

PLANNING (SCOTLAND) ACT 2019

EXPLANATORY NOTES

OVERVIEW OF THE ACT

PART 3 – DEVELOPMENT MANAGEMENT

Delegation of development decisions

Section 27: Delegation of development decisions

154. Section 27 of the Act repeals section 56(6A) (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 (“the 1973 Act”) and section 14(2) (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”). Section 56 of the 1973 Act deals with the delegation of functions within local authorities. Section 14 of the 2006 Act introduced subsection (6A) to section 56 of the 1973 Act which specifies that: “A local authority’s function of determining an application for planning permission for a development of a class mentioned in section 38A(1) of the [Town and Country Planning \(Scotland\) Act 1997](#) (c. 8) shall be discharged only by the authority.”
155. Section 38A(1) of the 1997 Act provides that a pre-determination hearing before a committee of the authority must be offered to the applicant (and prescribed parties) in relation to an application for planning permission for a prescribed class of development. Therefore, the local authority currently cannot delegate to a committee or to officials the decision on whether or not to grant planning permission in a case where a pre-determination hearing has to be offered.
156. Section 27 of the Act removes the requirement for such applications to go to full council for decision, and leaves the authority free to delegate the decision on such applications as it sees fit. For example, since the pre-determination hearing is before a committee of the authority, it might be considered appropriate for that committee to make the decision on the application.

Section 28: Schemes of delegation

157. Section 28 of the Act substitutes new sections 43A, 43AA, 43AB, 43AC and 43AD for section 43A of the 1997 Act. Section 43A of the 1997 Act currently requires each planning authority to prepare a scheme of delegation for the determination by an appointed person of various applications. The applications in question are applications for planning permission in relation to local development, and applications for consent, agreement or approval where that is required by conditions attached to such planning permission. An appointed person is distinct from an elected member of the authority and is usually an officer of the authority. Where applications are so delegated, rather than a right of appeal to the Scottish Ministers, the applicant has a right to a review by the planning authority of the appointed person’s decision, or failure to make a decision, on the application. The main effect of the new provisions is to extend such schemes of delegation to other types of application under the 1997 Act; they also expand the content of the current section 43A to set it out more clearly.

*These notes relate to the Planning (Scotland) Act 2019
(asp 13) which received Royal Assent on 25 July 2019*

158. New sections 43A(1) – (3) restate the basic specification of a scheme of delegation and the requirements to review and update the scheme which are currently in existing section 43A(1) of the 1997 Act. As all planning authorities already have schemes of delegation, the current requirement for each planning authority to prepare one as soon as possible after the provision comes into force has been removed.
159. New section 43A(4) sets out the applications to which a scheme of delegation applies. As well as covering those applications which are currently covered (paragraphs (a) and (b)), new section 43A(4) extends the range of applications to which such schemes apply. It adds applications for approval required by a development order (paragraph (c)), applications for certificates of lawful use or development (CLUD) (paragraphs (d) and (e)) and applications for advertisement consent (paragraph (f)). New section 43(5) restates the current section 43A(3) which prevents the delegation to an appointed person of applications for planning permission for which a pre-determination hearing before committee is required (section 38A(1) of the 1997 Act). New section 43A(6) restates current section 43A(6) which allows a planning authority to remove an application from the scheme of delegation and determine it themselves; and new section 43A(7) restates current section 43A(7) which requires them to produce a statement of reasons for doing so, which must be copied to the applicant. New section 43A(8) contains a new provision which clarifies that applications covered by a scheme of delegation under the 1997 Act cannot be delegated to an officer of the planning authority through section 56 of the Local Government (Scotland) Act 1973.
160. New section 43AA(1) restates the current provisions of section 43A(2) of the 1997 Act. This provides that the determination of any person appointed is to be treated as the determination of the planning authority, except for the purposes of triggering a right of review under section 43AC or a right of appeal to the Scottish Ministers under section 47 or section 154 of the 1997 Act. The inclusion of a reference to section 154 of the 1997 Act (which deals with CLUD appeals) is new, and is added alongside the reference to section 47 which deals with planning permission appeals. New section 43AA(1) means that although the applicant can require a review of the decision of the appointed person, they cannot appeal to the Scottish Ministers against such a decision. New section 43AA(2) restates the current section 43A(5), which lists provisions of the 1997 Act that place requirements on the planning authority when dealing with a planning application and applies them to an appointed person in delegated cases. New sections 43AA(4) and (5) are new provisions which similarly apply a development order and relevant parts of the 1997 Act to the appointed person when dealing with delegated applications for, respectively, the consent, agreement or approval required by a development order and with CLUDs.
161. New section 43AB(1) restates the current requirements of section 43A(4) of the 1997 Act, which allows the Scottish Ministers to make regulations setting out the form and content of schemes of delegation and the procedures for their preparation and adoption (with this being extended by new section 43AB(1) to also cover changes to schemes). New section 43AB(2) is a new provision which makes it clear that the regulations may require the planning authority to provide the Scottish Ministers with a draft of a scheme of delegation and may also require the authority to make such modifications as specified by the Scottish Ministers before adopting the scheme. It also allows regulations to require compliance with directions issued by the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation. New section 43AB(3) contains a new requirement for planning authorities to have regard to any guidance issued by the Scottish Ministers when authorities are preparing, adopting, reviewing or changing a scheme of delegation.
162. New sections 43AC and 43AD for the most part simply restate the current requirements of sections 43A(8) to 43A(17) of the 1997 Act. Those sections cover the procedure under which the applicant can require the planning authority to review a delegated decision – either where an application was refused or granted subject to conditions, or where the appointed person failed to determine the application within the prescribed

time period. The exception to this (as at present) is that an applicant cannot require the planning authority to hold a review on the basis of the application not being determined timeously if the formal power in section 39 of the 1997 Act to decline to determine an application in certain circumstances has been exercised, or if the Scottish Ministers have called-in the application under section 46 of the 1997 Act. The form and procedure of such a review may be set out in regulations or a development order.

163. Subsections (1) and (4) of new section 43AC, on, respectively, the right to review and determining a review, reflect the wider range of applications to which the schemes of delegation and review procedures now apply under new section 43A(4). New section 43AC(1)(e), together with 43AC(7), provide that a review may be requested if notice of the decision has not been given within “the relevant period”, which may be as prescribed or such other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a “fast track” service attracting a higher fee. New section 43AC(4) sets out the determinations available to a planning authority in dealing with a review. New section 43AC(5) restates section 43A(16) which stipulates that planning authority decisions on reviews are final, subject only to section 239 of the 1997 Act (proceedings for questioning the validity of other orders, decisions and directions).
164. New section 43AD makes provision as to what the Scottish Ministers may specify in regulations or a development order with regard to the form and procedures of any review by the planning authority. This largely replicates existing sections 43A(10) to (14) of the 1997 Act.
165. Section 28(3) of the Act replaces the existing provisions in section 43A(17) of the 1997 Act. Those sections both deal with an applicant’s right of appeal to the Scottish Ministers in cases where a planning authority fail to determine a local review which was requested by an applicant on the grounds that the appointed person had failed to determine a delegated application. Currently, where the planning authority fail to determine a local review in such cases, the application is deemed to have been refused and the applicant can then appeal to the Scottish Ministers under section 47(1) of the 1997 Act against that deemed refusal. Section 28(3) of the Act amends section 47(2) of the 1997 Act (which deals with appeals to the Scottish Ministers where the planning authority have failed to determine an application) to grant a right of appeal in a case where a local review requested on the grounds of non-determination is itself not determined timeously. However, paragraph (b) (which inserts section 47(2A) into the 1997 Act) makes it clear that a right of appeal does not arise under section 47(2) (a) where it is only the appointed person who has not determined the application timeously. In such a case the applicant should instead use the right of review under new section 43AC(1)(e). Section 28(4) of the Act makes equivalent provision in relation to appeals against a planning authority’s failure to determine a review that is requested on the grounds of non-determination of a delegated CLUD decision. Schedule 2 of the Act contains various minor and consequential amendments and repeals in connection with these amendments to schemes of delegation and local reviews.