
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 181

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

PART 5

Appeals under section 19 of the principal Act

Notice of appeal

24.—(1) An appeal to the Scottish Ministers under section 19 of the principal Act (appeals against decisions or failure to take decisions relating to hazardous substances) is to be made by giving notice in writing in accordance with this regulation.

(2) The period prescribed for the purposes of section 19(2) of the principal Act (appeals against failure to take decisions) is the period of 2 months after the validation date.

(3) The notice of appeal must be served on the Scottish Ministers within the period of 3 months beginning with, in the case of an appeal under—

- (a) section 19(1) of the principal Act, the date of the decision notice or the notice of decision given under regulation 19 (notices on decisions on applications for approval of matters specified in conditions), as the case may be; and
 - (b) section 19(2) of the principal Act, the date of expiry of the period prescribed under paragraph (2) or such extended period as may be agreed upon in writing between the applicant and the planning authority.
- (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 of the notice and the reference number given by the planning authority to the application in respect of which the appeal is made;
 - (c) the name and address of any agent acting on behalf of the appellant and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the agent 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) referred to in regulation 30(3) (decisions as to further procedure) the appellant considers the appeal should be conducted, and in particular—
 - (i) a statement of whether or not the appellant wishes the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the appellant so wishes, a statement of the matters on which the appellant wishes the opportunity to be heard; and
 - (e) where the appeal is made under section 19(1) of the principal Act, a copy of the decision notice or a copy of the notice of decision given under regulation 19, as the case may be.

(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.

(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 25 (intimation to planning authority and planning authority's response), 26 (notification to interested parties) and 32 (written submissions procedure), the Hearing Session Rules or, as the case may be, the Hazardous Substances Inquiry Session Rules.

Intimation to planning authority and planning authority's response

25.—(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 24(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 the notification of appeal given 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) referred to in regulation 30(3) the planning authority consider the appeal should be conducted and in particular—
 - (i) a statement of whether or not the planning authority wish the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the planning authority so wish, a statement of the matters on which the planning authority wish the opportunity to be heard;
- (b) a copy of the documents (other than those specified on the list referred to in paragraph (1) (b)) which were before the planning authority and which were taken into account in reaching their decision; and
- (c) the conditions (if any) which the planning authority presently consider should be imposed in the event that consent is 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 or notice of decision given under regulation 19, as the case may be; and
- (b) any documents, materials or evidence on which the appellant intends to rely in relation to such comments.

Notification to interested parties

26.—(1) The planning authority must not later than 14 days following the date of receipt of the notification of appeal given under regulation 25(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 these Regulations other than by newspaper advertisement; and
- (b) by post or by advertisement in a newspaper circulating in the locality in which the land to which the appeal relates is situated, to any other interested party.

(3) Notice under paragraph (1) must—

- (a) state the name of the appellant;
- (b) include a description of the proposal to which the appeal relates;
- (c) include the postal address of the land to which the appeal relates, or if the land in question has no postal address, a description of the location of the land;
- (d) state that a copy of any representation previously made to the planning authority, other than a representation which the interested party who made it 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 representations may be made and by what date they must be made; and
- (f) state where and when a copy of the notice of appeal and other documents related to the appeal may be inspected.

(4) An interested party may, within a period of 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 must send a copy of any representations received under paragraph (4) to the appellant and to the planning authority and 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

27. The planning authority must, in relation to an appeal under section 19 of the principal Act, until such time as the appeal is determined, make available for inspection at an office of the planning authority copies of—

- (a) the notice of appeal;
- (b) the planning authority's response and any comments sent under regulation 25(3)(a);
- (c) the documents—
 - (i) specified on the list referred to in regulation 25(1)(b);
 - (ii) sent in accordance with regulation 25(2)(b) and (3)(b);
- (d) the notice given under regulation 26(1); and
- (e) any representations or comments made under regulation 26(4) or (6).

Determination without further procedure

28.—(1) This regulation applies only where neither the appellant nor the planning authority wish to be given an opportunity to appear before and be heard by the appointed person on any matter in relation to the appeal.

(2) Where this regulation applies and 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

29.—(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) by 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 the specified date they may lose the opportunity to participate in any further procedure.

(3) Where notice is given under paragraph (1) any reference in regulations 31 (pre-examination meetings) and 33 (site inspections), the Hearing Session Rules and the Hazardous Substances 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.

Decisions as to further procedure

30.—(1) Subject to paragraph (3)—

- (a) 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;
- (b) 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;
- (c) where the appointed person so determines the appeal or stage of the appeal is to be conducted by one of, or by a combination of, the procedures referred to in paragraph (3).

(2) Where either the appellant or the planning authority wish to be given an opportunity to appear before and be heard by the appointed person on any matter then that matter is, to the extent that the appellant or planning authority, as the case may be, wish to make oral submissions on that matter, to be considered by means of, or a combination of, the procedures referred to in paragraph (4)(b) and (c).

(3) 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.

(4) 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 32 applies;
- (b) a hearing session, the Hearing Session Rules apply;
- (c) an inquiry session, the Hazardous Substances Inquiry Session Rules apply;
- (d) an inspection of the land, regulation 33 applies.

(5) Notices given under regulation 32(1), rule 1(1) of the Hearing Session Rules or rule 3(1) of the Hazardous Substances Inquiry Session Rules may be given separately or combined into a single notice.

Pre-examination meetings

31.—(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 procedure

32.—(1) Where an 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) the appellant;
- (b) the planning authority; and
- (c) 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 (“procedure notice response”) must 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.

Site inspections

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

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

34.—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 30, 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; and
- (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 32, any person to whom such notice was sent.

Further copies of documents etc.

35.—(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; or

- (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.

Compliance with notification and consultation procedures

36.—(1) The appointed person must, to the extent not already done so by the appellant or the planning authority, as the case may be, comply with—

- (a) regulation 5 (notice to owner by applicants);
- (b) regulation 9 (neighbour notification by planning authorities);
- (c) regulation 10 (publication of receipt of application by planning authorities); and
- (d) regulation 14 (consultation before determination of applications).

(2) Where the appointed person notifies or consults with any body or person in accordance with paragraph (1) references in these Regulations to an interested party (other than in regulation 26 (notification to interested parties)) includes any such body or person from whom the appointed person received representations (which are not subsequently withdrawn) in connection with the appeal.

Appointment of assessor

37.—(1) The Scottish Ministers may appoint a person to sit with the appointed person at a hearing 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 hearing session 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, make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

Notice of decision on appeal

38.—(1) The appointed person must—

- (a) give notice of the decision on an appeal under section 19 of the principal Act (“notice of decision”) to—
 - (i) the appellant, or where an agent is acting on behalf of the appellant that agent;
 - (ii) the planning authority;
 - (iii) the safety regulator; and
 - (iv) the Scottish Environment Protection Agency; 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 given under sub-paragraph (a) is available for inspection.

(2) The notice of decision must include the appointed person's decision on the appeal, including a description of any variation or reversal of any part of the decision of the planning authority.

(3) The notice of decision must also—

- (a) identify the bodies and other persons consulted by the appointed person in respect of the application;
- (b) explain the reasons on which the decision is based;
- (c) contain a statement of the number of representations made in respect of the appeal, a summary of the main issues raised by such representations and an explanation of how they were taken into account in the decision; and
- (d) contain information regarding the right to challenge the validity of the decision and the procedures for doing so.

Called-in applications

39.—(1) This Part (other than regulations 24 (notice of appeal), 25 (intimation to planning authority and planning authority's response), 26 (notification to interested parties) and 27 (publication of appeal documents)) and the Hearing Session Rules apply to an application referred to the Scottish Ministers following a direction under section 18(1) of the principal Act (reference of applications to Scottish Ministers) with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references to the appeal and the appellant are to be treated, respectively, as references to the application and the applicant;
- (b) references to the appointed person—
 - (i) in this Part (other than in regulation 37 (appointment of assessor)) and rule 1(1) of the Hearing Session Rules are to be treated as references to the Scottish Ministers; and
 - (ii) in regulation 37 and the Hearing Session Rules (other than in rule 1(1)) are to be treated as references to the person appointed to hold the hearing session;
- (c) in—
 - (i) regulation 28(2) (determination without further procedure) and 30(4) (decisions as to further procedure), “considers” is to be read as “consider”;
 - (ii) regulation 30(1)(a), “does” is to be read as “do”;
 - (iii) regulation 30(1)(c), “determines” is to be read as “determine”;
 - (iv) regulation 29(1) (opt-in notice to interested parties), regulation 31(2) and (4) (pre-examination meetings), 32(1) (written submissions procedure) and 33(2), (3) and (4) (where it first appears) (site inspections), “is” is to be read as “are”;
 - (v) regulation 32(1), “has” is to be read as “have”;
 - (vi) regulation 32(1)(c), “wishes” is to be read as “wish”;
 - (vii) regulation 33(2) and (3), “intends” is to be read as “intend”;
 - (viii) regulation 34(1) (new evidence), “proposes” is to be read as “proposed”; and
 - (ix) regulation 36(2) (compliance with notification and consultation procedures) “notifies or consults” is to be read as “notify or consult”; and
- (d) where the direction requiring the application to be referred to the Scottish Ministers is given under section 18(1) of the principal Act, regulation 36 (compliance with notification and consultation procedures) applies as in the case of an appeal under section 19 of the principal Act.

Non-delegated appeals

40.—(1) This Part and the Hearing Session Rules apply to a non-delegated appeal as they apply to a delegated appeal with the modifications specified in regulation 39(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 the Schedule to the principal Act;

“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 the Schedule to the principal Act; and

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

Changes to legislation:

There are currently no known outstanding effects for the The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015, PART 5.