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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 434**

**TOWN AND COUNTRY PLANNING**

The Town and Country Planning  
(Appeals) (Scotland) Regulations 2008

Made - - - - 22nd December  
2008  
Laid before the Scottish  
Parliament - - - - 23rd December 2008  
Coming into force - - 3rd August 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 47(2) and (3), 130(3) and 131(1) (and as applied by section 180(3)), 154(2), 169(3), 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997(1) and all other powers enabling them to do so.

PART 1

Preliminary

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Appeals) (Scotland) Regulations 2008 and come into force on 3rd August 2009.

(2) These Regulations apply, as specified in paragraph (3), to appeals made under—

- (a) section 47 (appeals against planning decisions and failure to take such decisions) of the Act;
- (b) section 130 (appeal against enforcement notice) of the Act;
- (c) section 154 (appeals against refusal of certificate of lawful use or development) of the Act;
- (d) section 169 (appeal against section 168 notice) of the Act; and
- (e) section 180 (appeal against amenity notice) of the Act,

where notice of appeal is given to the Scottish Ministers under section 47(3), 130(2), 154(2), 169(2) or 180(2) of the Act, as the case may be, on or after 3rd August 2009.

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(1) 1997 c. 8. The Town and Country Planning (Scotland) Act 1997 (“the Act”) was amended by sections 19, 52(1) and 54(6) of and the Schedule to the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#). The functions of the Secretary of State under the Act transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). See section 277(1) of the Act for the definition of “prescribed”.

(3) These Regulations—

- (a) other than Parts 4, 5 and 6, apply to a delegated appeal under section 47 of the Act;
- (b) other than Parts 2, 5 and 6, apply to appeals under sections 130, 169 and section 180 of the Act as they apply to an appeal made under section 47 of the Act;
- (c) apply to an appeal under section 154 of the Act in accordance with regulation 16; and
- (d) apply to non delegated appeals in accordance with regulation 18.

(4) These Regulations apply in accordance with regulation 17 to applications referred to the Scottish Ministers following a direction under section 46(1) (call in of applications by the Scottish Ministers) of the Act given on or after 3rd August 2009.

## **Interpretation**

**2.** In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“appellant” means a person who gives notice of appeal under section 47, 130, 154, 169 or 180 of the Act;

“appointed person” subject to regulations 17 and 18, means a person appointed under paragraph 1 of Schedule 4 to the Act to determine an appeal instead of the Scottish Ministers;

“decision notice” means the notice given by the planning authority of their decision on the application to which the appeal relates;

“delegated appeal” means an appeal to the Scottish Ministers which falls to be determined by a person appointed by the Scottish Ministers for that purpose by virtue of powers contained in Schedule 4 to the Act;

“hearing session” means a hearing held or to be held into matters specified in a procedure notice given under rule 1(1) of the Hearing Session Rules;

“Hearing Session Rules” means the rules set out in Schedule 1 to these Regulations;

“inquiry session” means a local inquiry held or to be held under section 265 of or paragraph 6 of Schedule 4 to the Act into matters specified in a procedure notice given under rule 1(1) of the Inquiry Session Rules;

“Inquiry Session Rules” means the rules set out in Schedule 2 to these Regulations;

“interested party” means—

- (a) in the case of an appeal under section 47 of the Act—
  - (i) any authority or person consulted by the planning authority in compliance with a requirement imposed by virtue of section 43(1)(c) of the Act and from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application; and
  - (ii) any other person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application, before the end of the period mentioned in section 38(1) of the Act; and
- (b) in the case of an appeal under section 130, 169 or 180 of the Act, any person given notice of the appeal in accordance with regulation 15(1) and from whom representations were received (and not subsequently withdrawn);

“non-delegated appeal” means—

- (a) a recalled appeal;
- (b) an appeal within such classes of case as may be—

- (i) for the time being prescribed; or
- (ii) specified in directions given,  
under paragraph 1(2) of Schedule 4 to the Act;

“period allowed for determination of the application” is, in the case of an appeal made under—

- (a) section 47(2) of the Act, the period specified in regulation 26(2) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008<sup>(2)</sup>;
- (b) section 154(1)(b) of the Act, the period specified in regulation 41(4) of those Regulations, or such extended period as may be agreed in writing between the applicant and the planning authority under section 47(2) or 154(1)(b), as the case may be;

“procedure notice” means a notice given (whether separately or in combination) under regulation 10(1), rule 1(1) of the Hearing Session Rules or rule 1(1) of the Inquiry Session Rules;

“Report on Handling” means, in respect of an appeal, the report to be placed in the register of applications which the planning authority is required to keep in accordance with regulations made under section 36(1) of the Act<sup>(3)</sup> in respect of the application to which the appeal relates;

“recalled appeal” means an appeal which is to be determined by the Scottish Ministers in accordance with a direction under paragraph 3(1) of Schedule 4 to the Act;

“rule” means a rule set out in Schedule 1 or 2 to these Regulations;

“specified matters” are in relation to a request for further written representations or information under regulation 10 or to a particular hearing session or inquiry session, those matters which are set out in the procedure notice.

## PART 2

### Appeals under section 47 of the Act

#### Notice of Appeal

3.—(1) An appeal to the Scottish Ministers under section 47 of the Act is to be made by giving notice in writing in accordance with this regulation.

(2) Subject to regulation 24, the notice of appeal must be served on the Scottish Ministers within the period of three months beginning with, in the case of an appeal made under—

- (a) section 47(1) of the Act, the date of the decision notice; and
- (b) section 47(2) of the Act, the date of expiry of the period allowed for determination of the application.

(3) The notice of appeal (on a form obtained from the Scottish Ministers) must include—

- (a) the name and address of the appellant;
- (b) the date and the reference number assigned by the planning authority to the application in respect of which the appeal is made;
- (c) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant;

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(2) S.S.I. 2008/432.

(3) Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 requires the register to contain a report.

(d) a statement setting out full particulars of the appeal including a note of what matters the appellant considers require to be taken into account in determining the appeal and by what procedure (or combination of procedures) mentioned in regulation 8(4) the appellant wishes the appeal to be conducted.

(4) Subject to paragraph (5)–

(a) all matters which the appellant intends to raise in the appeal must be set out in the notice of appeal or in the documents which accompany the notice of appeal; and

(b) all documents, materials and evidence which the appellant intends to rely on in the appeal must accompany the notice of appeal.

(5) In addition to matters set out in the notice of appeal and documents which accompany the notice of appeal, the appellant may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulations 4, 5 and 10, the Hearing Session Rules and the Inquiry Session Rules.

#### **Intimation to planning authority and planning authority's response**

4.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to the planning authority–

(a) a copy of the notice of appeal;

(b) a list of all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 3(4)(b); and

(c) a copy of all documents, materials and evidence specified on such list which the appellant has not already provided to the planning authority in connection with the application to which the appeal relates.

(2) The planning authority must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant–

(a) a note (“the planning authority’s response”) of what matters the planning authority consider require to be taken into account in determining the appeal and by what procedure (or combination of procedures) mentioned in regulation 8(4) the planning authority wish the appeal to be conducted;

(b) a copy of the documents (other than those specified on the list mentioned in paragraph (1)(b)) which were before the planning authority and which were taken into account in reaching their decision;

(c) a copy of any Report on Handling prepared in respect of the application; and

(d) the conditions (if any) which the planning authority presently consider should be imposed in the event that the Scottish Ministers or the appointed person, as the case may be, decide that permission be granted.

(3) The appellant may, within 14 days beginning with the date of receipt of the planning authority’s response, send to the Scottish Ministers and the planning authority–

(a) comments on any matters raised in the planning authority’s response which had not been raised in the decision notice; and

(b) any documents, materials or evidence on which the appellant intends to rely in relation to such comments.

### **Notification to interested parties**

5.—(1) The planning authority must not later than 14 days following notification of the appeal under regulation 4(1) give notice of the appeal to each interested party.

(2) Notice under paragraph (1) may be given—

- (a) by post to any interested person notified or consulted under the Act other than by newspaper advertisement; and
- (b) by post or by advertisement in a newspaper circulating in the locality where the proposed development is situated, to any other interested person.

(3) Notice under paragraph (1) shall—

- (a) state the name of the appellant;
- (b) include a description of the development to which the appeal relates;
- (c) include the postal address of the land to which such development relates, or if the land in question has no postal address, a description of the location of the land;
- (d) state that copies of any representations previously made to the planning authority, other than representations which the interested party has asked to be treated as confidential, will be sent to the Scottish Ministers and the appellant and will be taken into consideration in the determination of the appeal;
- (e) state that further representations may be made to the Scottish Ministers and include information as to how any representations may be made and by what date they must be made;
- (f) state how a copy of the notice of appeal and other documents related to the appeal may be inspected.

(4) An interested party may, within 14 days beginning with the date on which notice is given under paragraph (1) make representations in respect of the appeal to the Scottish Ministers.

(5) The Scottish Ministers are to send a copy of any representations received under paragraph (4) to the appellant and to the planning authority and are to inform them how and by what date (being a date not less than 14 days after the date on which such copy is sent under this paragraph) they may make comments to the Scottish Ministers on such representations.

(6) The appellant and the planning authority may, on or before that date, make comments on such representations to the Scottish Ministers.

### **Publication of appeal documents**

6.—(1) The planning authority are in relation to an appeal to make copies of—

- (a) the notice of appeal;
- (b) the planning authority's response and any comments sent under regulation 4(3)(a); and
- (c) the documents—
  - (i) specified on the list mentioned in regulation 4(1)(b);
  - (ii) sent in accordance with regulation 4(2)(b) and (3)(b);
- (d) any notice given under regulation 5(1);
- (e) any representations or comments made under regulation 5(4) or (6),

available for inspection at an office of the planning authority until such time as the appeal is determined.

(2) The planning authority are until such time as the appeal is determined to afford to any person who so requests the opportunity to inspect and, where practicable, take copies of any such documents (or any part thereof).

## PART 3

### Procedure for determination

#### **Determination without further procedure**

7. Where the appointed person considers that no further representations are or information is required to enable the appeal to be determined, the appointed person may determine the appeal without further procedure.

#### **Decision as to further procedure**

8.—(1) Where the appointed person does not determine the appeal without further procedure, the appointed person may determine the manner in which the appeal is to be conducted and must do so in accordance with this regulation.

(2) The appointed person may determine at any stage of the appeal that further representations should be made or further information should be made available or provided to enable the appeal to be determined.

(3) Where the appointed person so determines, the appeal or a stage of the appeal is to be conducted by one of or by a combination of the procedures mentioned in paragraph (4).

(4) The procedures are—

- (a) by means of written submissions;
- (b) by the holding of one or more hearing sessions;
- (c) by the holding of one or more inquiry sessions;
- (d) by means of an inspection of the land to which the appeal relates.

(5) Where the appointed person considers that such further representations should be made or information should be made available or provided by means of—

- (a) written submissions, regulation 10 applies;
- (b) a hearing session, the Hearing Session Rules apply;
- (c) an inquiry session, the Inquiry Session Rules apply;
- (d) an inspection of the land, regulation 11 applies.

(6) Notices given under regulation 10(1), rule 1(1) of the Hearing Session Rules or rule 1(1) of the Inquiry Session Rules may be given separately or combined into a single notice.

#### **Pre-examination meetings**

9.—(1) The appointed person may hold a meeting (“a pre-examination meeting”) to consider the manner in which the appeal or any stage of the appeal is to be conducted with a view to securing that the appeal or any stage of the appeal is conducted efficiently and expeditiously.

(2) The appointed person is to determine (and may subsequently vary) the date, time or place for the holding of a pre-examination meeting.

(3) The appointed person must give such notice of the holding of a pre-examination meeting and of the date, time and place where it is to be held (and any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances, to—

- (a) where a pre-examination meeting is to be held in connection only with the conduct of a particular hearing session or inquiry session, those persons entitled to appear at that hearing session or inquiry session; and
- (b) in any other case, the appellant, the planning authority and any interested party.

(4) The appointed person is to determine the matters to be discussed and the procedure to be followed at the pre-examination meeting.

### **Written submissions**

**10.**—(1) Where the appointed person has determined that further representations should be made or further information should be provided by means of written submissions, the appointed person may request such further representations or information and is to do so by written notice to that effect to—

- (a) both the appellant and the planning authority; and
- (b) any other body or person from whom the appointed person wishes to receive further representations or information.

(2) The procedure notice given under paragraph (1) is to—

- (a) set out the matters on which such further representations or information is requested;
- (b) specify the date by which such further representations or information are to be sent to the appointed person; and
- (c) provide the name and address of any other body or person to whom a request for such further representations or information has been made.

(3) Any further representations or information made in response to the procedure notice are to be sent to the appointed person on or before the date specified for that purpose in the procedure notice and a copy of any such further representations or information are to be sent on or before that date to the appellant, planning authority and to such other bodies or persons (and at the address) specified in the procedure notice.

(4) Within a period of 14 days from receipt of a copy of such further representations or information, the appellant, the planning authority or such other body or person may send comments to the appointed person in reply to it and when doing so must send a copy of such comments to the appellant, planning authority and to such other bodies or persons (and at the address) specified in the procedure notice.

### **Site inspections**

**11.**—(1) The appointed person may at any time make—

- (a) an unaccompanied inspection of the land to which the appeal relates; or
- (b) an inspection of the land in the company of such of the persons notified under paragraph (3) as desire to do so.

(2) Where the appointed person intends to make an unaccompanied inspection, the appointed person is to inform the appellant and the planning authority of such intention.

(3) Where the appointed person intends to make an accompanied inspection, the appointed person is to give such notice of the date and time of the proposed inspection as may appear to the appointed person to be reasonable in the circumstances, to—

- (a) the appellant;

- (b) the planning authority: and
- (c) any interested party.

(4) The appointed person is not bound to defer an inspection if any person to whom notice was given under paragraph (3) is not present at the time appointed.

### **New evidence**

**12.**—(1) If after the conclusion of any further procedure conducted by virtue of regulation 8, the appointed person proposes to take into consideration any new evidence which is material to the determination of the appeal, the appointed person must not reach a decision on the appeal without first affording the appellant, the planning authority and other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation—

“relevant party” means—

- (a) where the new evidence relates to a specified matter considered at a hearing session or inquiry session, any person entitled to appear at that hearing session or inquiry session;
- (b) where the new evidence relates to matters in respect of which further written representations or information was sought by a procedure notice under regulation 10, any person to whom such notice was sent.

## **PART 4**

### **Appeals under sections 130(2), 169(1) and 180(2) of the Act**

#### **Statement of appeal**

**13.**—(1) The appellant must at the same time as giving notice of appeal to the Scottish Ministers under section 130(2), section 169(2) or section 180(2) of the Act, as the case may be, and in addition to specifying the grounds of appeal as required by section 130(3)(a) (and as applied by section 180(3)) or 169(3), of the Act, also submit a statement (“statement of appeal”) on a form to be obtained from the Scottish Ministers giving the information specified in paragraph (2).

(2) The information is—

- (a) all matters which the appellant intends to raise in the appeal;
- (b) the name and address of the appellant;
- (c) a copy of the notice against which the appeal is made;
- (d) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant;
- (e) a note of what matters the appellant considers require determination and by what procedure (or combination of procedures) mentioned in regulation 8(4) the appellant wishes the appeal to be determined.

(3) The statement of appeal is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely on in the appeal.

(4) In addition to matters set out in the statement of appeal and the documents accompanying the statement of appeal, the appellant may raise matters only in accordance with and to the extent permitted by regulations 10 and 14, the Hearing Session Rules and the Inquiry Session Rules.

### **Intimation of appeal to planning authority and planning authority's response**

14.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to the planning authority a copy of—

- (a) the notice of appeal;
- (b) the statement of appeal; and
- (c) all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 13(3).

(2) The planning authority must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant—

- (a) a statement (“the planning authority’s response”) incorporating a response to each ground of appeal and stating what matters the planning authority consider require determination and by what procedure (or combination of procedures) mentioned in regulation 8(4) the planning authority wish the appeal to be conducted; and
- (b) copies of documents which were before the planning authority and which were taken into account in reaching its decision to issue the notice which is the subject of the appeal.

(3) The appellant may, within 14 days beginning with the date of receipt of the planning authority’s response send to the Scottish Ministers and the planning authority comments on any matters raised in the planning authority’s response.

(4) The planning authority are until such time as the appeal is determined to make copies of—

- (a) the notice of appeal;
- (b) the statement of appeal;
- (c) the planning authority’s response and any comments made under paragraph (3); and
- (d) documents which accompanied the statement of appeal or which were sent with the planning authority’s response,

available for inspection at an office of the planning authority and to afford any interested party who so requests an opportunity to inspect and, where practicable, to take copies of any such documents (or any part thereof).

### **Notification to other parties**

15.—(1) The planning authority must not later than 14 days following notification of the appeal under regulation 13 give notice of the appeal to each person (other than the appellant) on whom the enforcement notice or the notice under section 168 or 179 of the Act, as the case may be, was served.

(2) Notice under paragraph (1) shall—

- (a) state the name of the appellant and the address of the land to which the appeal relates;
- (b) describe the steps required by the notice;
- (c) state that representations may be made to the Scottish Ministers and provide information as to how and by when such representations may be made;
- (d) state where a copy of the notice of appeal, the statement of appeal and of the planning authority’s response may be inspected.

(3) The period allowed for making representations is to be no less than 14 days from the date on which notice is given under paragraph (1).

## PART 5

### Appeals under section 154 of the Act

#### Notice and conduct of the appeal

**16.**—(1) An appeal to the Scottish Ministers under section 154(1) of the Act is to be made by giving notice in writing in accordance with this regulation.

(2) Subject to regulation 24, the notice of appeal must be served on the Scottish Ministers within the period of three months beginning with, in the case of an appeal made by virtue of—

- (a) section 154(1)(a) of the Act, the date of the decision notice; and
- (b) section 154(1)(b) of the Act, the date of expiry of the period allowed for determination of the application.

(3) The following provisions apply to an appeal made under section 154(1) of the Act as they apply to an appeal made under section 47 of the Act—

- (a) paragraphs (3) to (5) of regulation 3;
- (b) regulation 4 other than paragraphs (2)(c) and (d);
- (c) regulation 6 other than paragraphs (1)(d) and (e);
- (d) Parts 3, 7 (other than regulation 20) and 8; and
- (e) the Hearing Session Rules and the Inquiry Session Rules.

## PART 6

### Called-in Applications and non-delegated appeals

#### Called-in applications

**17.**—(1) Parts 1, 3 and 7, the Hearing Session Rules and the Inquiry Session Rules apply to an application referred to the Scottish Ministers following a direction under section 46(1) of the Act as they apply to a delegated appeal under section 47 of the Act with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references to the appeal and the appellant are to be treated, respectively, as references to the application and the applicant;
- (b) references to the appointed person in Parts 3 and 7 (other than in regulation 21) are to be treated as references to the Scottish Ministers, and in regulation 21, the Hearing Session Rules and the Inquiry Session Rules are to be treated as references to the person appointed to hold the hearing session or inquiry session, as the case may be; and
- (c) in regulation 7, 8(5) and 11(3)(c), “considers”; in regulation 8(1), “does”; in regulation 8(3), “determines”; in regulation 9(2) and (4) and 11(4), “is”; in regulation 10(1), “has”; in regulation 10(1)(b), “wishes” and in regulation 12(1), “proposes”, are respectively to be read as “consider”, “do”, “determine”, “are”, “have”, “wish” and “propose”.

### **Non-delegated appeals**

18. Parts 1, 3 and 7, the Hearing Session Rules and the Inquiry Session Rules apply to a non-delegated appeal as they apply to a delegated appeal with the modifications specified in regulation 17(2)(b) and (c).

## **PART 7**

### **General**

#### **Further copies of documents etc**

19.—(1) The appointed person may require any person who has submitted documents, materials or evidence under these Regulations in connection with the appeal to—

- (a) provide to the appointed person such number of additional copies of such of those documents, materials or evidence as the appointed person may specify;
- (b) provide to such other persons as the appointed person may specify such copies or additional copies of any document, materials or evidence as the appointed person may specify.

(2) The appointed person may require the planning authority to make copies of such documents, materials or evidence as the appointed person may specify available for inspection at an office of that planning authority until such time as the appeal is determined and to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any such documents, materials or evidence (or any part thereof) which, or a copy of which, has been sent to the planning authority in accordance with this regulation.

#### **Compliance with development management procedures**

20. The appointed person must, to the extent not already done so by the planning authority comply with regulations 18 (notification by the planning authority), 19 (notification of minerals applications), 20 (publication by the planning authority) and 25 (consultation by the planning authority) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(4) before determining the appeal.

#### **Appointment of assessor**

21.—(1) The Scottish Ministers may appoint a person to sit with the appointed person at a hearing session or inquiry session to advise the appointed person on such matters arising as the Scottish Ministers may specify (“an assessor”) and where they do so they are to notify every person entitled to appear at the inquiry session or hearing session, as the case may be, of the name of the assessor and of the matters on which the assessor is to advise the appointed person.

(2) Where an assessor has been appointed, the assessor may (and if so required by the appointed person, must), after the close of the hearing session or inquiry session, make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

#### **Decision notice**

22. The appointed person must—

- (a) give notice of the decision to the appellant and to the planning authority; and

- (b) notify every person who has made (and did not subsequently withdraw) representations in respect of the appeal that a decision on the appeal has been made and where a copy of the notice of the decision is available for inspection.

### **Electronic communications**

**23.**—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that the document transmitted by the electronic communication is—
  - (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) shall subsist until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, agreement, decision, representation, statement, report or other information or communication;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(5);

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

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(5) 2000 c. 7. Section 15 was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

## PART 8

### Transitional Provisions

#### **Time within which appeal must be made**

**24.**—(1) In the case of an appeal made by virtue of section 47 or 154 of the Act where the relevant date is before 3rd August 2009, the notice of appeal must be served on the Scottish Ministers within a period of six months from the relevant date.

(2) In this regulation “relevant date” means in the case of an appeal made by virtue of—

- (a) section 47(1) or 154(1)(a) of the Act, the date of the decision notice; and
- (b) section 47(2) or 154(1)(b) of the Act, the date on which the applicant first becomes entitled to appeal under that subsection.

St Andrew’s House, Edinburgh  
22nd December 2008

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 2

### Hearing Session Rules

#### **Notice of hearing session and specified matters**

1.—(1) Where the appointed person has determined that a hearing session should be held the appointed person is to give written notice to that effect to—

- (a) the appellant;
- (b) the planning authority;
- (c) any interested party who made representations in relation to specified matters; and
- (d) any body or person who the appointed person wishes to make further representations or to provide further information on specified matters at the hearing session.

(2) The notice given under paragraph (1) is to set out the matters to be considered at the hearing session.

(3) Only specified matters are to be considered at the hearing session.

(4) A person or body given notice under paragraph (1) and who intends to appear at the hearing session must within 14 days of the date of such notice inform the appointed person in writing of that intention.

#### **Appearances at hearing session**

2. The persons entitled to appear at a hearing session are—

- (a) the appellant;
- (b) the planning authority; and
- (c) any other person or body who, in response to a procedure notice, has informed the appointed person of their intention to appear at the hearing session in accordance with rule 1(4).

#### **Date and notification of hearing session**

3.—(1) The date, time and place at which the hearing session is to be held is to be determined (and may subsequently be varied) by the appointed person.

(2) The appointed person is to give to those persons entitled to appear at the hearing session such notice of the date, time and place fixed for the holding of a hearing session (and any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances.

#### **Service of hearing statements and documents**

4.—(1) Where required to do so by notice given by the appointed person, a person entitled to appear at the hearing session must, by such date as is specified in the notice, send to—

- (a) the appointed person—
  - (i) a hearing statement; and
  - (ii) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list of such documents comprised in that hearing statement; and
- (b) the appellant and the planning authority and to such other persons entitled to appear at the hearing session as the appointed person may specify in such notice—

- (i) a hearing statement; and
  - (ii) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list comprised in that hearing statement which is not already available for inspection under regulation 6 or 19(2) or paragraph (2) of this rule.
- (2) The planning authority are, until such time as the appeal is determined, to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any hearing statement or other document (or any part thereof) which, or a copy of which, has been sent to them in accordance with this rule.
- (3) Any person who has served a hearing statement in accordance with this rule must—
- (a) when required by notice in writing from the appointed person provide such further information about the matters contained in the statement as the appointed person may specify; and
  - (b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.
- (4) Different dates and different persons may be specified for the purposes of paragraph (1).
- (5) In this rule, “hearing statement” means, and is comprised of a written statement which outlines the case relating to the specified matters which a person proposes to put forward to a hearing session and—
- (a) a list of documents (if any) which the person putting forward such case intends to refer to or rely on; and
  - (b) a list of any other persons who are to speak at the hearing session in respect of such case, any matters which such persons are particularly to address and any relevant qualifications of such persons to do so.

### **Procedure at hearing**

- 5.—(1) Except as otherwise provided in these Hearing Session Rules, the appointed person is to determine the procedure at a hearing session.
- (2) The appointed person is, having considered any submission by the persons entitled to appear at the hearing session, to state at the commencement of the hearing session the procedure the appointed person proposes to adopt.
- (3) Any person entitled to appear may do so on that person’s own behalf or be represented by another person.
- (4) Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the appointed person may allow one or more persons to appear on behalf of some or all of any persons so interested.
- (5) A hearing is to take the form of a discussion led by the appointed person and cross examination shall not be permitted.
- (6) The appointed person may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.
- (7) The appointed person may from time to time adjourn the hearing session and, if the date, time and place of the adjourned hearing session are announced before the adjournment, no further notice is required otherwise rule 3 shall apply as it applies to the variation of the date, time or place at which a hearing session is to be held.

## SCHEDULE 2

Regulation 2

## Inquiry Session Rules

**Notice of inquiry session and specified matters**

1.—(1) Where the appointed person has determined that an inquiry session is to be held the appointed person is to give written notice to that effect to—

- (a) the appellant;
- (b) the planning authority;
- (c) any interested party who made representations in relation to specified matters; and
- (d) any body or person who the appointed person wishes to make further representations or to provide further information on specified matters at the inquiry session.

(2) The notice given under paragraph (1) is to set out the matters to be considered at the inquiry session.

(3) Only specified matters are to be considered at the inquiry session.

(4) A body or person given notice under paragraph (1) and who intends to appear at the inquiry session must within 14 days of the date of the such notice inform the appointed person in writing of that intention.

**Appearances at inquiry session**

2. The persons entitled to appear at the inquiry session are—

- (a) the appellant;
- (b) the planning authority; and
- (c) any other person or body who, in a response to a procedure notice, has informed the appointed person of their intention to appear at the inquiry session in accordance with rule 1(4).

**Date and notification of inquiry**

3.—(1) The date, time and place for the holding of the inquiry session is to be fixed (and may subsequently be varied) by the appointed person.

(2) The appointed person is to give to those persons entitled to appear at the inquiry session such notice of the date, time and place fixed for the holding of the inquiry session (and of any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances.

(3) The appointed person may require the planning authority to take one or more of the following steps—

- (a) not less than 14 days before the date fixed for the holding of the inquiry session, to publish—
  - (i) in one or more local newspapers circulating in the locality in which the land is situated; and
  - (ii) on a website,such notices of the inquiry session as the appointed person may direct; or
- (b) to serve notice of the inquiry session in such form and on such persons or classes of persons as the appointed person may specify.

### **Service of inquiry statements, documents and precognitions**

4.—(1) Where required to do so by notice given by the appointed person, a person entitled to appear at the inquiry session must, by such date as is specified in the notice, send to—

- (a) the appointed person—
  - (i) an inquiry statement;
  - (ii) a copy of every document (or the relevant part of a document) on the list of such documents comprised in that inquiry statement; and
  - (iii) a precognition in respect of any evidence to be given to the inquiry session by a person included on the list of witnesses comprised in that inquiry statement; and
- (b) the appellant and the planning authority and to such other persons entitled to appear at the hearing session as the appointed person may specify in such notice—
  - (i) an inquiry statement; and
  - (ii) a copy of every document (or the relevant part of a document) and precognition sent to the appointed person under paragraph (a)(ii) or (iii) and which is not already available for inspection under regulation 6 or 19(2) or paragraph (2) of this rule.

(2) The planning authority are, until such time as the appeal is determined, to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any inquiry statement, precognition or other document (or any part hereof) which, or a copy of which, has been sent to them in accordance with this rule.

(3) A precognition must not, unless the appointed person otherwise so agrees, contain more than 2000 words.

(4) Different dates and different persons may be specified for the purposes of paragraph (1).

(5) In this rule—

“inquiry statement” means, and is comprised of—

- (a) a written statement which contains particulars of the case relating to the specified matters which a person proposes to put forward to an inquiry session;
- (b) a list of documents (if any) which the person putting forward such case intends to refer to, rely on or put in evidence; and
- (c) a list of witnesses specifying the persons who are to give, or be called to give, evidence at the inquiry session, the matters in respect of which such persons are to give evidence and the relevant qualifications of such persons to do so; and

“precognition” means a written statement of the evidence which it is proposed that a witness will give to the inquiry session.

### **Procedure at inquiry session**

5.—(1) Except as otherwise provided in these Inquiry Session Rules, the procedure at the inquiry session shall be such as the appointed person determines.

(2) The appointed person is, having considered any submission by the persons entitled to appear at the inquiry session, to state at or before the commencement of the inquiry session the procedure which the appointed person proposes to adopt and in particular is to state—

- (a) the order in which the specified matters are to be considered at the inquiry session; and
- (b) the order in which the persons entitled to appear at the inquiry session are to be heard in relation to a specified matter (a different order may be chosen for different specified matters).

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

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

(5) Subject to paragraph (6), any person entitled to appear at the inquiry session is entitled to call evidence and to cross examine persons giving evidence and to make closing statements.

(6) The appointed person may refuse to permit—

- (a) the giving or production of evidence;
- (b) the cross examination of persons giving evidence; or
- (c) the presentation of any other matter,

which the appointed person considers to be irrelevant or repetitious.

(7) If any person entitled to appear at the inquiry session fails to do so, the appointed person may proceed with the inquiry session at the appointed person's discretion.

(8) The appointed person may from time to time adjourn the inquiry session and, if the date, time and place of the adjourned inquiry session are announced before the adjournment, no further notice is to be required, otherwise rule 3 shall apply as it applies to the variation of the date, time or place at which a inquiry session is to be held.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in connection with appeals to the Scottish Ministers under sections 47, 130, 154, 169 and 180 of the Town and Country Planning (Scotland) Act 1997 (c. 8) ("the Act") and in relation to the procedure for dealing with applications called-in for determination by the Scottish Ministers by virtue of a direction under section 46 of the Act. These Regulations apply to appeals where the notice of appeal is given on or after 3rd August 2009.

The Regulations primarily make provision in relation to the conduct of appeals under section 47 of the Act to be determined by a person appointed for that purpose under Schedule 4 to the Act. Such appeals along with appeals to be determined by an appointed person under sections 103, 154, 169 and 180 are defined in regulation 2 as "delegated appeals". The prescribed classes of appeals which are to be determined by an appointed person are specified in the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987 (S.I.1987/1531). Those Regulations also set out classes of appeal which are reserved for determination by the Scottish Ministers. Appeals falling within that class or within a class specified in directions made under paragraph 1(2) of Schedule 4 to the Act are, together with those appeals which are recalled for determination by virtue of powers contained in paragraph 3(1) of Schedule 4 to the Act, defined as non-delegated appeals.

The Regulations apply to appeals other than delegated appeals under section 47 in accordance with the terms of regulation 1(3) and apply to the handling of called in applications in terms of regulation 1(4).

Part 2 of the Regulations makes provision in relation to the time period within which and how an appeal under section 47 must be made. Regulation 3 sets out the requirements for the form and content of the notice of review and the documents which must accompany such notice. Regulation 3(2) requires the notice of appeal to be given to the Scottish Ministers within three months of the date of the planning authority's decision or of expiry of the period within the application should have been determined. This period is defined in regulation 2 by reference to the period within which an application is to be determined in accordance with the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (S.S.I. 2008/ ). The three month period within which an appeal can be made replaces the current period of six months. Regulation 4 requires the notice of appeal to be given to the planning authority and makes provision for the planning authority to respond to the notice and for the appellant to make comments on such response. Regulation 5 makes provision for notification and publication of the appeal and gives interested parties an opportunity to make representations on the case to the Scottish Ministers. The appellant is given the right to respond to any such representations. Regulation 6 requires the planning authority to make the documents relating to the appeal available for inspection and, where practicable, to allow copies to be made of such documents.

Part 3 of the Regulations relates to the process of determination of the appeal. Where the appointed person consider that no further information is required to enable the case to be determined the appointed person may, under regulation 7, do so without any further procedure. The appointed person is not required to determine the case without further procedure and may under regulation 8 seek further information or representations by means of further procedure. The procedures available are those described in regulation 8(4). The procedures to be followed are, in terms of regulation 8(5), further written submission in accordance with regulation 10, a hearing session held under the Hearing Session Rules in Schedule 1, an inquiry session held under the Inquiry Session Rules in Schedule 2 and a site visit in accordance with regulation 11. Regulation 9 makes provision for the holding of pre-examination meetings to consider how the appeal may be conducted.

Regulation 12 requires the appointed person to afford the appellant and other parties a further opportunity to make representations in respect of any new and material evidence which the appointed person proposes to take into account in determining the appeal.

Part 4 makes provision relating to how an appeal under sections 130, 169 and 180 of the Act is made. Regulation 13 specifies information which must be included in a statement of appeal under sections 130(3)(a) in respect of appeals made under section 130 of the Act, 169(3) in respect of appeals made under section 168 and also in respect of appeals made under section 180 under section 130(3)(a) as applied by section 180(3). Regulation 14 requires the appellant to give a copy of the notice of appeal and supporting documents to the planning authority when making an appeal and allows the planning authority to respond to the appeal and the appellant to make comments on their response. Regulation 15 provides for the notification to be given to other parties on whom a notice which is the subject of the appeal was served and allows such persons to make representations.

Part 5 of the Regulations makes provision relating to how an appeal under sections 154 of the Act is made. Regulation 16(2) prescribes the period within which a notice of appeal must be served. Regulation 16(3) applies specified provisions of the Regulations to appeals under section 154 as those provisions apply to an appeal under section 47.

Part 6 of the Regulations makes provision in relation to applications called-in by the Scottish Ministers for determination by a direction under section 46 of the Act and in relation to non-delegated appeals. In these situations the determination is made by the Scottish Ministers rather than by a person appointed to do so. Regulations 17 and 18 apply specified provisions of the Regulations with modifications to take account of this distinction in both cases and, in the case of called-in applications, to refer to an application and applicant rather than an appeal and appellant.

Part 7 of the Regulations contains provisions relating to the provision of further copies of documents (regulation 19), the appointment of an assessor to advise the appointed person (regulation 21) and the use of electronic communications (regulation 23). Regulation 20 requires the appointed person to

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comply with consultation and notification requirements in connection with an application under the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 to the extent that they have not already been met. Regulation 22 makes provision for the content and publication of the decision on the appeal or application.

Regulation 24 makes transitional provisions to ensure that where a person is entitled to make an appeal before the date on which the Regulations come into force that such person will continue to have a period of six months in which to make an appeal. Such an appeal if made after the 3rd August 2009 is to be made in accordance with these Regulations. In respect of appeals made before that date the current law will continue to apply