



PINS NOTE 05/2022r1

To:	All Inspectors, All Casework Managers
Relevancy:	All Planning, Enforcement and Specialist casework
Date of Issue:	15 February 2022
Review Date:	15 August 2022
Last Updated:	02 March 2022 – Footnote 2 to clarify where in the Town and Country Planning Act 1990 it limits Inspectors' powers under s319A.

Section 319A Town and Country Planning Act 1990 – Determination of Procedure

Introduction

1. Section 319A of the Town and Country Planning Act 1990 (see [Annex A](#)) gives the Secretary of State the duty to determine the procedure for dealing with various appeals. This duty will be exercised by the Planning Inspectorate on behalf of the Secretary of State, taking account of the criteria for determining the appeal procedure (see [Annexe K of the Procedural Guide](#)).
2. The legislation states that the Secretary of State must make a determination in respect of the appeal proceedings and notify the appellant or applicant and the local planning authority of that determination.
3. Whilst the statutory provisions have been in operation for several years, a recent legal challenge has highlighted that an Inspector cannot act on behalf of the Secretary of State for the purpose of s319A (except in very limited circumstances¹). Instead, the power to determine the initial appeal procedure or to subsequently change it, must be applied by administrative staff who are authorised under s319A to act on behalf of the Secretary of State in that regard.²

¹ If during a [planning](#) or [enforcement](#) appeal hearing it appears to the Inspector that the hearings procedure is inappropriate, the hearing procedure rules allow the Inspector to close hearing proceedings and arrange for an inquiry to be held instead, after consultation with appellant and local planning authority.

² Paragraph 2(10) of Schedule 6 "Determination of certain appeals by person appointed by the Secretary of State" of the Town and Country Planning Act 1990 limits

Action

4. In appeals where s319A applies (except those covered by footnote 1) there is a risk of successful legal challenge where Inspectors are seen to be acting beyond their legal powers if determining the choice of appeal procedure.
5. Therefore, when a determination of the procedure is made it must be made clear to the parties that it is a member of administrative staff who has made the decision. It is of course crucial that the Inspector's views are taken into consideration when deciding on the appeal procedure and so on such cases Inspectors should continue to liaise with Case Officers in recommending the most appropriate choice of appeal procedure and, where necessary, provide reasons to support their view. Where necessary the Case Officer may inform the parties that the Inspector's views on the appeal procedure have been sought and considered, as long as it remains clear that the overall decision on procedure is an administrative one.
6. The Inspector Training Manual, the casework desk instructions and appeals guidance will be updated in due course.

Further Information

7. Please contact [Knowledge Centre](#) if you have any general queries on this Note.
8. For case-specific queries, Inspectors should contact their IM in the first instance. The IM may raise the matter with the relevant PFL if necessary.
9. Non-salaried Inspectors should approach [Resource and Process Ownership Team](#) with any queries in the first instance.

the scope of para 2(9) and in so doing excludes Inspectors from the usual delegation of Secretary of State powers to an appointed person in relation to s319A.

Annex A

319A Determination of procedure for certain proceedings

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in [such one or more of the following ways as appear] to the Secretary of State to be [...] appropriate—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to:
 - (za) an application made to the Secretary of State under section 62A;
 - (a) an application referred to the Secretary of State under section 77 instead of being dealt with by a local planning authority in England;
 - (b) an appeal under section 78 against a decision of a local planning authority in England;
 - (ba) an appeal under section 106BC (appeals in relation to applications for modification or discharge of affordable housing requirements);
 - (c) an appeal under section 174 against an enforcement notice issued by a local planning authority in England;
 - (d) an appeal under section 195 against a decision of a local planning authority in England; and
 - (e) an appeal under section 208 against a notice under section 207(1) issued by a local planning authority in England.
- (8) But this section does not apply to proceedings if they are referred to a Planning Inquiry Commission under section 101; and on proceedings being so referred, any determination made in relation to the proceedings under subsection (1) of this section ceases to have effect.
- (9) The Secretary of State may by order amend subsection (7) to—
 - (a) add proceedings to, or remove proceedings from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings to which this section applies.
- (10) An order under subsection (9) may—
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.