
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

The Additional Powers Request (Scotland) Regulations 2019

PART 4

Review

Review of decision by the Scottish Ministers

- 15.**—(1) For the purpose of sections 15(2)(g) and 21(2)(d) of the Act, this Part applies where—
- (a) an additional powers request is made to the Scottish Ministers by a relevant local authority, and
 - (b) the Scottish Ministers decide to refuse the additional powers request.
- (2) On an application made by the requesting local authority, the Scottish Ministers must carry out a review of that decision.

Application for review

- 16.**—(1) An application for review under regulation 15(2) must be made in writing in accordance with this regulation.
- (2) An application for review must be received by the Scottish Ministers no later than the date set out in the decision notice under regulation 14(1)(e)(ii).
- (3) The application for review must—
- (a) identify the requesting local authority,
 - (b) describe the additional power,
 - (c) include a statement setting out the requesting local authority’s reasons for seeking a review of the decision, and
 - (d) be accompanied by a list of all documents, materials and evidence on which the requesting local authority intends to rely in the review.
- (4) Subject to paragraph (5)—
- (a) all matters which the requesting local authority intends to raise in the review must be set out in the application for review or in the documents, materials and evidence referred to on the list submitted in accordance with paragraph (3)(d), and
 - (b) the application for review must be accompanied by a copy of all documents, materials and evidence specified on such list other than any documents, materials or evidence which—
 - (i) the requesting local authority has already provided to the Scottish Ministers in connection with the additional powers request, or
 - (ii) the Scottish Ministers otherwise already hold.
- (5) In addition to matters set out in the application for review and in the documents, materials and evidence referred to the list submitted in accordance with paragraph (3)(d), the requesting local authority may raise matters and submit further documents, materials or evidence only—

- (a) in accordance with and to the extent permitted by regulation 17(7), or
- (b) where a request is made (under regulation 22(1), rule 1(1) of the Hearing Session Rules or otherwise) for further representations to be made or further information to be provided by the requesting local authority.

Notification of the review

17.—(1) The Scottish Ministers must before the expiry of the period of 20 working days beginning with the date on which the application for review is received—

- (a) send an acknowledgement of the application for review to the requesting local authority stating the date on which the application for review was made and informing the requesting local authority how documents related to the review may be inspected, and
 - (b) give notice of the review to each interested party.
- (2) Notice under paragraph (1)(b) must be given in writing.
- (3) Notice under paragraph (1)(b) must—
- (a) state the name of the requesting local authority,
 - (b) specify the additional power to which additional powers request relates,
 - (c) state that copies of any representations previously made with respect to the additional powers request will be considered by the Scottish Ministers when determining the review,
 - (d) state that representations may be made to the Scottish Ministers and include information as to how any representations may be made, by what date they must be made and that a copy of the representation will be sent to the requesting local authority for comment, and
 - (e) state how a copy of the application for review and other documents related to the review may be inspected.

(4) An interested party may within the period of 20 working days beginning with the date on which notice is given under paragraph (1)(b) make representations in writing in respect of the review to the Scottish Ministers.

(5) The Scottish Ministers must send a copy of any representations received under paragraph (4) to the requesting local authority and must inform the requesting local authority how and by what date (being a date not less than 20 working days after the date on which such copy is sent under this paragraph) the requesting local authority may make comments in writing to the Scottish Ministers on such representations.

(6) The requesting local authority may, on or before that date, make comments in writing on such representations to the Scottish Ministers.

(7) An interested party may, in addition to any representations made by virtue of paragraph (4), raise matters and submit further documents, materials or evidence only in accordance with a request made under regulation 22(1), rule 1(1) of the Hearing Session Rules or otherwise.

Publication of review documents

- 18.** As soon as practicable the Scottish Ministers must, in relation to a review, make a copy of—
- (a) the review documents, and
 - (b) any notice given under regulation 17(1)(b),

available for inspection on a website or by other electronic means until such time as the review is determined.

Review panel

19.—(1) Where an application for review is made in accordance with regulation 16, the Scottish Ministers must appoint three persons, no more than one of whom may be a member of the staff of the Scottish Administration, to consider the additional powers request and report to the Scottish Ministers on it (“the review panel”).

(2) Following such consideration the review panel must report—

- (a) their findings in fact and conclusions in respect of the additional powers request, and
 - (b) their recommendations as to the determination of the additional powers request,
- to the Scottish Ministers.

Determination without further procedure

20. Where the review panel considers that the review documents provide sufficient information to enable them to do so, the review panel may finalise their report without further procedure.

Decision as to further procedure

21.—(1) Where the review panel considers that further procedure is desirable to assist them in the preparation of their report, the review panel may determine the manner in which the review is to be conducted.

(2) The review panel may determine at any stage of the review—

- (a) that further representations should be made or further information should be made available or provided to enable the review to be determined, and
- (b) how such further representations or further information should be made available or provided.

(3) Where the review panel consider that further representations should be made or further information should be made available or provided by means of—

- (a) written submissions, regulation 22 applies,
- (b) a hearing session, the Hearing Session Rules apply.

(4) Notices given under regulation 22(1) or rule 1(1) of the Hearing Session Rules—

- (a) may be given separately or combined into a single notice, and
- (b) must include an address to which any written communication for the review panel may be sent.

Written submissions

22.—(1) Where the review panel has determined that further representations should be made or further information should be provided by means of written submissions, the review panel may request such further representations or information and must do so by giving written notice to that effect to—

- (a) the requesting local authority, and
- (b) any other person from whom the review panel wishes to receive further representations or information.

(2) The notice given under paragraph (1) must—

- (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 review panel, and

(c) provide the name and address of all persons to whom the notice is given.

(3) Any further representations made or information made available or provided in response to the notice given under paragraph (1) (“additional material”) are to be sent to the review panel on or before the date specified for that purpose in the notice and a copy of any additional material must be sent on or before that date to any other person to whom the notice was given.

(4) Within a period of 10 working days beginning with the date of receipt of a copy of the additional material, any person to whom the notice under paragraph (1) was given—

(a) may send comments to the review panel in respect of the additional material, and

(b) must, when doing so, send a copy of such comments to any other person to whom the notice was given under paragraph (1).

(5) A copy of any additional material or any comments required to be sent to a person under this regulation must be sent to the person at the address stated for that person in the notice given under paragraph (1).

(6) In this regulation “additional material” has the meaning given in paragraph (3).

New evidence

23.—(1) If, after the consideration of the review panel’s report, the Scottish Ministers propose to take into consideration any new evidence which is material to the determination of the review, the Scottish Ministers must not reach a decision on the review without affording the requesting local authority and any other relevant party an opportunity of making written 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, any person entitled to appear at that hearing session,

(b) where the new evidence relates to matters in respect of which further written representations or information was sought by a notice under regulation 22(1), any person to whom such notice was sent.

Further copies of documents etc.

24.—(1) The Scottish Ministers may require any person who has submitted documents, materials or evidence in connection with the review to provide to such other persons as they may specify additional copies of such documents, materials or evidence as they may specify.

(2) The Scottish Ministers must, until such time as the review is determined, make copies of documents, materials or evidence provided by any person in connection with the review available for inspection on a website or by other electronic means.

Determination of the review

25.—(1) The Scottish Ministers must determine a review under regulation 15 by—

(a) confirming their decision, or

(b) substituting their decision with a decision to give effect to an additional powers request.

(2) Where the Scottish Ministers substitute their decision under paragraph (1)(b), the Scottish Ministers may decide to extend the additional power to one or more of the other relevant local authorities.

(3) In determining the review under paragraph (1) the Scottish Ministers must consider—

- (a) the review panel's report, and
- (b) where relevant, any new evidence and any written representations on that evidence received by virtue of regulation 23.

Time periods for determining the review

- 26.**—(1) Within the period mentioned in paragraph (2), the Scottish Ministers must—
- (a) issue a determination notice to the requesting local authority,
 - (b) give a copy of the determination notice to any other relevant local authority to which the additional power is extended under regulation 25(2),
 - (c) publish a copy of the determination notice on a website or by other electronic means, and
 - (d) notify every person who made (and did not subsequently withdraw) representations in respect of the review that the review has been determined and how a copy of the determination notice may be inspected.
- (2) The period referred to in paragraph (1) is—
- (i) the period of 6 months beginning with the date on which the application for review was made, or
 - (ii) such longer period as may be agreed between the Scottish Ministers and the requesting local authority.

Determination notice

- 27.**—(1) The determination notice must—
- (a) identify the requesting local authority,
 - (b) describe the additional power,
 - (c) state how the Scottish Ministers have determined the review under regulation 25(1) and the reasons for their determination, and
 - (d) where the Scottish Ministers decide to extend the additional power—
 - (i) state the reasons for that decision, and
 - (ii) identify the relevant local authorities to which the additional power is to be extended.
- (2) The determination notice replaces any decision notice relating to the additional powers request in respect of which the review was carried out.