this a decision will be taken by the panel, of no fewer than four Commissioners, at a meeting at which reports and recommendations are discussed.
- [47] Since collective appeal decisions are taken by the Commission, the recommendation of the appointed Commissioner may not be accepted. Where the PAC reaches a different conclusion, the decision of the PAC sets out clearly the full reasoning which gave rise to the decision. The PAC decision and not the Commissioner’s report is the appeal decision. The PAC decision (individual or collective) is final. There is no further appeal except on a point of law to the High Court (see paragraphs 55-56).
- [48] The PAC informs all parties of its decision. If it is a collective decision, the DoE, appellant and objectors/supporters (who attended the hearing or took part in the exchange of written submissions or attended the accompanied site visit) also receive copies of the Commissioner’s report. If anyone was represented by an agent then the decision and report [if applicable] go to the agent. Copies of the decision and the report [if applicable] are available to anyone who asks for a copy or may be viewed on the Commission’s website.

Complaints

- [49] A complaint is any expression of dissatisfaction by any party involved in the process about the way the PAC handled an appeal. Complaints must be made within six months of the date of the PAC's decision on an appeal. A complaint should be made in writing to the Chief Administrative Officer of the PAC and will normally be acknowledged within seven working days of receipt. Complaints raising issues about an appeal which is still being processed by the Commission will not be responded to until consideration of that case has been completed. In the event of legal proceedings being initiated while a complaint is under consideration, the matter will be addressed through the legal process and not the complaints system.
- [50] Apart from the circumstances set out above, complaints will be investigated and a full reply will normally be issued within four weeks. Where this is not possible an interim reply will be issued within the four weeks indicating when a full response will be made.
- [51] All complaints are investigated at a senior level by Commissioners or Administrative Staff not directly involved in the matter giving rise to the complaint. Anyone dissatisfied with the written response to their complaint may request a meeting to discuss the matter. Complaint files are open for public inspection.
- [52] An Independent Complaints Audit Panel, consisting of two members appointed respectively by the Royal Town Planning Institute and the Bar Council, reviews the operation of the Complaints System and presents a report to the Chief Commissioner which is available to the public.
- [53] Please note that the PAC cannot reconsider or alter an appeal decision once it has been issued. However, the PAC may issue a corrected decision letter or Commissioner's report (not a revised decision letter or report) correcting:
- (i) obvious typographical and textual errors; and
 - (ii) wording which all parties, including the PAC and Commissioner, agree cannot be right.

Complaints to the Parliamentary Ombudsman for Northern Ireland

- [54] If you have a complaint about maladministration by any member of the PAC's administrative staff you can ask the Ombudsman to investigate the matter. The Ombudsman should be approached through an MLA or MP. The Ombudsman has no power to question the merits of an appeal or to alter the PAC's decision.

Challenging the Commission in the Courts

- [55] PAC decisions or rulings may be challenged by application for a judicial review to the High Court. This must be done promptly or in any event within three months of the appeal decision and you will need legal advice.

[56] The grounds for review may only be made on a point of law which in essence means that it has to be demonstrated that the decision is illegal, irrational or procedurally improper.

Appendix I

Data Protection and Freedom of Information in the Planning and Water Appeals Commissions

DATA PROTECTION AND FREEDOM OF INFORMATION IN THE PLANNING AND WATER APPEALS COMMISSIONS

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 an appeal, representations about a major development under Article 31 of the Planning (NI) Order 1991 or objections to a draft development plan, 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:-

- the original application, together with any documents of support or objection;
- the appeal form, together with any other documents of support or objection.

The information received by the Commission 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 appeal or objection. It is only retained as long as reasonably necessary, usually no longer than a year from the completion of the Commission's work. However, all appeal 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 decision. All decisions are published on the Commissions' website at www.pacni.gov.uk and retained indefinitely. In addition, the Department of the Environment must register all appeal decisions by the Planning Appeals Commission in the Planning Register.

The Commission is a tribunal 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 information that he/she accepts will be available to the public. No-one should present personal information about other people (including family members) unless he/she has informed the person concerned and it has been agreed that the information could be provided to the Commission.

Under the Data Protection Act, an individual can request access to his/her personal information held by the Commission. 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 an appeal decision cannot be changed. There will be no charge for this.

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

If you remain dissatisfied with the Commission's 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
 Park House
 87-91 Great Victoria Street
 BELFAST BT2 7AG
 Telephone number: (028) 9024-4710
 Fax number: (028) 9031-1338
 e-mail address: info@pacni.gov.uk
 website address: www.pacni.gov.uk

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

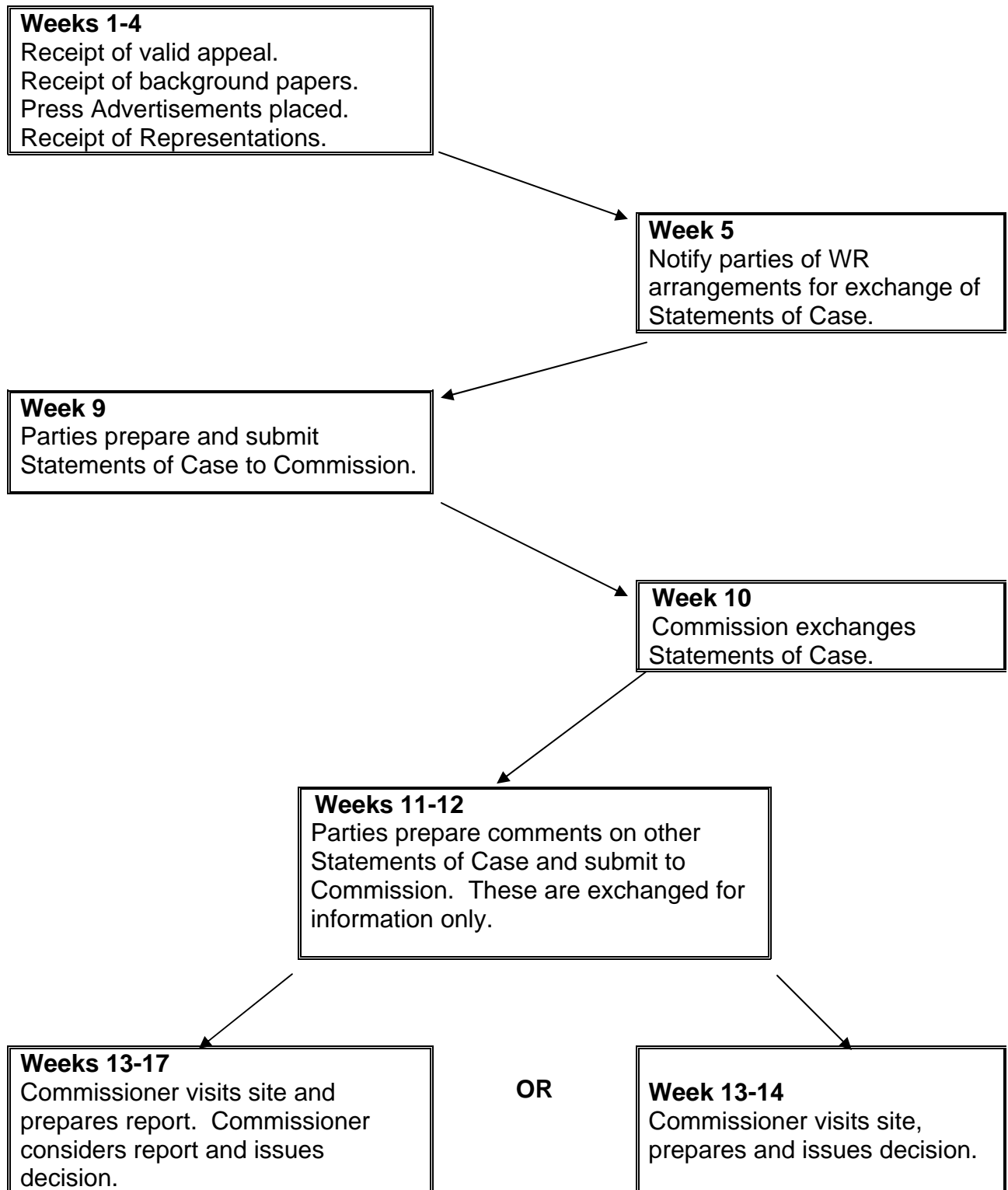
Freedom of Information Act - The Commissions are not identified as Public Authorities under the Act. The Environmental Information Regulations 2004 apply to any body that has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment or provides 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 II

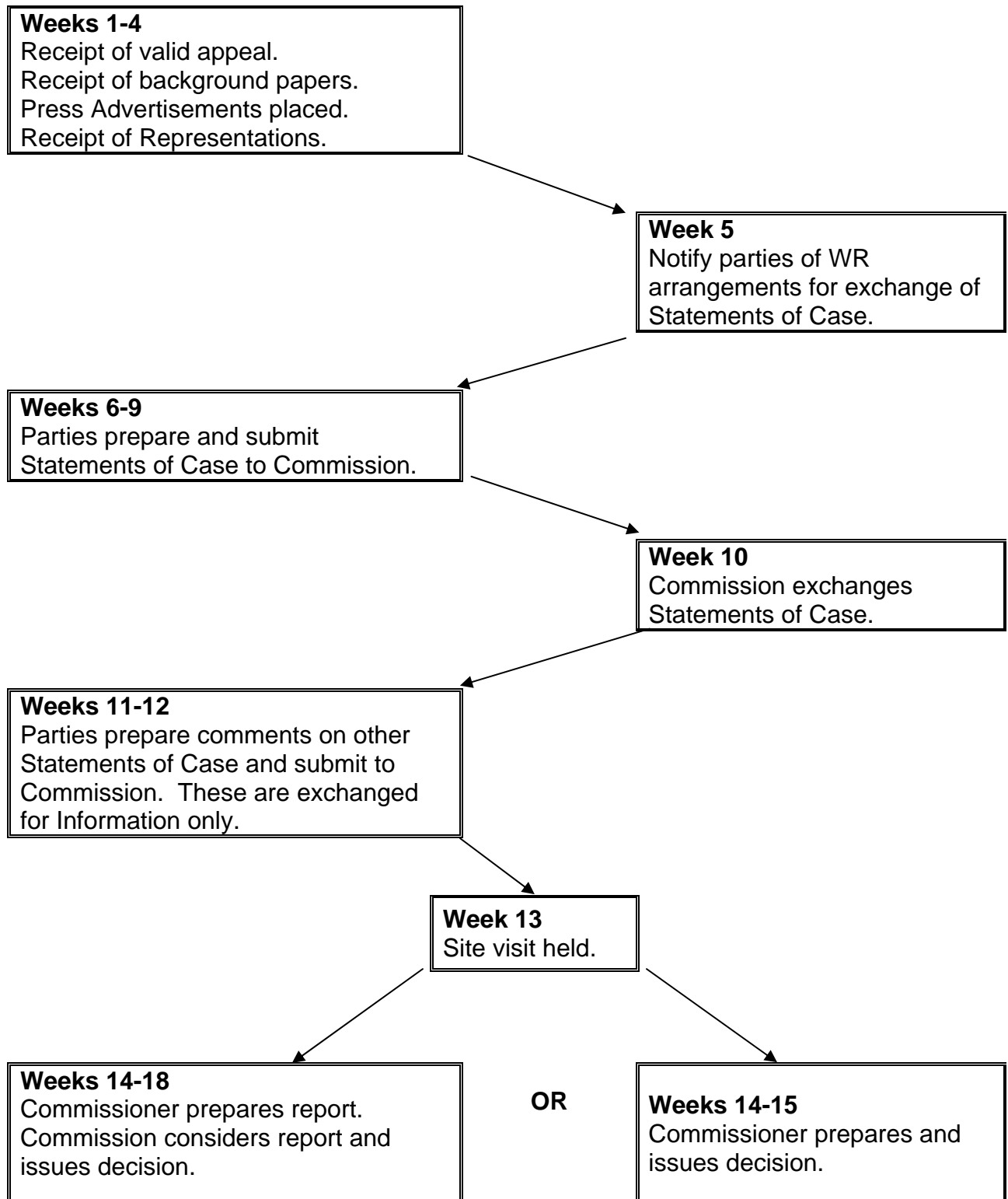
Illustrative Procedural Charts

HEARING/WRITTEN REPRESENTATION PROCEDURES

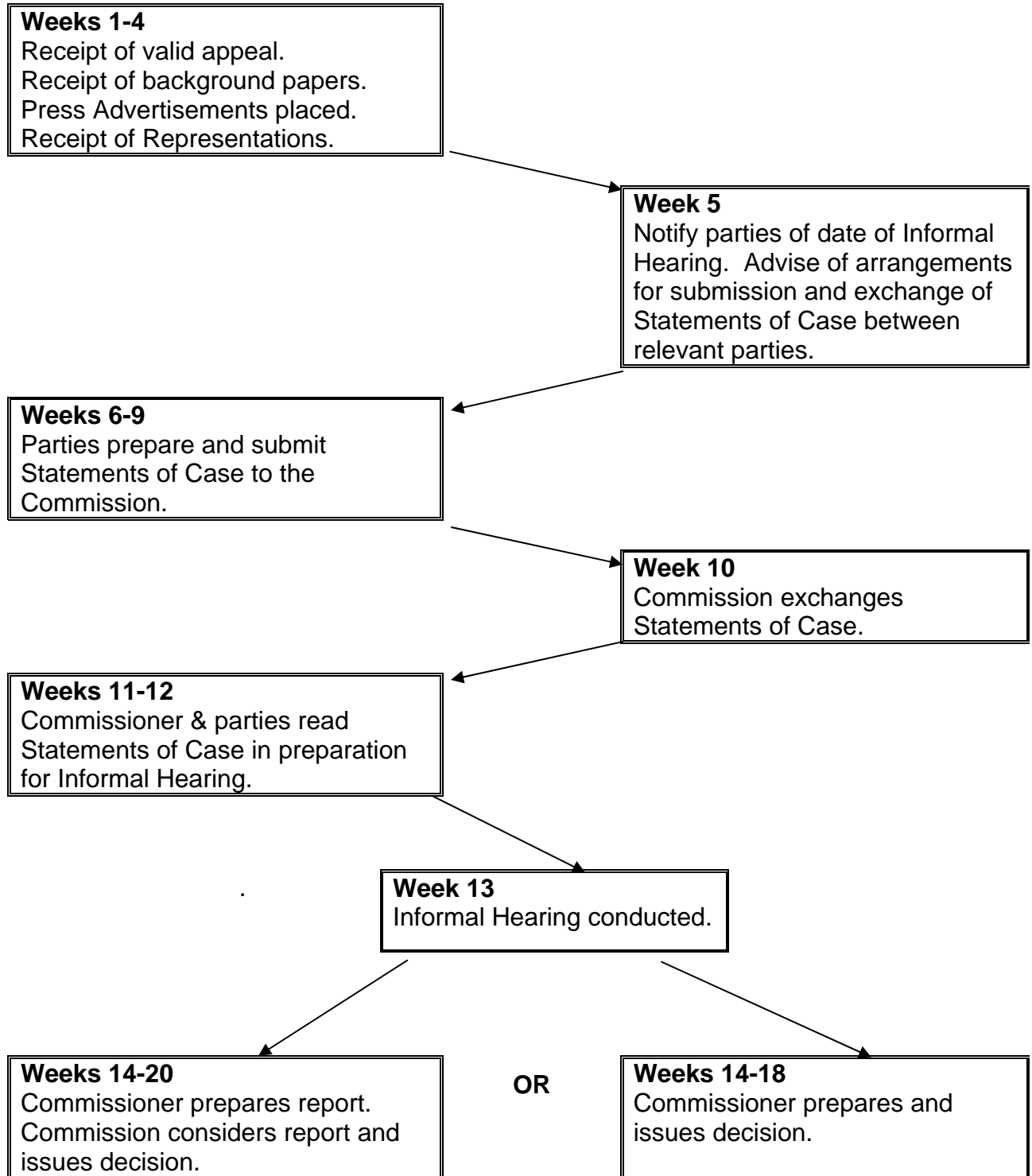
PROCEDURES FOR WRITTEN REPRESENTATIONS WITHOUT AN ACCOMPANIED SITE VISIT



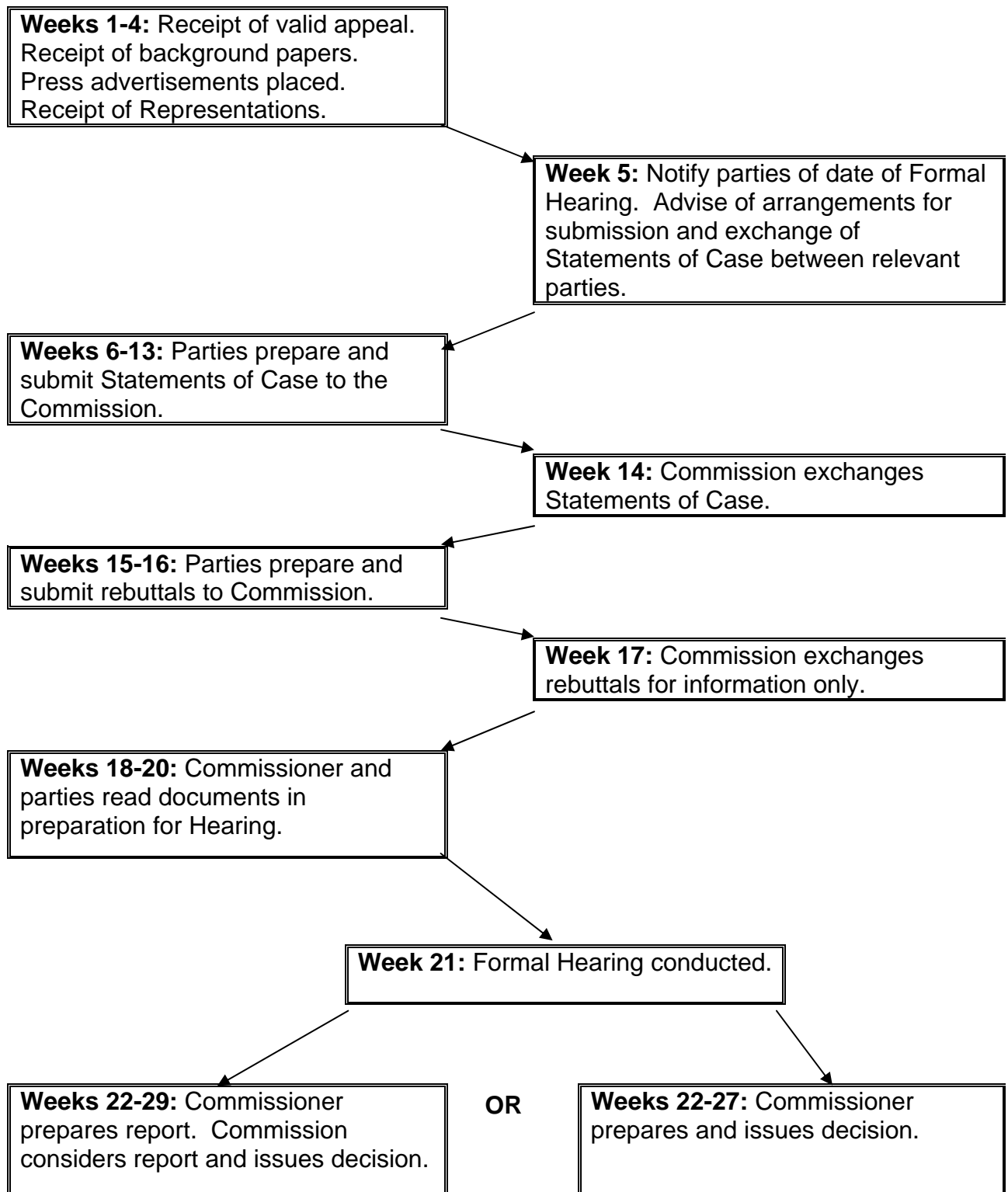
**PROCEDURES FOR WRITTEN REPRESENTATIONS
WITH AN ACCOMPANIED SITE VISIT**



PROCEDURES FOR INFORMAL HEARING



PROCEDURES FOR FORMAL HEARING



Appendix III

Key Planning and Water Legislation

KEY PLANNING AND WATER LEGISLATION

The Planning (Northern Ireland) Order 1991 as amended.

The Planning (General Development) Order (Northern Ireland) 1993 as amended.

The Planning (Use Classes) Order (Northern Ireland) 2004.

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999, as amended.

Planning (Control of Advertisements) Regulations 1992 as amended.

The Planning (Fees) Regulations (Northern Ireland) 1995 as amended.

The Planning (Listed Buildings) Regulations (Northern Ireland) 1992.

The Water and Sewerage Services (NI) Order 2006.

The Water (NI) Order 1999 as amended)

The Fisheries Act (NI) 1966 as amended.

Appendix IV
Advice on Preparation of
Statements of Case

ADVICE ON PREPARATION OF STATEMENTS OF CASE

A Statement of Case should not exceed 1500 words and should contain all the points you wish to make to support your case. It **must** be submitted within the specified time limits.

1.0 Appellants

Your statement may include the following:

- (i) **Site Description** - if the issues raised by the appeal involve site specific matters you should include a description of the site and its surroundings drawing attention to what you regard as critical factual features.
- (ii) **DoE's Reasons for Refusal/Imposing Conditions** - you may wish to address each reason for refusal/condition under dispute in turn or use a series of topics in relation to the main issues. It is important that you clearly set out why you consider that the reasons for refusal are not justified or conditions are not needed. To assist you in this you should examine any policy documents referred to in the reasons for refusal. If you are not sure which documents are relevant you should ask the local Divisional Planning Office which policy documents the DoE will be relying on and where they are available. You may refer to other policy documents/ guidance which you think are relevant.
- (iii) **Objections** - (if any) you should deal with each issue raised by objectors in turn which has not already been covered in your response to the DoE's reasons for refusal/imposing conditions.
- (iv) **Other Issues** - if there are any other relevant issues which you feel support your case you should deal with each one in turn.
- (v) **Maps** - Maps should be either A4 or A3 size. Photographs can be used but their location should be clearly identified on a map - larger maps are not acceptable.

2.0 Third Party Objectors/Supporters

Your statement may include the following:

- (i) **Site Description** - again the position as set out above will generally apply. However, you may feel that it is appropriate to highlight some features of the site relevant to your particular grounds of objection/support.
- (ii) **DoE's Reasons for Refusal/Imposing Conditions** - objectors should briefly indicate if and why they support the DoE's stance and then deal in turn and in more detail with other issues which have not been raised by the DoE but which are considered to be relevant. Likewise supporters should set out in turn the relevant issues leading them to favour the development. Supporters may consider it appropriate to liaise with the

appellant and, if both parties agree, include their views as part of the appellant's Statement of Case rather than making a separate submission.

The general comments relating to policy documents, maps, etc, also apply to objectors/supporters.

Original Letters of Objection/Support - if you consider that you have covered all the points you wish to make in your letter of objection/support submitted in respect of the advertisement of the application/appeal, you may simply send in the required number of copies of these letters with a note indicating that they are to be treated as your Statement of Case.

Common Cause - objectors or supporters **should** join together with other third parties (if any) sharing a common cause and submit a single Statement of Case (see paragraphs 17-19).

3.0 General Advice

Statements of Case should:

- (i) Concentrate on the main arguments you wish to make for or against the development/proposal.
- (ii) Deal very briefly with relevant minor or secondary issues which do not affect the principle of whether the development/proposal should be accepted or rejected.
- (iii) Avoid issues which are not relevant as these will not add anything to your case.
- (iv) Avoid lengthy quotations from published policy documents/guidance as the Commissioner will have copies of these.
- (v) Aim for clarity and be brief while covering all relevant matters.

Note: The Commission's administrative staff are available to answer any queries you may have on procedures but cannot provide technical advice or comment on the merits of appeals.

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