

## SCHEDULE 11

### Appeals to the Scottish Ministers

## PART 2

**10.** In this Part—

“appointed person” means a person appointed under regulation 78(2)(a);

“appointment”, in the case of any appointed person, means appointment under regulation 78(2)(a).

**11.** An appointment must be in writing and—

(a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;

(b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and

(c) may, by notice in writing to the appointed person, be revoked at any time by the appeal body in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

**12.** Subject to the provisions of this Part, an appointed person, in relation to any appeal, matter or question to which the appointed person’s appointment relates, has the same powers and duties as the appeal body, other than any function of appointing a person for the purpose—

(a) of enabling persons to appear before and be heard by the person so appointed; or

(b) of referring any question or matter to that person.

**13.—**(1) If the appellant, the regulator or any person whose civil rights are to be determined in the appeal expresses a wish to appear before and be heard by the appointed person, the appointed person must give them an opportunity of appearing and being heard.

(2) Whether or not a person under sub-paragraph (1) has asked for an opportunity to appear and be heard, the appointed person—

(a) may hold a local inquiry or other hearing in connection with the appeal, matter or question; and

(b) must if the appeal body so directs, hold a local inquiry in connection with an appeal, matter or question.

(3) Where an appointed person holds a local inquiry or other hearing by virtue of this Part, an assessor may be appointed by the appeal body to sit with the appointed person at the inquiry or hearing and advise the appeal body on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.

(4) Subject to sub-paragraphs (5) and (6), the costs of a local inquiry held under this Part must be defrayed by the appeal body.

(5) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973(1) (which relates to the costs of and holding of local inquiries) apply to hearings held under this Part

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(1) 1973 c. 65, section 210 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and 289G (which were inserted into that Act by the Criminal Justice Act 1982 (c. 48), section 54) and the Housing and Planning Act 1986, Schedule 11, paragraph 39.

*Status: This is the original version (as it was originally made).*

by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers; and
  - (ii) for the second reference to the Minister of a reference to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
  - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
  - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
  - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses)—
  - (i) for the words “the Minister has”, of the words “the Scottish Ministers have”;
  - (ii) for the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

**14.—(1)** Where—

- (a) under paragraph 11(c) the appointment of the appointed person is revoked in respect of any appeal, matter or question, and
  - (b) the appeal body does not itself propose to determine that appeal, matter or question,
- the appeal body must appoint another person under regulation 78(2)(a) to determine the appeal, matter or question.

(2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, must be begun afresh.

**15.—(1)** Anything done or omitted to be done by an appointed person in, or in connection with, the exercise of any function to which the appointment relates is for all purposes to be treated as done or omitted to be done by the appeal body in its capacity as such.

(2) Sub-paragraph (1) does not apply—

- (a) for the purposes of so much of any contract made between the appeal body and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates.