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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 156**

**TOWN AND COUNTRY PLANNING**

The Town and Country Planning  
(Appeals) (Scotland) Regulations 2013

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| <i>Made</i>                                | - - - - | <i>21st May 2013</i>  |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>23rd May 2013</i>  |
| <i>Coming into force</i>                   | - -     | <i>30th June 2013</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 47(2) and (3), 75B, 75F, 130(3) and 131(1) (and as applied by section 180(3)), 154(2), 169(3) and (4), 182, 186, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997(1), sections 18, 19, 35, 36 and 82 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(2) 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 2013 and come into force on 30th June 2013.

(2) Subject to paragraph (4), these Regulations apply as specified in paragraph (6) to appeals under—

- (a) section 47 of the Act (appeal against planning decisions and failure to take such decisions);
- (b) section 130 of the Act (appeal against enforcement notice);
- (c) section 154 of the Act (appeal against refusal of certificate of lawful use or development);

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(1) 1997 c.8. The Town and Country Planning (Scotland) Act 1997 (“the Act”) was amended by sections 19 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”.

(2) 1997 c.9. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Section 81(1) defines “prescribed”. Section 79 applies various provisions of the Town and Country Planning (Scotland) Act 1997, including sections 267 and 275A, for the purposes of the Act. Section 82 is amended by section 30 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3).

- (d) section 169 of the Act (appeal against section 168 notice); and
- (e) section 180 of the Act (appeal against amenity notice),

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.

- (3) These Regulations apply as specified in paragraph (8) to appeals under—
  - (a) section 18(1) of the Listed Buildings Act (appeal against refusal of, or conditional consent to, applications for listed building consent or against refusal of approval required by a condition);
  - (b) section 18(2) of the Listed Buildings Act (appeal in default of decision on application for listed building consent or for approval required by a condition);
  - (c) section 18(1) and (2) of the Listed Buildings Act as applied by—
    - (i) section 17 of that Act (applications for variation or discharge of conditions); or
    - (ii) section 66 of that Act (control of demolition of buildings in conservation areas);
  - (d) section 35 of the Listed Buildings Act (appeal against listed building enforcement notices); and
  - (e) section 35 of the Listed Buildings Act as applied by section 66 of that Act (appeals against enforcement notices in respect of the demolition of buildings in conservation areas),

where notice of appeal is given to the Scottish Ministers under section 19(1) or 35(2) of the Listed Buildings Act, as the case may be, on or after 1st December 2011.

- (4) These Regulations apply as specified—
  - (a) in Part 6 to appeals under section 47 of the Act as applied by regulation 21 of the 1984 Regulations; and
  - (b) in regulation 14(7) to appeals under section 130 of the Act as applied by regulation 25 of the 1984 Regulations,

where notice of appeal is given to the Scottish Ministers on or after 30th June 2013.

- (5) These Regulations apply as specified—
  - (a) in regulation 21 to appeals under section 75B of the Act (planning obligations: appeals); and
  - (b) in regulation 22 to appeals under section 75F of the Act (good neighbour agreements: appeals).

- (6) These Regulations—
  - (a) other than Parts 4 to 8 and Schedule 3, apply to an appeal under section 47 of the Act;
  - (b) apply to appeals under sections 130, 169 and 180 of the Act in accordance with regulation 14(6); and
  - (c) apply to an appeal under section 154 of the Act in accordance with regulation 23.

(7) These Regulations apply in accordance with regulation 24 to applications referred to the Scottish Ministers following—

- (a) a direction under section 46(1) of the Act (call-in of applications by the Scottish Ministers) given on or after 3rd August 2009; and
- (b) a direction under section 11(1) of the Listed Buildings Act (reference of certain applications to the Scottish Ministers) given on or after 1st December 2011.

(8) These Regulations apply—

- (a) to an appeal under section 18 of the Listed Buildings Act in accordance with regulation 17(4); and

(b) to an appeal under section 35 of the Listed Buildings Act in accordance with regulation 14(6).

(9) These Regulations apply in accordance with regulation 25 to applications made to the Scottish Ministers under section 242A of the Act (urgent crown development: application) on or after 30th June 2013.

(10) These Regulations apply as specified in Schedule 4 where—

- (a) a security direction has been given in relation to an application or appeal; or
- (b) a request for a security direction has been made to the Scottish Ministers or the Secretary of State but no determination as to whether or not to give a direction has been made.

## **Interpretation**

2. In these Regulations—

“the 1984 Regulations” means the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984(3);

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

“appellant” means a person who gives notice of appeal under section 47, 75B, 75F, 130, 154, 169 or 180 of the Act or section 19 or 35 of the Listed Buildings Act;

“application” means, in the case of an appeal, the application to which the appeal relates;

“appointed person” subject to regulations 24 to 26, means a person appointed under paragraph 1 of Schedule 4 to the Act or paragraph 1 of Schedule 3 to the Listed Buildings Act to determine an appeal instead of the Scottish Ministers;

“assessor” has the meaning given in regulation 30(1);

“community body” means the community body (within the meaning of section 75D(2) of the Act) which entered into the good neighbour agreement to which the application relates;

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

“EIA development” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011(4);

“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;

“inquiry session” means a local inquiry held or to be held under—

- (a) section 265 of the Act;
- (b) section 265 of the Act as applied by section 79(1) of the Listed Buildings Act;
- (c) paragraph 6 of Schedule 4 to the Act; or
- (d) paragraph 6 of Schedule 3 to the Listed Buildings 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;

“interested party” means—

- (a) in the case of an appeal under section 47 of the Act (other than an appeal specified in regulation 19(1) or 20(1)) or an application (other than an application made under

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(3) [S.I. 1984/467](#) as amended by [S.S.I. 2013/154](#) and to which there are other amendments which are not relevant to those Regulations.

(4) [S.S.I. 2011/139](#).

section 75A(2) of the Act) referred to the Scottish Ministers following a direction under section 46(1) of the Act—

- (i) any 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;
- (b) in the case of an appeal under section 47 of the Act—
- (i) specified in regulation 19(1), any person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application; and
  - (ii) specified in regulation 20(1), any person given notice of the appeal in accordance with regulation 20(5) and from whom representations were received (and not subsequently withdrawn);
- (c) in the case of an appeal under section 75B of the Act or an application made under section 75A(2) of the Act referred to the Scottish Ministers following a direction under section 46(1) of the Act (other than where such a person is the appellant)—
- (i) the owner of the land to which the planning obligation in respect of which the appeal is made relates; and
  - (ii) any other person against whom the planning obligation is enforceable;
- (d) in the case of an appeal under section 75F of the Act (other than where such a person is the appellant)—
- (i) the community body;
  - (ii) the owner of the land to which the obligation in respect of which the appeal is made relates; and
  - (iii) any other person against whom the obligation is enforceable;
- (e) in the case of an appeal under section 130, 169 or 180 of the Act or section 35 of the Listed Buildings Act, any person given notice of the appeal in accordance with regulation 16(1) and from whom representations were received (and not subsequently withdrawn); and
- (f) in the case of an appeal under section 18 of the Listed Buildings Act—
- (i) any person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application; and
  - (ii) any person from whom the Scottish Ministers received representations (which are not subsequently withdrawn) in connection with the appeal in accordance with the terms of a notice given under regulation 18(1) or published under regulation 18(2);
- (g) in the case of an application referred to the Scottish Ministers following a direction under section 11(1) of the Listed Buildings Act, any person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application; and
- (h) in the case of an application made under section 242A of the Act, any person from whom the Scottish Ministers received representations (which are not subsequently withdrawn) in connection with the application;

“Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997<sup>(5)</sup>;

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

- (a) section 47(2) of the Act, the period prescribed under regulation 3(2) in respect of the application;
- (b) section 154(1)(b) of the Act, the period prescribed under regulation 23(2) in respect of the application;
- (c) section 18(2) of the Listed Buildings Act—
  - (i) in respect of an application mentioned in section 18(1)(a) or (b) of the Listed Buildings Act, the relevant period prescribed under regulation 17(2); and
  - (ii) in respect of an application mentioned in section 18(1)(c) of the Listed Buildings Act, the relevant period within the meaning of section 18(3)(b)(6) of that Act, 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) of the Act or section 18(2) of the Listed Buildings Act, as the case may be;

“person” includes authorities and other bodies;

“planning authority’s response” has the meaning given in regulation 4(2)(a) or 15(2)(a), as the case may be;

“planning obligation” and “relevant instrument” have the same meaning as in section 75 of the Act;

“pre-examination meeting” has the meaning given in regulation 10(1);

“procedure notice” means a notice given (whether separately or in combination) under regulation 11(1), rule 1(1) of the Hearing Session Rules or rule 1(1) of the Inquiry Session Rules;

“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 or paragraph 3(1) of Schedule 3 to the Listed Buildings Act;

“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>(7)</sup> in respect of the application to which the appeal relates;

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

“security direction” means a direction by the Scottish Ministers, or the Secretary of State, under or by virtue of—

- (a) section 265A(3) of the Act; or
- (b) paragraph 6(7) of Schedule 3 to the Listed Buildings Act;

“specified matters” are in relation to a request for further written representations or information under regulation 11 or to a particular hearing session or inquiry session, those matters which are set out in the procedure notice;

“validation date” has—

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(5) 1997 c.9.

(6) Section 18(3)(b) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides that the relevant period for the purposes of an appeal under section 18(2) in respect of an application for approval required by a condition imposed on the grant of listed building consent is the period of two months from the date of receipt by the planning authority of the application.

(7) Schedule 2 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 requires the register to contain a report.

- (a) in the case of an application for planning permission for EIA development, the same meaning as in regulation 44(2)(b) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011<sup>(8)</sup>; and
- (b) in any other case, the same meaning as in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013<sup>(9)</sup>.

## 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) The period prescribed for the purposes of section 47(2) of the Act is—

- (a) in the case of an application for planning permission for—
  - (i) EIA Development; or
  - (ii) development within the category of national developments or major developments, the period of four months after the validation date; and
- (b) in any other case, the period of two months after the validation date.

(3) 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 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.

(4) 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;
- (d) a statement setting out full particulars of the appeal including a note of the matters which the appellant considers require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) the appellant considers the appeal should be conducted; and
- (e) where the appeal is made under section 47(1) of the Act, a copy of the decision notice.

(5) Subject to paragraph (6)—

- (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.

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<sup>(8)</sup> S.S.I. 2011/139.

<sup>(9)</sup> S.S.I. 2013/155.

(6) 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 11, 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(5)(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 the matters which the planning authority consider require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(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 party 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 party.

(3) Notice under paragraph (1) is to—

- (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; and
- (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 must, in relation to an appeal, make copies of—

- (a) the notice of appeal;
- (b) the planning authority's response and any comments sent under regulation 4(3)(a);
- (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); and
- (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.

### **Opt-in notice to interested parties**

8.—(1) Where the appointed person does not determine the appeal without further procedure, the appointed person may (but is not required to) invite, by notice given in accordance with this regulation, any or all interested parties to confirm if they wish to participate in any further procedure.

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

- (a) state that if the interested party wishes to participate in any further procedure conducted in relation to the appeal they must send a notice ('an opt-in notice') to the appointed person informing the appointed person of that wish;
- (b) include information as to how the opt-in notice may be given and specify the date (being not less than 14 days after the date on which the notice under paragraph (1) is given) on or before which the opt-in notice must be given to the appointed person; and
- (c) inform the interested party that if they do not give an opt-in notice to the appointed person before that date they may lose the opportunity to participate in any further procedure.

(3) Where notice is given under paragraph (1) any reference in regulations 10 and 12 and in the Hearing Session Rules and Inquiry Session Rules to an interested party is to be treated as including only those interested parties who have given an opt-in notice to the appointed person in accordance with this regulation.

(4) In this regulation "opt-in notice" has the meaning given in paragraph (2)(a).

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

9.—(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.

(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 further representations should be made or further information should be made available or provided by means of—

- (a) written submissions, regulation 11 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 12 applies.

(6) Notices given under regulation 11(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**

**10.**—(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 and 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—

(a) where a pre-examination meeting is to be held in connection only with the conduct of a particular hearing session or inquiry session, to those persons entitled to appear at that hearing session or inquiry session; and

(b) in any other case, to 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**

**11.**—(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 giving written notice to that effect to—

(a) both the appellant and the planning authority; and

(b) any other 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) state the name and address of any person to whom the procedure notice is given.

(3) Any further representations made or information provided in response to the procedure notice (“the procedure notice response”) 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 procedure notice response is to be sent on or before that date to any other person to whom the procedure notice was given.

(4) Within a period of 14 days from receipt of a copy of the procedure notice response, any person to whom the procedure notice was given—

(a) may send comments to the appointed person in reply to the procedure notice response; and

(b) must, when doing so, send a copy of such comments to any other person to whom the procedure notice was given.

(5) A copy of any procedure notice response or any comments required to be sent to a person under this regulation is to be sent to the person at the address stated for that person in the procedure notice.

(6) In this regulation “procedure notice response” has the meaning given in paragraph (3).

### **Site inspections**

**12.**—(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 attend the inspection.

(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**

**13.**—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 9, 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 affording the appellant, the planning authority and any 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 11, any person to whom such notice was sent.

## **PART 4**

### **Appeals under sections 130(2), 169(1) and 180(2) of the Act and section 35(2) of the Listed Buildings Act**

#### **Statement of appeal**

**14.**—(1) The appellant must at the same time as giving notice of appeal to the Scottish Ministers under section 130(2), 169(2) or 180(2) of the Act or section 35(2) of the Listed Buildings Act, as the case may be, submit a statement (“statement of appeal”) on a form obtained from the Scottish Ministers.

(2) The statement of appeal, 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 or section 35(4)(a) of the Listed Buildings Act, as the case may be, is to give the information specified in paragraph (3).

(3) 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; and
  - (e) a note of the matters which the appellant considers require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) the appellant considers the appeal should be determined.
- (4) 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.
- (5) 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 11 and 15, the Hearing Session Rules and the Inquiry Session Rules.
- (6) The following provisions apply in relation to appeals under sections 130, 169 and 180 of the Act and an appeal under section 35 of the Listed Buildings Act—
- (a) this Part and Parts 1, 3, 9 (other than regulation 29) and 10; and
  - (b) the Hearing Session Rules and the Inquiry Session Rules.
- (7) These Regulations apply to an appeal under section 130 as applied by regulation 25 of the 1984 Regulations as they apply to an appeal under section 130 of the Act as if references to an enforcement notice were references to an enforcement notice served under regulation 24 of the 1984 Regulations.

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

- 15.—**(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 statement of appeal in accordance with regulation 14(4).
- (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 the matters which the planning authority consider require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(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 must until such time as the appeal is determined 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**

**16.**—(1) The planning authority must not later than 14 days following notification of the appeal under regulation 14 give notice of the appeal to each person (other than the appellant) on whom the enforcement notice, listed building 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) is to—

- (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 to which the appeal relates;
- (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 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 18 of the Listed Buildings Act**

#### **Notice of appeal**

**17.**—(1) An appeal to the Scottish Ministers under—

- (a) section 18(1) of the Listed Buildings Act;
- (b) section 18(2) of the Listed Buildings Act; or
- (c) section 18(1) or (2) of the Listed Buildings Act as applied by—
  - (i) section 17 of that Act; or
  - (ii) section 66 of that Act,

is to be made by giving notice in writing in accordance with this regulation.

(2) In relation to an application mentioned in section 18(1)(a) or (b) of the Listed Buildings Act the relevant period prescribed for the purposes of section 18(3)(a) of the Listed Buildings Act is the period of two months from the date of receipt of the application by the planning authority.

(3) 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 under—

- (a) section 18(1) of the Listed Buildings Act, the date of the decision notice; and
- (b) section 18(2) of the Listed Buildings Act, the date of expiry of the period allowed for determination of the application.

(4) In relation to an appeal made under section 18 of the Listed Buildings Act—

- (a) this Part and Parts 1, 3, 9 and 10, the Hearing Session Rules and the Inquiry Session Rules apply; and
- (b) the following provisions of Part 2 apply as they apply to an appeal under section 47 of the Act with the modifications specified in paragraph (5)—

- (i) regulation 3(4) to (6);
  - (ii) regulation 4 other than paragraph (2)(c); and
  - (iii) regulations 5 and 6.
- (5) The modifications are—
- (a) regulation 3(4)(e) applies as if the reference to section 47(1) of the Act is a reference to section 18(1) of the Listed Buildings Act;
  - (b) regulation 5(2)(a) applies as if the reference to the Act is a reference to the Listed Buildings Act; and
  - (c) regulation 5(2)(b) and (3)(b) and (c) apply as if the reference to development is a reference to the works for which listed building consent is sought.
- (6) An appeal under section 18 of the Listed Buildings Act is not to be entertained by the Scottish Ministers unless it is accompanied by a certificate required under regulation 18.

### **Notice to owners**

**18.**—(1) The appellant is to give notice in the form set out in Part 1 of Schedule 3 to any person (other than the appellant) who at the beginning of the prescribed period is the owner of the building to which the appeal relates.

(2) Where the appellant is unable to give notice to every person (other than the appellant) who at the beginning of the prescribed period was the owner of the building to which the appeal relates, the appellant must publish a notice in a local newspaper circulating in the locality in which the building is situated.

- (3) Notice under paragraph (2) is to—
- (a) be in the form set out in Part 2 of Schedule 3; and
  - (b) be published before the beginning of the prescribed period.
- (4) The appellant must issue a certificate stating, as appropriate—
- (a) that at the beginning of the prescribed period no person (other than the appellant) was the owner of the building to which the appeal relates;
  - (b) that the appellant has given notice to every person (other than the appellant) who at the beginning of the prescribed period was the owner of the building to which the appeal relates; or
  - (c) that the appellant is unable to give notice to every such person.
- (5) A certificate issued—
- (a) under paragraph (4)(b) or (c) must state the name of every person to whom notice was given and the address at and date on which such notice was given;
  - (b) under paragraph (4)(c) must certify that—
    - (i) the appellant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice; and
    - (ii) that a notice has been published in accordance with paragraph (2) (specifying the date and place of publication).

(6) In this regulation “prescribed period” means the period of 21 days ending with the date on which notice of appeal is given to the Scottish Ministers under section 19(1) of the Listed Buildings Act.

## PART 6

### Appeals in relation to the display of advertisements

#### Appeals in relation to consent for the display of advertisements

**19.**—(1) Subject to regulation 20, this regulation and the provisions of these Regulations specified in paragraph (2) apply to an appeal under section 47 of the Act (as applied by regulation 21 of the 1984 Regulations) in relation to—

- (a) an application for consent to display advertisements;
- (b) a condition imposed on the grant of such consent; and
- (c) an application for any consent, agreement or approval required by a condition imposed on the grant of such consent,

subject to the modifications specified in paragraph (3).

(2) The provisions are—

- (a) Parts 1, 2, 3, 9 and 10;
- (b) the Hearing Session Rules; and
- (c) the Inquiry Session Rules.

(3) The modifications are—

- (a) regulation 3(2)(b) applies as if the reference to the validation date is a reference to the date of receipt by the planning authority of the application for consent to display advertisements;
- (b) regulation 3(3) is subject to regulation 33;
- (c) regulation 4(2) applies as if—
  - (i) sub-paragraph (c) is omitted; and
  - (ii) in sub-paragraph (d) the reference to permission is a reference to consent to the display of advertisements; and
- (d) regulation 5 applies as if—
  - (i) the references to the development in paragraphs (2)(b) and (3)(b) are references to the advertisement; and
  - (ii) the reference in paragraph (3)(c) to land to which the development relates is a reference to the site where the advertisement is to be displayed.

#### Appeals in relation to discontinuance notices

**20.**—(1) This regulation and the provisions of these Regulations specified in paragraph (8) apply to an appeal under section 47 of the Act (as applied by regulation 21 of the 1984 Regulations) in relation to a discontinuance notice subject to the modifications specified in paragraph (9).

(2) The notice of appeal must be served on the Scottish Ministers—

- (a) before the expiry of the period specified in the discontinuance notice after which the discontinuance notice is to take effect; or
- (b) where notice is given under regulation 14(5) of the 1984 Regulations to vary the discontinuation notice to extend that period, before the expiry of such extended period.

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

- (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 the matters which the appellant considers require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 9(4) the appellant considers the appeal should be determined.
- (4) Notice of appeal is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely on in the appeal.
- (5) The planning authority must not later than 14 days following notification of the appeal by the appellant give notice of the appeal to each person (other than the appellant) on whom the discontinuance notice was served.
- (6) Notice under paragraph (5) is to—
- (a) state the name of the appellant and specify the advertisement or the site to which the appeal relates;
  - (b) describe the steps required by the discontinuance 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; and
  - (d) state where a copy of the notice of appeal and of the planning authority’s response may be inspected.
- (7) The period allowed for making representations is to be no less than 14 days from the date on which notice is given under paragraph (5).
- (8) The provisions are—
- (a) Parts 1 and 3, regulation 15, Part 9 (other than regulation 29) and Part 10;
  - (b) the Hearing Session Rules; and
  - (c) the Inquiry Session Rules.
- (9) Regulation 15 applies as if—
- (a) references to the notice of appeal were to the notice of appeal mentioned in paragraph (2);
  - (b) the reference in paragraph (1)(c) to regulation 14(4) were a reference to paragraph (4) of this regulation; and
  - (c) paragraphs (1)(b) and (4)(b) were omitted.
- (10) In this regulation “discontinuance notice” means a notice served under regulation 14 of the 1984 Regulations.

## PART 7

### Appeals under sections 75B, 75F and 154 of the Act

#### Appeals under section 75B of the Act

**21.—**(1) An appeal to the Scottish Ministers under section 75B(1) of the Act (appeals against refusal or failure to agree to modify or discharge planning obligations) is to be made by giving notice in writing in accordance with this regulation.

- (2) 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 under—
- (a) section 75B(1)(a) of the Act, the date of expiry of the period specified in regulation 7(1) of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010<sup>(10)</sup>; and
  - (b) section 75B(1)(b) of the Act, the date of the decision notice.
- (3) In relation to an appeal under section 75B(1) of the Act—
- (a) this regulation, Parts 1, 3, 9 and 10, the Hearing Session Rules and the Inquiry Session Rules apply; and
  - (b) the following provisions of Part 2 apply as they apply to an appeal under section 47 of the Act with the modifications specified in paragraph (4)—
    - (i) regulation 3(4) to (6);
    - (ii) regulation 4 other than paragraph (2)(c) and (d);
    - (iii) regulation 5 other than paragraph (2) and (3)(c); and
    - (iv) regulation 6.
- (4) The modifications are—
- (a) regulation 3(4)(e) applies as if the reference to section 47(1) of the Act is a reference to section 75B(1)(b) of the Act; and
  - (b) regulation 5(3)(b) applies as if the reference to development is a reference to the planning obligation and the relevant instrument within which it is contained.

### **Appeals under section 75F of the Act**

**22.**—(1) An appeal to the Scottish Ministers under section 75F(1) of the Act (appeals against refusal or failure to agree to modify or discharge good neighbour agreements) is to be made by giving notice in writing in accordance with this regulation.

- (2) 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 under—
- (a) section 75F(1)(a) of the Act, the date of expiry of the period specified in regulation 7(1) of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010<sup>(11)</sup>; and
  - (b) section 75F(1)(b) of the Act, the date of the decision notice.
- (3) In relation to an appeal under section 75F(1) of the Act—
- (a) this regulation, Parts 1, 3, 9 and 10, the Hearing Session Rules and the Inquiry Session Rules apply; and
  - (b) the following provisions of Part 2 apply as they apply to an appeal under section 47 of the Act with the modifications specified in paragraph (4)—
    - (i) regulation 3(4) to (6);
    - (ii) regulation 4 other than paragraph (2)(c) and (d);
    - (iii) regulation 5 other than paragraph (2) and (3)(c); and
    - (iv) regulation 6.
- (4) The modifications are—

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<sup>(10)</sup> S.S.I. 2010/432.

<sup>(11)</sup> S.S.I. 2010/433.

- (a) regulation 3(4)(e) applies as if the reference to section 47(1) of the Act is a reference to section 75F(1)(b) of the Act; and
- (b) regulation 5(3)(b) applies as if the reference to development is a reference to the obligation and the good neighbour agreement within which it is contained.

### **Appeals under section 154 of the Act**

**23.**—(1) An appeal to the Scottish Ministers under section 154(1) of the Act (appeals against refusal or failure to give decision on application for certificate of lawfulness of use or development) is to be made by giving notice in writing in accordance with this regulation.

(2) In relation to an application for a certificate under section 150 or 151 of the Act the period prescribed for the purposes of section 154(1)(b) of the Act is the period of two months beginning with the date of receipt by the planning authority of—

- (a) the application; or
- (b) if later, any fee required to be paid in respect of the application.

(3) 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 under—

- (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.

(4) In relation to an appeal under section 154(1) of the Act—

- (a) this Part and Parts 1, 3, 9 (other than regulation 29) and 10, the Hearing Session Rules and the Inquiry Session Rules apply; and
- (b) the following provisions of Part 2 apply as they apply to an appeal under section 47 of the Act with the modification specified in paragraph (5)—
  - (i) regulation 3(4) to (6);
  - (ii) regulation 4 other than paragraph (2)(c) and (d); and
  - (iii) regulation 6 other than paragraph (1)(d) and (e).

(5) Regulation 3(4)(e) applies as if the reference to section 47(1) of the Act is a reference to section 151(1)(a) of the Act.

## **PART 8**

### **Called-in applications and applications for urgent Crown development**

#### **Called-in applications**

**24.**—(1) Parts 1, 3, 9 and 10, 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 (call-in of applications by Scottish Ministers) or section 11(1) of the Listed Buildings Act (reference of certain applications to Scottish Ministers) with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references (other than in Part 1) 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—

- (i) in Parts 3 and 9 (other than in regulation 30), rule 1(1) of the Hearing Session Rules and rule 1(1) of the Inquiry Session Rules are to be treated as references to the Scottish Ministers; and
- (ii) in regulation 30, the Hearing Session Rules (other than in rule 1(1)) and the Inquiry Session Rules (other than in rule 1(1)) 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 and 9(5), “considers”; in regulation 8(1) and 9(1), “does”; in regulation 9(3), “determines”; in regulation 10(2) and (4) and 12(3) and (4), “is”; in regulation 11(1), “has”; in regulation 11(1)(b), “wishes”; in regulation 12(2) and (3), “intends”; in regulation 13(1), “proposes” and in regulation 29(2) “notifies or consults”, are respectively to be read as “consider”, “do”, “determine”, “are”, “have”, “wish”, “intend”, “propose” and “notify or consult”; and
- (d) where the direction requiring the application to be referred to the Scottish Ministers is given—
  - (i) under section 46(1) of the Act (other than in relation to an application made under section 75A(2) of the Act), regulation 29 applies as in the case of an appeal under section 47 of the Act;
  - (ii) under section 46(1) of the Act in relation to an application made under section 75A(2) of the Act, regulation 29 applies as in the case of an appeal under section 75B of the Act; or
  - (iii) under section 11 of the Listed Buildings Act, regulation 29 applies as in the case of an appeal under section 18 of the Listed Buildings Act.

### **Applications for urgent Crown development**

**25.** Parts 1, 3 and 9 (other than regulation 29), the Hearing Session Rules and the Inquiry Session Rules apply to an application for planning permission made to the Scottish Ministers by virtue of section 242A of the Act (urgent Crown development) with the modifications specified in regulation 24(2)(a) to (c).

## **PART 9**

### **General**

#### **Non-delegated appeals**

**26.—**(1) Parts 1, 3, 9 and 10, 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 24(2)(b) and (c).

(2) In this regulation—

“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 or Schedule 3 to the Listed Buildings Act; and

“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 or paragraph 1(2) of Schedule 3 to the Listed Buildings Act.

### **National security**

**27.** The validity of an appeal is not affected by failure to disclose information as to—

- (a) national security; and
- (b) the measures taken, or to be taken, to ensure the security of any premises or property,

where the notice of appeal is accompanied by a written statement from the appellant that, in the opinion of the appellant, the information relates to the matters mentioned in paragraph (a) or (b) above, and that public disclosure of that information would be contrary to the national interest.

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

**28.—**(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 notification and consultation procedures**

**29.—**(1) The appointed person must, to the extent not already done so by the planning authority—

- (a) in the case of an appeal under section 47 of the Act (other than an appeal under that section as applied by regulation 21 of the 1984 Regulations), comply with—
  - (i) regulation 18 (notification by the planning authority);
  - (ii) regulation 19 (notification of minerals applications);
  - (iii) regulation 20 (publication by the planning authority); and
  - (iv) regulation 25 (consultation by the planning authority),

of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(**12**) before determining the appeal or the application, as the case may be;

- (b) in the case of an appeal under section 18 of the Listed Buildings Act, comply with regulation 5(1) (advertisement of applications) of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987(**13**) before determining the appeal;

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(12) S.S.I. 2013/155.

(13) S.I. 1987/1529.

- (c) in the case of an appeal under section 75B of the Act, comply with regulation 5 (notification of application) of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010<sup>(14)</sup> before determining the appeal;
- (d) in the case of an appeal under section 75F of the Act, comply with regulation 5 (notification of application) of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010<sup>(15)</sup> before determining the appeal; and
- (e) in the case of an appeal under section 47 of the Act as applied by regulation 21 of the 1984 Regulations, comply with regulation 16 (duty to consult with respect to an application) of the 1984 Regulations before determining the appeal.

(2) Subject to regulation 8(3), where the appointed person notifies or consults with any person in accordance with paragraph (1) references in these Regulations (other than regulation 5) to an interested party includes any such person from whom the appointed person received representations (which are not subsequently withdrawn) in connection with the appeal.

### **Appointment of assessor**

**30.**—(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**

**31.** 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**

**32.**—(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) 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.

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<sup>(14)</sup> S.S.I. 2010/432.

<sup>(15)</sup> S.S.I. 2010/433.

- (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; and
  - (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) subsists 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(16);
- “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.

## PART 10

### Saving and transitional provisions and revocations

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

**33.**—(1) In the case of an appeal under section 47(1) or (2) of the Act as applied by regulation 21 of the 1984 Regulations, where the relevant date is before 30th June 2013 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 under—
- (a) section 47(1) of the Act as applied by regulation 21 of the 1984 Regulations, the date of the decision notice; and
  - (b) section 47(2) of the Act as applied by regulation 21 of the 1984 Regulations, the date on which the applicant first becomes entitled to appeal under that subsection.

#### **Revocations, saving and transitional provisions**

**34.**—(1) Subject to paragraph (2), the provisions specified in column 1 of the Table in Schedule 5 are revoked to the extent specified in Column 3 of that Table.

(2) In relation to a hearing session or inquiry session in respect of which notice is given under paragraph 1(1) of Schedule 1 (hearing session rules) or paragraph 1(1) of Schedule 2 (inquiry session

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(16) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

rules) of the Town and Country Planning (Appeals) (Scotland) Regulations 2008(17) before 30th June 2013—

- (a) the provisions of Schedule 1 (hearing session rules) or Schedule 2 (inquiry session rules) of those Regulations, as the case may be, continue to have effect as they did immediately before that date; and
- (b) the Hearing Session Rules and Inquiry Session Rules contained in these Regulations do not apply.

St Andrew's House,  
Edinburgh  
21st May 2013

*DEREK MACKAY*  
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 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 specify the matters to be considered at the hearing session.

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

(4) A person 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 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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (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, 15(4) or 28(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) a written statement which fully sets out the case relating to the specified matters which a person proposes to put forward to a hearing session;
  - (b) a list of documents (if any) which the person putting forward such case intends to refer to or rely on; and
  - (c) 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 procedure at a hearing session shall be as the appointed person determines.
- (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 is not 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 applies 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 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 specify the matters to be considered at the inquiry session.

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

(4) A person given notice under paragraph (1) and who intends to appear at the inquiry session must within 14 days of date of 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 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 sub-paragraph (a)(ii) or (iii) and which is not already available for inspection under regulation 6, 15(4) or 28(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 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).

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(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 required, otherwise rule 3 applies as it applies to the variation of the date, time or place at which an inquiry session is to be held.

SCHEDULE 3

Regulation 18(1) and (3)

Notices under regulation 18

PART 1

Notice for service on owner of the building

TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2013

Notice under regulation 18(1) of appeal under section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Proposed works at [Note 1]

TAKE NOTICE

1. That appeal is being made to the Scottish Ministers by [Note 2]

\**(i)* against the decision of [Note 3].

\**(ii)* on the failure of [Note 3] to give a decision on an application to them.

2. If you wish to make representations to the Scottish Ministers about the appeal, you should make them in writing not later than [Note 4] to [Note 5].

Signed .....

\*On behalf of .....

Date .....

\*Delete where inappropriate

---

Note 1 - Insert address or location of building and brief description of the proposed works.

Note 2 - Insert name of applicant.

Note 3 - Insert name of Council.

Note 4 - Insert date. The date must not be earlier than 21 days after the date on which notice is given.

Note 5 - Insert address. The address is the same address to which the notice of appeal is sent.

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## PART 2

### Notice for publication in local newspaper

#### TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2013

Notice under regulation 18(2) of appeal under section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Proposed works at [Note 1]

#### TAKE NOTICE

1. That appeal is being made to the Scottish Ministers by [Note 2]

\*(i) against the decision of [Note 3].

\*(ii) on the failure of [Note 3] to give a decision on an application to them.

2. Representations about the appeal may be made by any owner of the building. If you wish to make representations you should make them in writing not later than [Note 4] to [Note 5].

Signed .....

\*On behalf of .....

Date .....

\*Delete where inappropriate

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Note 1 - Insert address or location of building and brief description of the proposed works.

Note 2 - Insert name of applicant.

Note 3 - Insert name of Council.

Note 4 - Insert date. The date must not be earlier than 21 days after the date of publication of the notice.

Note 5 - Insert address. The address is the same address to which the notice of appeal is sent.

#### SCHEDULE 4

Regulation 1(10)

#### Closed Evidence

#### Modification of provisions where security direction given

1. Where a security direction has been given or a request for a security direction has been made in relation to an inquiry session these Regulations apply in accordance with paragraphs 2 to 12.

2. Where closed evidence is to be discussed at a pre-examination meeting—

(a) only specified persons and any appointed representative may attend the pre-examination meeting while closed evidence is being discussed; and

(b) the notice to be given under regulation 10(3) must state that while closed evidence is being discussed at the pre-examination meeting attendance at the meeting is restricted to specified persons and any appointed representative.

3. Where a site inspection will involve inspection of closed evidence—
  - (a) regulation 12 does not apply; and
  - (b) the appointed person may inspect the land in the company of specified persons and any appointed representative.
4. Where the appointed person is notified that a security direction has been given—
  - (a) before the appointed person gives notice that an inquiry session is to be held under rule 1(1) of the Inquiry Session Rules, the appointed person must include in that notice a statement that a security direction has been given; and
  - (b) after giving that notice, the appointed person must as soon as practicable after being notified of the making of the direction, give notice of the making of the security direction to any person known at that date to be entitled to appear at the inquiry session.
5. While closed evidence is being considered at an inquiry session the persons entitled to appear at the inquiry session is restricted to—
  - (a) specified persons; and
  - (b) any appointed representative.
6. Where any provision of these Regulations requires or permits a document (or other materials or evidence) to be sent to any person that provision is to be read as requiring, or permitting—
  - (a) the sending of such documents (or other materials or evidence) which contain or make reference to any closed evidence to specified persons or any appointed representative; and
  - (b) the sending of such documents (or other materials or evidence) to any other person only to the extent that they do not contain or make reference to any closed evidence.
7. Where any rule of the Inquiry Session Rules requires or permits an inquiry statement (including any amended or additional inquiry statement) to be sent to any person that rule is to be read as requiring, or permitting—
  - (a) a closed inquiry statement to be sent to specified persons and any appointed representative; and
  - (b) an open inquiry statement to be sent to any other person.
8. Where any rule of the Inquiry Session Rules requires or permits a precognition (including any amended or additional precognition) to be sent to any person that rule is to be read as requiring, or permitting—
  - (a) a closed precognition to be sent to specified persons and any appointed representative; and
  - (b) an open precognition to any other person.
9. Where closed evidence was considered at an inquiry session the assessor, where one has been appointed, if making a report in accordance with regulation 30 is to set out in a separate part (“the closed part”) of the report any matters which relate to that evidence.
10. Where the appointed person’s reasons for a decision relate to matters in respect of which closed evidence has been given, nothing in these Regulations requires notification of those reasons to any person other than a specified person and any appointed representative.
11. Closed evidence must not be published and nothing in these Regulations is to be taken to require or permit closed evidence to be disclosed to a person other than—
  - (a) a specified person; and
  - (b) any appointed representative.
- 12.—(1) In this Schedule—

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“appointed representative” means a person (who is also a specified person) to represent the interests of any party to the inquiry, under or by virtue of—

- (a) section 265A(5) of the Act (planning inquiries to be held in public subject to certain exceptions); or
- (b) paragraph 6(7) of Schedule 3 to the Listed Buildings Act (determination of certain appeals by person appointed by the Scottish Ministers);

“closed evidence” means evidence which is subject to a security direction;

“closed inquiry statement” means such part (if any) of an inquiry statement as includes or refers to closed evidence;

“closed precognition” means such part (if any) of a precognition as includes or refers to closed evidence;

“open inquiry statement” means such part (if any) of an inquiry statement as does not include or refer to closed evidence;

“open precognition” means such part (if any) of a precognition as does not include or refer to closed evidence;

“potentially closed evidence” means evidence in respect of which a request for a security direction has been made; and

“specified person” means a person specified in, or a person of such description as is specified in, a security direction as being entitled to hear or inspect closed evidence.

(2) Where a request for a security direction has been made to the Scottish Ministers or the Secretary of State but no determination as to whether or not to give a direction has been made, references in paragraphs 2 to 12(1) to closed evidence are to be treated as references to potentially closed evidence and references to specified persons are to be treated as references to persons who, in terms of the request for a direction, would be permitted to hear or, as the case may be, inspect closed evidence if a security direction is given.

## SCHEDULE 5

Regulation 34

### Revocations

| <i>Column (1)</i>  | <i>Column (2)</i>               | <i>Column (3)</i>            |
|--|---------------------------------|------------------------------|
| <i>Regulations revoked</i>   | <i>References</i>               | <i>Extent of Revocations</i> |
| The Town and Country Planning (Appeals) (Scotland) Regulations 2008  | <a href="#">S.S.I. 2008/434</a> | The whole Regulations        |
| The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009                           | <a href="#">S.S.I. 2009/220</a> | Regulation 4                 |
| The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 | <a href="#">S.S.I. 2010/432</a> | Regulation 9                 |

| <i>Column (1)</i>  | <i>Column (2)</i>               | <i>Column (3)</i>            |
|--|---------------------------------|------------------------------|
| <i>Regulations revoked</i>   | <i>References</i>               | <i>Extent of Revocations</i> |
| The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010 | <a href="#">S.S.I. 2010/433</a> | Regulation 9                 |
| The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011                               | <a href="#">S.S.I. 2011/138</a> | Regulations 3, 6 and 7       |
| The Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2011                                      | <a href="#">S.S.I. 2011/378</a> | The whole Regulations        |

## 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, 75B, 75F, 130, 154, 169 and 180 of the Town and Country Planning (Scotland) Act 1997 (c.8) (“the Act”) and appeals under sections 18 and 35 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”). They apply to appeals under sections 47 and 130 as those sections are applied in relation to the control of advertisement by regulations under section 182 of the Act. These Regulations also apply in relation to the procedure for dealing with applications made under section 242A of the Act and applications called-in for determination by the Scottish Ministers by virtue of a direction under section 46 of the Act or section 11 of the Listed Buildings Act.

Part 1 of the Regulations sets out how the Regulations apply to these various appeals and applications.

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(3) 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 allowed for determination of the application, which is defined in regulation 2. 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.

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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 9 seek further information or representations by means of further procedure. The procedures available are those described in regulation 9(4). The procedures to be followed are, in terms of regulation 9(5), further written submission in accordance with regulation 11, 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 12. Regulation 10 makes provision for the holding of pre-examination meetings to consider how the appeal may be conducted. Regulation 8 enables the appointed person to seek confirmation from interested parties as to whether they wish to be involved in any further procedure.

Regulation 13 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 of the Regulations makes provision relating to how an appeal under sections 130, 169 and 180 of the Act or under section 35 if the Listed Building Act is made. Regulation 14 specifies information which must be included in a statement of appeal. Regulation 15 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 16 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 in relation to appeals under section 18 of the Listed Buildings Act. Regulation 17(6) requires an appeal to be accompanied by a certificate required under regulation 18 and the forms of notice to be used in relation to this requirement are set out in Schedule 3.

Part 6 of the Regulations makes provision in relation to appeals under section 47 of the Act as that section is applied by regulations made under section 182 of the Act, currently the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

Part 7 of the Regulations makes provision relating to how appeals under section 75B of the Act relating to planning obligations (regulation 21), section 75F of the Act relating to good neighbour agreement (regulation 22) and section 154 of the Act relating to certificates of lawfulness of existing use or development or proposed development (regulation 23) are made.

Part 8 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 or section 11 of the Listed Buildings Act. In addition Part 8 makes provision in relation to applications made directly to the Scottish Ministers under section 242A of the Act. In these situations the determination is made by the Scottish Ministers rather than by a person appointed to do so. Regulations 24 and 25 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 9 of the Regulations contains general provisions. Regulation 26 sets out how the Regulations apply in relation to non-delegated appeals. The provisions of the Regulations are generally framed in the context of delegated appeals. An appeal is a delegated appeal where it is to be determined by a person appointed for that purpose under Schedule 4 to the Act or Schedule 3 to the Listed Buildings Act. 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 2010 (S.S.I. 2010/467). 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 Schedule 4 to the

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Act or Schedule 3 to the Listed Buildings Act are, together with those appeals which are recalled for determination by virtue of powers contained in those Schedules, defined as non-delegated appeals. Part 9 in addition makes provision relating to cases giving rise to national security issues (regulation 27), the provision of further copies of documents (regulation 28), the appointment of an assessor to advise the appointed person (regulation 30) and the use of electronic communications (regulation 32). Regulation 29 requires the appointed person to comply with consultation and notification requirements in connection with an appeal or application to the extent that they have not already been met. Regulation 31 makes provision for the content and publication of the decision on the appeal or application.

Part 10 of the Regulations and Schedule 5 revoke the Town and Country Planning (Appeals) (Scotland) Regulations 2008 and other enactments which amended those Regulations and make transitional and saving provisions.