

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), SCHEDULE 7. (See end of Document for details)

SCHEDULES

SCHEDULE 7

Sections 33, 85, 91, 93, 99 and 279 and
paragraph 7 of Schedule 10.

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

Modifications etc. (not altering text)

- C1** Sch. 7 extended (1.1.1997) by 1995 c. 25, s. 96, **Sch. 13 para. 16(7)** (with ss. 7(6), 115, 117); S.I. 1996/2857, **art. 2**
Sch. 7 extended (1.1.1997) by 1995 c. 25, s. 96, **Sch. 14 para. 9(7)** (with ss. 7(6), 115, 117); S.I. 1996/2857, **art. 2**

Determination of appeals by appointed person

- 1 (1) An appeal to which this Schedule applies, being an appeal of a prescribed class, shall, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (3) This paragraph shall not affect any provision contained in this Act or any instrument thereunder that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.

Powers and duties of person determining appeal

- 2 (1) A person appointed under this Schedule to determine an appeal shall have the like powers and duties in relation to the appeal as the Secretary of State under whichever are relevant of the following provisions, that is to say—
- (a) in relation to appeals under section 33, subsections (3) and (5) of that section;
 - [^{F1}(aa) in relation to appeals under section 63A, subsections (4) and (6);]
 - (b) in relation to appeals under section 85, subsections (4) to (6) of that section;
 - (c) in relation to appeals under section 91, subsection (2) and (3) of that section;
 - (d) in relation to appeals under section 93, subsections (4) and (5) of that section;
 - (e) in relation to appeals under section 99, section 85(4) and (5) of this Act;
 - (f) in relation to appeals under paragraph 7 of Schedule 10 to this Act, subparagraph (3) of that paragraph.

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- (2) The provisions of section 33(4), [F²85(2D)], 91(4), 93(2) and paragraph 7(4) of Schedule 10 to this Act relating to the affording of an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State, shall not apply to an appeal which falls to be determined by a person appointed under this Schedule but before the determination of any such appeal the Secretary of State shall, unless (in the case of an appeal under section 36) the appeal is referred to a Planning Inquiry Commission under section 45 of this Act, ask the applicant or appellant, as the case may require, and the . . . F³ planning authority whether they wish to appear before and be heard by the person so appointed, and—
- (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid; and
 - (b) the person so appointed shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.
- (3) Subject to sub-paragraph (4) of this paragraph, the decision of a person appointed under this Schedule on any appeal to which this Schedule applies shall be final.

Textual Amendments

- F1** Sch. 7 para. 2(1)(aa) inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 53\(1\), Sch. 11 Pt. II para. 34\(2\)](#)
- F2** Figure substituted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 53\(1\), Sch. 11 Pt. II para. 53](#)
- F3** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

- [F⁴3A (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 of this Schedule at any time before the determination of the appeal.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the applicant or appellant, the planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 26(3)(a) of this Act.
- (3) Where a direction under this paragraph has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the person appointed to determine the appeal (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.]
- (4) An appeal determined by any such person by virtue of this Schedule shall be treated for the purposes of this Act as having been determined by the Secretary of State.

Textual Amendments

- F4** Sch. 7 para. 3A inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 53\(1\), Sch. 11 Pt. II para. 42](#)

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Determination of appeals by Secretary of State

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal, which by virtue of paragraph 1 of this Schedule and apart from this sub-paragraph, falls to be determined by a person appointed by the Secretary of State shall instead be determined by the Secretary of State.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the applicant or appellant, the . . .^{F5} planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 26(3)(a) of this Act.
- (3) Where in consequence of a direction under this paragraph an appeal to which this Schedule applies falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) Where in consequence of a direction under this paragraph the Secretary of State determines an appeal himself, he shall, unless (in the case of an appeal under section 33) the appeal is referred to a Planning Inquiry Commission under section 45 of this Act, afford to the applicant or appellant, the . . .^{F5} planning authority and any person who has made any such representations as aforesaid an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose either—
- (a) if the reasons for the direction raise matters with respect to which either the applicant or appellant, or the . . .^{F5} planning authority or any such person, have not made representations; or
- (b) if the applicant or appellant or the . . .^{F5} planning authority had not been asked in pursuance of paragraph 2(2) of this Schedule whether they wished to appear before and be heard by a person appointed to hear the appeal, or had been asked that question and had expressed no wish in answer thereto, or had expressed a wish to appear and be heard as aforesaid, but had not been afforded an opportunity of doing so.
- (5) Except as provided by sub-paragraph (4) of this paragraph, where the Secretary of State determines an appeal in consequence of a direction under this paragraph he shall not be obliged to afford any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made; and in determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

Textual Amendments

F5 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

- [^{F6}3A (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 of this Schedule at any time before the deter*mination of the appeal.

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- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the applicant or appellant, the planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 26(3)(a) of this Act.
- (3) Where a direction under this paragraph has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the person appointed to determine the appeal (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.]

Textual Amendments

F6 Sch. 7 para. 3A inserted by Housing and Planning Act 1986 (c. 63. SIF 123:2), s. 53(1), Sch.11 Pt. II para. 42

Appointment of another person to determine appeal

- 4 (1) Where the Secretary of State has appointed a person to determine an appeal under this Schedule the Secretary of State may, at any time before the determination of the appeal, appoint another person to determine it instead of the first-mentioned person.
- (2) Paragraph 2 of this Schedule shall, subject to sub-paragraph (3) of this paragraph, apply in relation to an appeal which falls to be determined by a person appointed under this paragraph as they apply in relation to an appeal which falls to be determined by a person appointed under that paragraph.
- (3) If before the appointment of a person under this paragraph to determine an appeal, the Secretary of State had with reference to the person previously appointed, asked the question referred to in paragraph 2(2) of this Schedule, the question need not be asked again with reference to the person appointed under this paragraph and any answers to the question shall be treated as given with reference to him, but—
 - (a) the consideration of the appeal or any inquiry or other hearing in connection therewith, if already begun, shall be begun afresh; and
 - (b) it shall not be necessary to afford any person an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

- 5 (1) A person appointed under this Schedule to determine an appeal may (whether or not the parties have asked for an opportunity to appear and be heard) hold a local inquiry in connection with the appeal and shall hold such an inquiry if the Secretary of State directs him to do so.

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- [^{F7}(1A) Where a person appointed under this Schedule to determine an appeal—
- (a) holds a hearing by virtue of paragraph 2(2)(b) of this Schedule, or
 - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising notwithstanding that the appointed person is to determine the appeal.]
- (2) Subject to sub-paragraph (3) of this paragraph, the expenses—
- (a) of any hearing held by virtue of paragraph 2(2)(b) of this Schedule; and
 - (b) of any inquiry held by virtue of this paragraph,
- shall be defrayed by the Secretary of State.
- (3) Subsections (4) to (9) of section 267 of this Act shall [^{F8}subject to sub-paragraph (4) below] apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- [^{F9}(4) The person appointed to determine the appeal has the same power to make orders under section 267(7) of this Act in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
- (5) For the purposes of this paragraph, references to the Minister in subsections (7) and (8) of section 267 shall be read as references to the person appointed by the Secretary of State to determine the appeal.]

Textual Amendments

- F7** Sch. 7 para. 5(1A) inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 53(1), **Sch. 11 Pt. II para. 43**
- F8** Words inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 53(1), **Sch. 11 Pt. II para. 40(2)(a)**
- F9** Sch. 7 para. 5(4)(5) inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 53(1), **Sch. 11 Pt. II para. 40(2)(b)**

Stopping of appeals

- 6 If before or during the determination of an appeal under section 33 of this Act which is to be or is being determined in accordance with paragraph 1 of this Schedule, the Secretary of State forms the opinion mentioned in subsection (7) of that section, he may direct that the determination shall not be begun or proceeded with.

Supplementary provisions

- 7 (1) The ^{M1}Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by a person appointed to determine the relevant appeal under this Schedule.

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- (2) The functions of determining an appeal and doing anything in connection therewith conferred by this Schedule on a person appointed to determine an appeal thereunder who is an officer of the Scottish Office shall be treated for the purposes of the ^{M2}Parliamentary Commissioner Act 1967 as functions of that office.
- (3) In section 33(7) of this Act, for the words “and 65” there shall be substituted the words “65 and 72”; but the provisions of this sub-paragraph shall cease to have effect at the same time as the provisions referred to in section 83(1) of this Act whether or not the provisions of this sub-paragraph have by that time been brought into operation.

Marginal Citations

M1 1971 c. 62.

M2 1967 c. 13.

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