



TRAINING NOTES SECTION 11

March 2016

ORDER DECISION AND REPORT WRITING

INTRODUCTION

- 11.1 The purpose of this section of the Training Notes is to provide advice to Inspectors on how decisions and reports upon Rights of Way Orders should be produced. These notes are supported by various skeleton examples, guidance on proof reading, guidance on short form decisions and information on the current reading and marking of decisions and/or reports that may take place (see the contents sheet for a list of all the documents included as appendices).

General

- 11.2 There are important distinctions between decisions on transferred cases (where an Inspector is appointed to take a decision on behalf of the Secretary of State / National Assembly for Wales) and reports on SofS / NAW cases (where the SofS / NAW makes the final decision). Firstly, for a report the Inspector makes only a recommendation. Secondly, when the Secretary of State is the decision-maker, the report must be self-contained, describing the site and setting out the cases for the parties in sufficient detail for the decision officer to understand the case fully.
- 11.3 However, there are some general principles that apply to both decisions and reports. Even when reporting, only the gist of the cases and not every word of evidence should be given. The important thing is to distinguish between those points likely to be pivotal in reaching a decision, and those that are not. Thus, whether writing a report or a decision, it is perfectly in order to sum up unarguably peripheral or uncontentious evidence to a greater extent than disputed or central matters. Obviously, much greater caution in this approach is necessary when writing a report. Inspectors must be quite certain that the Secretary of State could not reasonably attach greater relevance to a matter which they regard as peripheral.

- 11.4 In re-opened cases or in those closely related to an earlier one, Inspectors should not say that a previous Inspector or the Secretary of State came to the wrong conclusions. Instead, they should concentrate on their own analysis of the evidence before them. They should identify any changes in circumstances, any new, or better or more detailed evidence, or the greater or lesser weight that they have given to the evidence before them. Previous decisions should not be cited as a precedent. Each case must be decided on its merits.

TRANSFERRED DECISIONS

- 11.5 What makes a decision very different from a report is the fact that the Inspector is the decision-maker. This gives Inspectors much more scope for editorial judgment.
- 11.6 Accuracy, clarity and simplicity of language are attributes of a good decision. Any inaccuracy may be singled out by a losing party to cast doubt on the whole of the Inspector's treatment of the case. Otherwise good decisions can be spoilt by typographical and grammatical errors. Clarity and simplicity of language are qualities appreciated by all those who will read the decision. Simple expressions and short sentences and paragraphs are effective means of communication.
- 11.7 Decisions should not be too long, but brevity should not be sought at the expense of providing a satisfying and tactful explanation of the way the decision was reached. The losing party will inevitably be disappointed at the result, but ought at least to be reasonably convinced that there are sound reasons for the decision. See Annex 11.5 for advice on writing short format Rights of Way Decisions.
- 11.8 Defamatory remarks must not be made in decisions. This applies equally whether the remarks are the Inspector's own comments, or whether they are merely reporting something said by one of the parties. The fact that Inspectors are only repeating something said by one of the parties does not absolve them or the Inspectorate from responsibility, and the reporting of a defamatory statement may constitute the publication of a libel.
- 11.9 Inspectors should ensure that all decisions are submitted as quickly as possible but, notwithstanding the need for speed, they must always check their decisions thoroughly before they are submitted. Drafting errors are more easily picked up if the decision is written one day and checked the next.
- 11.10 Cases may occur where an Inspector forms the view that an Order should not be confirmed but that objections might be overcome were it to be modified. However, as a general rule Inspectors should not give an opinion as to what amendments might make an otherwise unsatisfactory Order acceptable and the decision should simply be not to confirm the Order. A desire to be helpful may merely result in fruitless post decision correspondence or put the Order Making

Authority (OMA) and possibly another Inspector in an awkward position at a later date.

- 11.11 Two useful tests to apply to a decision are:
- i. is it so constructed that the decision appears to be supported by the reasoning?
 - ii. are the reasons on which the decision is based explained sufficiently clearly for the parties to be satisfied that the Inspector has taken into account properly all the evidence on which they relied?
- 11.12 The decision should be understandable to members of the public who do not have any other material before them. Avoid the use of Latin or foreign expressions, and remember that the decision should be understandable to a lay reader.

THE FORMAT OF A DECISION AND THE DECISION TEMPLATE

- 11.13 The decision format is not a personal letter addressed to the Order Making Authority. It deals with the evidence in a direct and impersonal manner. It does not set out the cases for the parties separately and then deal with the respective merits of each case under "conclusions". The format goes directly to the Inspector's reasoning on each of the main issues under side and, if appropriate, sub-headings.
- 11.14 Decisions should be fully explained and thoroughly reasoned, yet succinct. The material considerations relating to the main issues should be fully discussed, without straying into excessive detail or covering superfluous matters. Peripheral or ancillary points, unrelated to the main issues, should be dealt with briefly as 'Other Matters'.
- 11.15 For Rights of Way cases, cost decisions will remain separate from the associated Order decision and should be prepared on the costs report template as appropriate (see separate guidance on costs decisions – under section 12 of these notes).
- 11.16 For inquiries or hearings lasting more than one day the convention to be adopted is that the decision heading will state the date when the event opened. You should then record accurately the dates when you sat under the heading of "Preliminary Matters" in the body of the decision. This information must be accurately recorded since the recovery of any costs for the event may be based upon it.

SETTING UP A DECISION/REPORT

- 11.17 Decisions and reports should be set up using the Decision and Report Document System (DRDS). This is available on the tool bar in microsoft word (currently only available in Windows 2003).

WRITING YOUR DECISION

- 11.18 The accompanying examples show how your decisions should look (see appendices 11.5 to 11.8. Note the overall layout, with the basic case details set out in bullet points at the beginning, together with the summary of the decision. The notes below give guidance on how to set out your narrative, the use of side and sub-headings, and the formulation for the formal decision, conditions etc.

General matters

- 11.19 The templates are not a straightjacket. You are still expected to use your experience, training and judgement to write and present a decision or recommendation in a readable and properly reasoned way. However, the use of side and sub-headings lends itself to a tighter, 'punchier' style of writing.
- 11.20 As the decisions are not addressed to anyone it is not possible to refer to 'you' or 'your council' in your narrative, but it is still appropriate to say things like "*I consider...*" and "*in my view...*".
- 11.21 PINS standard layout for the decision format is the hanging indent style with side and sub-headings; that is:
- The paragraph number against the left-hand margin
 - Text set out in an indented block (as per these notes)
 - Text fully justified
 - Side headings (and sub-headings) used to divide the main sections of the text.
- 11.22 Inspectors should not use the 'Normal' style unaltered for their decisions – that is with all text against the left-hand margin.
- 11.23 The preferred hierarchy for side and sub-headings is:
- **CAPITALS IN BOLD** (generally only used in longer decisions/reports)
 - **Lower Case in Bold**
 - ***Lower Case Bold in Italic***
 - *Lower Case in Italic*
- 11.24 Although the office is now equipped with colour photocopiers it is normal practice for photocopied decisions to be issued in black & white. You are recommended to change any coloured text (particularly any text in grey) to black if the template you are using gives you coloured text. Copies of Order maps accompanying decisions on modified Orders will normally be copied in colour in order to clearly show any modifications made. Other documents, including decisions, will only be copied in colour if there is a need for any differences to be obvious to those receiving the documents. You should only use colour variations on your decisions if this is required and notify the RoW team of the reason for this.

Details box

11.25 Insert details as follows:

- The relevant Section and Act and the title of the Order
- The name of the OMA
- The date of the Order and the number of objections. If an inquiry or hearing case then state there were X objections outstanding at the commencement of the inquiry/ hearing. If a written reps case then state there were X objections outstanding.
- Briefly set out what the Order proposes e.g. *"the Order proposes to divert part of footpath 99 to a new line"*. Note that the details of the route are set out in the Order Plan and Schedule.

11.26 The following additional information should be set out where the decision relates to modification(s) that have been proposed by an Inspector:

- The date of the decision that contained the proposed modification(s)
- The number of objections that have been made in relation to the proposed modification(s), or a statement that no objections have been made
- A brief description of the effect of the proposed modification(s).

Summary of Decision

11.27 The Summary of Decision will be a simple statement of fact: -

- Order confirmed –
"The Order is confirmed"
- Order not confirmed –
"The Order is not confirmed"
- Order confirmed with a modification that does not require advertising -
"The Order is confirmed subject to modifications set out below in the Formal Decision"
- Proposal to confirm the Order subject to a modification that requires advertising –
"The Order is proposed for confirmation subject to modifications set out below in the Formal Decision"

Preliminary Matters

11.28 Preliminary matters are dealt with at the beginning of the document, usually after the case details have been set out. These should be identified under a side heading.

- 11.29 Matters which have to be covered here will be detailed points of clarification (e.g. to note a minor error in the description of the route given in the Order Map and Statement) or to record procedural matters. Dealing with such points early will allow discussion of the main issues to take place without having to be side-tracked dealing with minor technical irregularities or procedural points.
- 11.30 You should not include a site description as the parties to the Order, its supporters and the objectors, will be (or at least should be) fully aware of the details of the route themselves. However, any detail observed on the site visit that is regarded as material to the decision should feature in the body of the decision under your consideration of the main issues.
- 11.31 For inquiry/hearing cases you should record the duration and details of sitting time. It is particularly important that this is accurately set out since PINS may be required to recover the costs of inquiry sitting days and this entry will be the only official record of the actual duration.
- 11.32 For written representation cases you should note whether you held an accompanied or unaccompanied site visit. This is also the place you should mention any people that you may have met or spoken with during an unaccompanied site visit. If on an accompanied site visit, however, you should only mention those additional people with whom you meet and not those with whom the ASV was arranged because the details of those are recorded on the file.
- 11.33 Another item that may appear in inquiry or hearing cases is a reference to any applications for awards of costs. Again it is important that these are recorded here so that procedure staff are made aware of associated costs decisions.
- 11.34 Other types of information which should be recorded here include:
- Rulings requested from and made by the Inspector
 - Requests for adjournments where special circumstances arise
 - Cases where the OMA takes a neutral stance and another party is promoting the Order
 - Any other facts or information made known to the Inspector and not recorded elsewhere.
- 11.35 Whereas it would be unusual to record all such points under the 'Preliminary Matters' side heading, for more complex cases it might be necessary to divide such points up into separate groupings – e.g. 'Procedural Matters', 'Preliminary Matters' and 'Matters for Clarification'. The format allows for such variations, providing you keep to the house style for side and sub-headings (see above). However, in order to minimise confusion amongst those who receive and read Order Decisions, it is recommended that such variations are used rarely and only where circumstances indicate it would be justifiable.

Main Issues

- 11.36 Identify each main issue clearly and separately under this side heading using sub-paragraphs as necessary. For Public Path Orders, you would list the relevant criteria first, followed by any other main issues that do not sit under any particular criteria (if any). For Definitive Map Orders, you might list the main evidential issues, for example the date of calling into question or items of documentary evidence. This is beneficial because, further down the decision, under Inspector's reasons you will be able to deal with each issue separately under a specific side heading which relates back in sequence and content to the main issues.
- 11.37 When writing decisions dealing with modifications proposed by an Inspector, it might also be possible to list the main evidential issues such as the correct width of the path. However, in some cases it might be necessary to identify the main issues less specifically, for example whether there is any new evidence which has a bearing on the proposed modification(s) and/or whether there is reasonable justification for the proposed modification(s).

Reasons

- 11.38 This part of the decision document is where you set out your consideration of the arguments put to you, for and against the Order, leading to a clear statement of your own view on each main issue. Set your narrative out under separate sub-headings relating to each main issue. Come to a definite conclusion under each main issue. Cover any other relevant matters after consideration of the main issues, under an appropriate side heading (e.g. Other Matters).
- 11.39 The facts necessary to set out the reasoning leading to your conclusion for each issue must be clearly stated. By discussing the cases on an issue-by-issue basis, the decision document should be more succinct than the previous practice of reciting the case for each party in turn, before coming to your conclusions. It is also easier for the recipient to follow. Experience of this practice in other areas of PINS' casework suggests that repetition of facts is unlikely unless you are dealing with a matter under the wrong heading. It may seem a very rigid discipline at first, but with practice it is likely to result in clearer and more concise decisions.

Conclusions

- 11.40 The wording will be one of the following standard options:
- "Having regard to these and all other matters raised at the inquiry/hearing and/or in the written representations I conclude that the Order should [not] be confirmed"* (confirmed/not confirmed).
- "Having regard to these and all other matters raised at the inquiry/hearing and/or in the written representations I conclude*

that the Order should be confirmed with modifications" (confirmed with modifications).

Formal Decision

11.41 This sets out the decision in full:

Order confirmed:

"I confirm the Order"

Order not confirmed:

"I do not confirm the Order"

Order confirmed with a modification that does not require advertising:

"I confirm the Order subject to ..."

Proposal to confirm the Order subject to a modification that requires advertising:

"I propose to confirm the Order subject to"

"Since the confirmed Order would (affect land not affected by the Order) (show as a highway of one description a way which is shown as a highway of another description in the Order) (not to show a way in the Order) (show a way not shown in the Order) as submitted I am required by virtue of..."

Select as appropriate:

Paragraph 2(3) of Schedule 6 to the Highways Act 1980

Or

Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981

Or

Paragraph 3(6) of Schedule 14 to the Town and Country Planning Act 1990

"... to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure."

Signature

11.42 Your name should be typed at the end of the decision using the Monotype Corsiva font at 18 point size. There is no need to type your qualifications after your signature as all of these details are included in the main heading. However, you should put the word 'INSPECTOR' against the left-hand margin below your signature.

Appearances and Documents

- 11.43 If you have held an inquiry or hearing it will be necessary to append a list of appearances, documents, plans and photographs to your decision document or report. The lists should be started on a separate page from the decision document or body of the report.

Multiple Order Cases

- 11.44 Should there be more than one Order that has been considered at the same inquiry, hearing or site visit, it may be appropriate for either a combined decision (one document), or separate decisions to be made. In any event it should be remembered that a combined decision does not lessen the need to consider each Order fully on its own merits. An example of a combined decision template is included as Annex 11.6, however you should be aware that this may vary according to differing circumstances as per paragraphs 11.58 to 11.62 below.
- 11.45 It is more usual to write a single document, but to separately set out the details of each decision – labelling them Order A, Order B etc., as appropriate, and giving a separate summary of decision on each Order. However, the narrative of the decision document may deal with matters which are common to all the Orders under a single section. Where specific points relate only to one of the Orders, this must be clearly distinguished by the use of side/sub-headings in the text.
- 11.46 A combined decision should generally be set out as described above for a single decision, with the following differences:
- There will be separate details boxes giving the details of each Order being decided upon.
 - The summary of decision will summarise the decisions upon all of the Orders.
 - The Main Issues will set out the main issues for each Order in turn under separate headings. The exception will be where the Orders are of identical type and have identical issues, in which case this should be stated.
 - Each Order should be identified by name (which need not be the whole title of the Order) or letter (for example Order A, Order B etc.) then dealt with under that name as a separate side heading, sufficient for each to be recognised. Under each Order side heading would follow the Reasons, Other Matters and Conclusions.
 - There will be one Formal Decision at the end, listing the decisions upon all of the Orders.
- 11.47 The combined decision approach must be used where a Highways Act section 118 Order has been submitted concurrently with a section 26 (creation), or section 119 (diversion) Order. As section 118(5) of the Act enables a path that has been created by either a section 26 or 119 Order to be taken into account when considering a section 118

extinguishment Order, it is that (extinguishment) Order which should be dealt with last in the decision.

- 11.48 Where there are other combinations of Orders, it will be for the Inspector to decide whether it will be clearer to the recipients to receive combined or separate decisions. For example, where there are a number of Orders which have differing groups of involved/interested parties, it will probably be beneficial to issue separate decisions.
- 11.49 Where it is decided to issue separate decisions upon Orders that were subject of the same inquiry or hearing, a cross reference should be made under Preliminary Matters (or Procedural Matters, if appropriate).

REPORTS TO THE SECRETARY OF STATE/NATIONAL ASSEMBLY FOR WALES

- 11.50 Writing reports is a different discipline. In these cases the Inspector has been appointed to consider the evidence relevant to the case, to report this in a rational and balanced fashion and then to draw conclusions from all the evidence – given at the inquiry, in writing and observed at the site visit. The report should conclude with a recommendation to the Secretary of State as to the decision to be made.
- 11.51 Secretary of State cases (i.e. recovered decisions) are rare in rights of way work.
- 11.52 It should be noted that the tone of a report differs from an Order Decision where an Inspector is the decision-maker on behalf of the Secretary of State. It should be suitably deferential, using phrases such as *"I would draw the attention of the Secretary of State to..."* and *"If the Secretary of State concludes X he/she may wish to consider Y...."*.

Aim of the Report

- 11.53 The Inspector should ensure that he or she reports with the greatest care and accuracy. The report should provide concisely all the information that the Secretary of State / NAW will need in order to understand the issues involved and the representations made. However, it is only necessary to report the gist of the cases of the parties, rather than a fully detailed or verbatim record of the evidence and opinions. At the same time, the report should satisfy the parties to the inquiry that their evidence and submissions have been properly understood, fairly reported and accorded appropriate weight.

Format of the Report

- 11.54 The preferred form of the report consists of some or all of the elements listed below:

- A title page (for all reports)
- A table of contents (for longer reports)
- A list of abbreviations and acronyms used (for longer reports)
- A preamble (to clarify or set out procedural matters, dates and duration of the inquiry etc.) and/ or
- An introduction (to explain the structure of your report and other matters to assist the reader)

(In many cases, a preamble might be more conveniently combined with an introduction under a single sub-heading of 'Introduction')

- A description of the route and its surroundings
- The gist of the case for the Order Making Authority
- The gist of the case for the supporters of the Order
- The gist of the case for the objectors
- The Inspector's conclusions
- The Inspector's recommendation(s) (or his/her reasons for not making any recommendation(s))
- The Inspector's signature

11.55 Appendices must include:

- A list of those who appeared at the inquiry (or the parties to an appeal)
- Lists of all the documents, plans and photographs submitted to the inquiry

(Some skeleton examples of reports are included as annexes to this section of these guidance notes)

Title Page

11.56 A title page should set out:

- The title of the Act or Acts under which the inquiry was held (or appeal lodged)
- The title of the Order (or details of appeal)
- The date(s) on which the inquiry was held (i.e. the full period, not just the opening date)
- The case reference number
- The name and qualifications of the Inspector

(Some examples of title pages are included as annexes to this section of these guidance notes).

Table of Contents

11.57 The table of contents should set out the report's divisions and sub-divisions or even paragraph numbers so that the reader can tell at a

glance how it is constructed and where matters of particular interest can be found. This is generally considered essential for reports of more than a few (10) pages. Word processing packages can be used to automatically create (and up-date) a table of contents.

Abbreviations and Acronyms

- 11.58 Where a report makes abbreviated reference to bodies, companies, documents etc the full name should be used initially and the abbreviation / acronym given in brackets immediately after. Thereafter it will only be necessary to use the abbreviation / acronym. However, in longer reports (e.g. more than 25 pages) and where there are numerous abbreviations (e.g. 10+) the reader may not find it easy to find or remember the initial explanation for the shortened form. In which case a list or glossary of all the abbreviations and acronyms used in the report should be included either after the table of contents or as an annex at the end.

Preamble/Introduction

- 11.59 The Preamble (or Introduction) should always be formally worded and should begin:

"I have been appointed to report to the Secretary of State for"

And can conveniently continue:

"...on (quote the date) I held an inquiry at (quote the venue) for the purposes of hearing representations and objections concerning"

"...an application made by the (specify) Council under Section (specify) of the (specify) Act (quote the date) for confirmation of the following Order: (specify quoting the precise title)"

- 11.60 The preamble should also include the dates on which any formal site inspections took place. In cases where no site visit has taken place but the Inspector is satisfied a recommendation can be made without one, this should be recorded.

- 11.61 The Preamble (or Introduction) should include:

- A brief statement on the purpose and scale of the proposal
- The number of objections outstanding at the start of the inquiry and the number since withdrawn; and the number of objectors who appeared or were represented at the inquiry
- A brief summary (general headings) of the main grounds for objection
- A brief statement about any requests for adjournment and the decision given
- A record that the OMA confirmed that they had complied with all the statutory formalities

- A brief statement about any legal submissions, with a cross reference to any further details of such submissions appearing in the body of the report
- A reference to any suggestions that a party would be making an application for costs
- If appropriate, the reasons for the “recovery” of the decision
- Any other matters the Inspector wishes to bring to the attention of the SoS/NAW

11.62 The Preamble/Introduction should end with a note about the format of the report, along the following lines:

“This report contains a brief description of the site of the proposals (the subject of the Order) and its surroundings, the gist of the cases presented and my conclusions and recommendations. Lists of inquiry appearances, documents, plans and photographs are attached”.

Description of the Route

- 11.63 This should be a brief, factual pen picture of the route and its surroundings. It should include only as much detail as is necessary for the matters at issue to be fully understood by the decision-maker. Clearly this may be difficult where no site visit has taken place but as much information as can be found from the case documents should be included.
- 11.64 Opinions or qualitative, subjective descriptions which could be interpreted as conclusions and/or expressions which include emotive adjectives which might appear to indicate a predisposition on the Inspector’s part should be avoided. Examples are: *“a delightful stretch of beautiful countryside”* or *“a depressing area of derelict industrial land”*.
- 11.65 Inspectors occasionally find it necessary to give their own brief description of alternative routes or sites put forward by objectors at inquiries. Provided they are clearly identified as the descriptions of such routes or sites, they can be included immediately after the description of the site and surroundings of the proposal which is the subject of the inquiry. However, if the alternative route is a substantial one which justifies its own part of the report, it would be more appropriate for the route description to be contained in that part of the report.
- 11.66 References to any plans which might help the decision-maker to identify the various features mentioned in a site description should be included. On-site agreements about measurements, physical features, etc, which may have been in dispute at the inquiry, should be recorded so that they can be referred to in the conclusions, if necessary. Where any maps or plans are out of date, it is usually helpful to mention this.

The Cases

In General

- 11.67 In reporting the cases Inspectors may use either the present or the past tense, but the chosen tense should be used consistently throughout the report.
- 11.68 The report on each case should contain only the gist of the main arguments and evidence put forward in support of that case at the inquiry. The Inspector must exercise judgment as to what to include, having regard not only to the salient points of the evidence-in-chief, but also those which emerged during cross-examination and re-examination. A brief mention should be made of any point to which a party attached great importance, even though it might not have the same significance as far as the Inspector is concerned. However, defamatory remarks must not be included. The fact that the Inspector is only repeating something said by one of the parties does not absolve him or her from responsibility, as reporting a defamatory statement may constitute a libel. So that the decision-maker can evaluate a statement that is reported, it may be helpful to make clear the degree of professional expertise of the person offering the opinion.
- 11.69 Since the Inspector is not going to report on everything that was said, the report of each case should be prefaced by the following or similar words:
- "The material points are (were):..."*
- 11.70 Reporting involves marshalling the submissions, arguments and evidence for each party and setting them down in a logical, concise and cohesive form in which each point is made only once. It is the Inspector's duty to present the cases in the best possible light. Where they are lengthy it is helpful to set out the cases under a series of sub-headings such that the gist of a page can be seen at a glance.
- 11.71 The conditional mood should be used where appropriate as using the present tense might imply that a decision has already been taken. Phrases like *"it is submitted that..."* or *"the objector stated that..."* are out of place and should not be used.

The Case for the Order Making Authority (OMA)

- 11.72 The case for the OMA should include the following elements:
- A brief description of the Order route and the justification which led to making the Order
 - Comments from consultees; any representations duly made by any other person
 - In those instances in which a general rebuttal of objections is made, this can be reported as part of the OMA's case. Alternatively it can be inserted as a final reply after all the other cases have been reported

- The reporting of the specific rebuttal of each individual objection should follow the reporting of that objection

The Cases of the Supporters

- 11.73 These should follow the case for the promoting authority or promoter and may be either grouped together or reported singly, depending upon their extent and content. The cases for public authorities, statutory undertakers and national organisations should normally be reported under separate headings.

The Cases of the Objectors

- 11.74 These should follow those of the supporters and, like the latter, may be either grouped together or reported separately depending upon their extent and content. Again, the cases for public authorities, statutory undertakers and national organisations should normally be reported separately (under separate headings), and where appropriate each should contain the gist of any comments or representations about the Environmental Statement and the likely effects of the proposed development.
- 11.75 It is often possible to group individual objections together very effectively under a number of different subject headings (i.e. a topic-based report), thereby giving the reader a comprehensive picture of the nature and weight of objections relating to the main considerations. However, unrelated objections should be reported separately. Usually statutory objectors should be reported before other objectors (under separate headings) and written submissions left to the end and only reported on if they raise issues not already covered. Should that not be the case, then a simple statement *"The written submissions did not raise any issues not already reported"* should be included.
- 11.76 Whichever method of reporting is chosen the headings should be consistent and self-explanatory.

Conclusions

To be Based on Facts

- 11.77 The Inspector's report to the Secretary of State must include conclusions and a recommendation. There is no need to record separately findings of fact; indeed, current practice is to weave in relevant facts in a discussion of the material considerations. Nevertheless this does not absolve the Inspector from recording the factual basis for his or her conclusions, and so they must be based on the facts derived from the body of the report.
- 11.78 Conclusions should be prefaced by words such as:

"Bearing in mind the submissions and representations I have reported, I have reached the following conclusions, reference being given in brackets to earlier paragraphs, where appropriate."

- 11.79 The facts that are identified from the paragraphs referred to in brackets form the basis for the Inspector's conclusions. These conclusions provide the link between the factual matters found in the body of the report and the recommendation, and should set out clearly and explicitly the reasoning which leads him or her from one to the other. They should consist of the Inspector's reasoned judgement on each of the considerations in turn in a logical sequence. They should end with a final paragraph in which the conclusions on the various considerations are drawn together. This should bear the heading 'Summary'.

Legal Issues

- 11.80 Any legal issues should be dealt with first and should always be prefaced by some such words as *"whether or not is the case is clearly a matter of law, but it seems to me that"* Wherever possible the Inspector should then go on to give his/her view of the issue including, if possible or appropriate, likely alternative outcomes according to whatever view is taken by the Secretary of State/NAW on the legal submission(s).

Preliminary and Ancillary Matters

- 11.81 It is not unusual for Inspectors to refer to certain preliminary matters before they set out their main conclusions, and to deal with certain ancillary matters at the end of them. They should ensure that such matters do not interfere with the logical flow of reasoned argument concerning the major issues in the main body of the conclusions. The preliminary matters might well be included in an Introduction.

Arrangement of Conclusions

- 11.82 It is not appropriate to identify the main issues in a report to the Secretary of State/NAW, neither is it necessary to advise the Secretary of State/NAW of his/her own policies or the law. However, the decision-maker may find it helpful if the Inspector were to set out the material points on which a decision should be based.
- 11.83 The arrangement of the Inspector's main conclusions will vary according to circumstances, but the conclusions themselves must relate to the Order as a whole and not merely to the objections and representations.

Separate Consideration of Each Order

- 11.84 In multiple, related Order cases (i.e. not omnibus Orders), the Orders must be considered individually as the Inspector is required to reach a separate conclusion on each of the Orders. To achieve this it may be helpful to consider the merits of the whole proposal first and then to address the individual Orders. There are likely to be more objections to the proposal at large than to individual Orders. In omnibus Order cases each path or byway might be given separate consideration.

- 11.85 The report of the nub of the case made by the OMA will be followed by an examination of the substance of the objections made both at the inquiry and in the written representations. There will then follow an overall judgement on the subject of the Order, together with the reasoning which leads to any recommended modification, bearing in mind the submissions and objections made, and the criteria specified in the relevant Act.

Consideration of Objections

- 11.86 In considering the objections it is important that the Inspector reaches a conclusion on each one. Therefore, it can be helpful if the same order of reporting the case of the objectors is followed in the conclusions.

Introduction of New Matters

- 11.87 Inspectors should never introduce arguments into their conclusions which were not canvassed at the inquiry. The introduction of any new matter on which the parties have not been given an opportunity to comment would be in breach of the rules of natural justice and could easily lead to a successful challenge in the Courts.
- 11.88 Likewise Inspectors must not draw conclusions from, or make reference to, inquiry documents unless due reference has been made to the documents concerned in the body of the report. There is no scope for "Other Matters" to be included in the report. The conclusions must never contain matters which have not been reported in the case for one or other of the parties.

Consideration of Alternative Proposals

- 11.89 Although the Inspector is not in a position to make a recommendation on any alternative proposal, any such proposal (and any counter-objections to it) must be given due consideration, and any apparent advantages and disadvantages compared with the proposal. This is because the Inspector will need to be in a position to advise the Secretary of State/NAW on whether the alternative in question appears to warrant further investigation in the event of the Inspector coming to the conclusion that, whilst the proposal may be justified in principle, the objections are sufficiently overwhelming to lead the Inspector to recommend against it.
- 11.90 An Inspector should never presume to read the Secretary of State's/NAW's mind by assuming only one possible conclusion can be reached. Where there are alternatives to be considered, the implications of each should be discussed.

Wording of Conclusions

- 11.91 When an Inspector's report is published it will be read by parties and individuals who are disappointed by the decision. The Inspector's conclusions should therefore be so worded that they leave such people in no doubt that their arguments have been comprehended and fully considered, giving reasons why those arguments were not successful.

Recommendations

Form of Recommendations

11.92 The Inspector's recommendation should accurately include the title of the Order and use the following form of words depending on which of three courses of action are taken. Where an Order is concerned, one of the following three courses of action should be recommended using only the prescribed form of words:

- *"That the (specify) Order be confirmed without modification."*
- *"That the (specify) Order be modified by and that the Order so modified be confirmed."*
- *"That the (specify) Order not be confirmed."*

11.93 If the proposed modifications are very long, rather than embody them in the Recommendations, it is better to refer to where the detail lies in the report, or in an appendix to the report – (*".... be modified as detailed in paragraph ... above" or "... as referred to in paragraph ... above and detailed in Appendix ..."*).

Inability to Make a Recommendation

11.94 When the Inspector is unable to make a recommendation reasons should be given. Under the heading Recommendation the Inspector merely states:

- *"For the reasons given in paragraph I make no recommendation on the (specify) Order".*

Recommendations Confined to Orders Before Inquiry

11.95 The Inspector's recommendations must be confined to the Orders that are the subject of the Inquiry. They must not include recommendations on other matters or contain advice, suggestions or reasoning. They should flow logically and inevitably from the Inspector's conclusions.

Conditional Recommendations

11.96 An Inspector should never attempt to make a conditional recommendation because neither the Secretary of State nor the National Assembly for Wales has powers to attach conditions to Orders.

11.97 If an Inspector concludes that an Order should not be made unless or until some negotiation has been completed, some matter has been dealt with, or some problem investigated, he or she should say so in the conclusions. The Inspector should then recommend that the Order be confirmed, or not confirmed unless the matter in question has been cleared up. The choice of recommendation will depend upon the likelihood of the uncertainty being satisfactorily resolved.

Appendices to the Report

List of Appearances

- 11.98 A list of Appearances is required for all inquiries. It should record the names of those who spoke at the inquiry, whether to make a statement, to present evidence for cross-examination, or to ask questions. It is good practice not to allow anyone to address the inquiry, even by way of a question, without taking their name and address, and recording them on the list of appearances. It is advisable, even if the Inspector considers the point to be irrelevant or repetitious, as the person concerned may not share that view and may pursue the matter beyond the inquiry. The appearances list should be attached to the report

List of Documents, Plans and Photographs

- 11.99 Documents, plans and photographs should be given unique numbers and listed in a further appendix to the report. The format will depend on the system of organising and numbering used at the inquiry. It may not be convenient to distinguish between documents, plans and photographs.
- 11.100 Proofs of evidence are not normally inquiry documents and are not included in the list because they are open to challenge, revision and concessions through cross-examination. The Inspector's report, together with any appendices, which support proofs of evidence, should be an accurate and adequate record of relevant evidence. However, where the proofs include tables or schedules which are not challenged and which are useful references for the report, the schedules or tables can be treated as inquiry documents and recorded as such on the list. The list should make clear the origin of any such tables etc. used. If significant aspects of the evidence were changed, or conceded in cross-examination then the tables etc. should not be appended as inquiry documents. Inspectors may like to separately list proofs of evidence, with a cautionary note that their content may have been challenged or varied through cross-examination.

Dispatch of the Inspector's Report

- 11.101 One copy of the signed and undated report together with all the documents, plans and photographs submitted, bearing unique numbers and bundled in sequence, should be sent to the RoW Team for onward transmission to the Secretary of State/NAW. If the documents are too bulky for posting the advice of the RoW Team should be sought.