

*Status: Point in time view as at 23/10/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, SCHEDULE. (See end of Document for details)*

## SCHEDULE

Section 19(10).

### DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

#### *Determination of appeals by appointed person*

- 1 (1) The Secretary of State may by regulations prescribe classes of appeals under section 19 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Those classes of appeals shall be so determined except in such classes of case—
  - (a) as may for the time being be prescribed, or
  - (b) as may be specified in directions given by the Secretary of State.
- (3) Such regulations may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
- (5) A person appointed under this paragraph is referred to in this Schedule as an “appointed person”.

#### *Powers and duties of appointed person*

- 2 (1) An appointed person shall have the same powers and duties as the Secretary of State has under section 19(5), (7) and (9).
- (2) Subsection (6) of that section shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the planning authority whether they wish to appear before and be heard by the appointed person.
- (3) If both the parties express a wish not to appear and be heard, the appeal may be determined without their being heard.
- (4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.
- (5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.
- (6) Except as provided by section 20, the decision of an appointed person on an appeal shall be final.

#### *Determination of appeals by Secretary of State*

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.
- (2) Such a direction shall state the reasons for which it is given and shall be served on the 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

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into account by regulations made under section 6 or, as the case may be, 15(2) and, if any person has been appointed under paragraph 1, on him.

- (3) Where in consequence of such a direction an appeal under section 19 falls to be determined by the Secretary of State himself, 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) The Secretary of State shall give the appellant, the planning authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if—
    - (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations, or
    - (b) in the case of the appellant or the planning authority, either of them was not asked in pursuance of paragraph 2(2) whether they wish to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard, but was not given an opportunity of doing so.
  - (5) Except as provided by sub-paragraph (4), the Secretary of State need not give 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.
  - (6) 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.
- 4
- (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
  - (2) Such a further direction 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 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 by regulations made under section 6 or, as the case may be, 15(2).
  - (3) Where such a further direction 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 appointed person (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.

*Appointment of another person to determine appeal*

- 5
- (1) At any time before the appointed person has determined the appeal the Secretary of State may—
    - (a) revoke his appointment, and
    - (b) appoint another person under paragraph 1 to determine the appeal instead.
  - (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.

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- (3) Nothing in sub-paragraph (2) shall require—
- (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person), or
  - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

#### *Local inquiries and hearings*

- 6 (1) Whether or not the parties have asked for an opportunity to appear and be heard, an appointed person—
- (a) may hold a local inquiry in connection with the appeal, and
  - (b) shall do so if the Secretary of State so directs.
- (2) Where an appointed person—
- (a) holds a hearing by virtue of paragraph 2(4), 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.
- (3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry shall be paid by the Secretary of State.
- (4) Subsections (4) to (13) of section 265 of the principal Act apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- (5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
- (6) For the purposes of this paragraph, references to the Minister in subsections (9) to (12) of that section shall be read as references to the appointed person.

#### *Supplementary provisions*

- 7 (1) The <sup>M1</sup>Tribunals and Inquiries Act 1992 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 10(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 an appointed person.
- (2) The functions of determining an appeal and doing anything in connection with it conferred by this Schedule on an appointed person who is [<sup>F1</sup>a member of the staff of the Scottish Administration shall be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.]

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#### **Textual Amendments**

**F1** Words in [Sch. para. 7\(2\)](#) substituted (23.10.2002) by [Scottish Public Services Ombudsman Act 2002 \(asp 11\)](#), s. 25, [Sch. 6](#) {para. 19}; S.I. 2002/467, [art. 2](#)

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#### **Modifications etc. (not altering text)**

**C1** [Sch. para. 7](#) modified (1.7.1999) by S.I. 1999/1351, [art. 17\(7\)\(c\)](#); S.I. 1998/3178

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#### **Marginal Citations**

**M1** 1992 c. 53.

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