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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 433**

**The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008**

**PART 1**

**Preliminary**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and come into force in accordance with paragraphs (2) and (3).

(2) Parts 1 and 2 of these Regulations come into force on 6th April 2009.

(3) These Regulations (other than Parts 1 and 2) come into force on 3rd August 2009.

(4) These Regulations (other than Part 2) apply to reviews conducted by virtue of section 43A(8) of the Act.

(5) Part 2 of these Regulations applies to the preparation and content of a scheme of delegation under section 43A(1) of the Act.

**Interpretation**

2. In these Regulations—

“Act” means the Town and Country Planning (Scotland) Act 1997;

“appointed officer” means a person appointed by virtue of a scheme of delegation under section 43A(1) of the Act by the planning authority to determine the application;

“hearing session” means a hearing held or to be held into matters specified in a procedure notice given under rule 1(1) of the Hearing Session Rules;

“Hearing Session Rules” means the rules set out in Schedule 1 to these Regulations;

“interested party” means—

(a) any authority or person consulted by the planning authority in compliance with a requirement imposed by virtue of section 43(1)(c) of the Act and from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application; and

(b) any other person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application, before the end of the period mentioned in section 38(1) of the Act;

“local review body” has the meaning given in regulation 7(1);

“period allowed for determination of the application” is the period specified in regulation 26(2) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(1);

“procedure notice” means a notice given (whether separately or in combination) under regulation 15(1) or rule 1(1) of the Hearing Session Rules;

“reference number of the application” means the unique number assigned by the planning authority to the application;

“review documents” means notice of the decision in respect of the application to which the review relates, the Report on Handling and any documents referred to in that Report, the notice of review given in accordance with regulation 9, all documents accompanying the notice of review in accordance with regulation 9(4) and any representations or comments made under regulation 10(4) or (6) in relation to the review;

“Report on Handling” means, in respect of an application, the report to be placed in the register of applications which the planning authority are required to keep in accordance with regulations made under section 36(1) of the Act(2);

“rule” means a rule set out in Schedule 1 to these Regulations; and

“specified matters” are in relation to a request for further written representations or information under regulation 15 or to a particular hearing session, those matters which are set out in the procedure notice.

## PART 2

### Schemes of Delegation

#### Content of scheme of delegation

3.—(1) A scheme of delegation must describe the classes of development to which the scheme will apply and state with respect to every such class which of the applications mentioned in paragraph (2) are to be determined by an appointed officer and if such application is only to be so determined in particular circumstances the scheme is to specify such circumstances.

(2) The applications are—

- (a) an application for planning permission; and
- (b) an application for consent, agreement or approval required by a condition imposed on a grant of planning permission.

(3) A scheme of delegation must include provision that prohibits an appointed officer from determining an application for planning permission in the circumstances mentioned in paragraph (4).

(4) The circumstances are that—

- (a) the application is made by—
  - (i) the planning authority; or
  - (ii) a member of the planning authority; or
- (b) the application relates to land in the ownership of the planning authority or to land in which the planning authority have a financial interest.

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(1) [S.S.I. 2008/432](#).

(2) The requirement to include a Report in the register is contained in Schedule 2 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (S.S.I. 2008/432).

### **Procedure for preparation and adoption of scheme of delegation**

4. Where a planning authority propose to adopt a scheme of delegation, the authority are to send a copy of the scheme to the Scottish Ministers and the planning authority are not to adopt the scheme until the scheme has been approved by the Scottish Ministers.

### **Publication of the scheme**

5. The planning authority are to—
- (a) make a copy of the adopted scheme of delegation available for inspection at an office of the planning authority and in every public library in the area of the planning authority; and
  - (b) publish the adopted scheme of delegation on the internet.

### **Subsequent schemes of delegation**

6. The planning authority must prepare a scheme of delegation at intervals of no greater than every five years.

## **PART 3**

### **Review**

#### **Local Review Body**

7.—(1) A review of a case by virtue of section 43A(8) of the Act is to be conducted by a committee of the planning authority comprising at least three members of the authority (to be known as the “local review body”).

- (2) Meetings of the local review body at which decisions—
- (a) under regulation 13 relating to the manner in which the review is to be conducted; or
  - (b) as to how the case under review is to be determined,

are to be held in public.

(3) The date, time and place at which a meeting mentioned in paragraph (2) is to be held is to be determined (and may subsequently be varied) by the local review body.

- (4) The local review body are to give to—
- (a) the applicant; and
  - (b) any interested parties who made representations (which were not subsequently withdrawn) in connection with the application under regulation 10(4),

such notice of the date, time and place fixed for the holding of such meeting (and any subsequent variation thereof) as may appear to the local review body to be reasonable in the circumstances.

#### **Review on failure to determine the application**

8.—(1) An applicant may require the local review body to review the case under section 43A(8) (c) of the Act if the appointed officer has failed to give to the applicant notice of their decision or determination or notice of referral of the application to the Scottish Ministers within the period allowed for determination of the application.

(2) The period prescribed for the purposes of section 43A(17) of the Act is the period of two months beginning on the date when the requirement to review is made by virtue of section 43A(8) (c) of the Act.

### **Notice of Review**

9.—(1) An applicant may require the local review body to review a case under section 43A(8) by giving notice in writing in accordance with this regulation.

(2) The notice of review must be served on the local review body within the period of three months beginning with, in the case of a requirement arising by virtue of—

- (a) section 43A(8)(a) or (b) of the Act, the date of the notice of the decision to which the review relates;
- (b) section 43(8)(c) of the Act, the date of expiry of the period allowed for determination of the application.

(3) The notice of review (on a form obtained from the planning authority) must include—

- (a) the name and address of the applicant;
- (b) the date and the reference number of the application in respect of which the review is required;
- (c) the name and address of the representative of the applicant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the representative instead of the applicant; and
- (d) a statement setting out the applicant's reasons for requiring the local review body to review the case and by what procedure (or combination of procedures) mentioned in regulation 13(4) the applicant wishes the review to be conducted.

(4) Subject to paragraph (5)—

- (a) all matters which the applicant intends to raise in the review must be set out in or accompany the notice of review; and
- (b) all documents, materials and evidence which the applicant intends to rely on in the review must accompany the notice of review.

(5) In addition to matters set out in the notice of review and documents which accompany the notice of review, the applicant may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulation 15 and the Hearing Session Rules.

### **Notification to interested parties and publication**

10.—(1) The local review body must not later than 14 days following notification of the review—

- (a) send an acknowledgement of the notice of review to the applicant and inform the applicant 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) may be given—

- (a) by post to any interested person notified or consulted under the Act other than by newspaper advertisement; and
- (b) by post or by advertisement in a newspaper circulating in the locality where the proposed development is situated, to any other interested person.

(3) Notice under paragraph (1)(b) shall—

- (a) state the name of the applicant and the address of the site to which the review relates;
- (b) describe the application;
- (c) state that copies of any representations previously made with respect to the application, will be considered by the local review body when determining the review;

- (d) state that further representations may be made to the local review body 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 applicant for comment; and
- (e) state how a copy of the notice of review and other documents related to the review may be inspected.

(4) An interested party may, within 14 days beginning with the date on which notice is given under paragraph (1)(b) make representations in respect of the review to the local review body.

(5) The local review body are to send a copy of any representations received under paragraph (4) to the applicant and are to inform the applicant how and by what date (being a date not less than 14 days after the date on which such copy is sent under this paragraph) the applicant may make comments to the local review body on such representations.

(6) The applicant may, on or before that date, make comments on such representations to the local review body.

### **Publication of review documents**

**11.**—(1) The planning authority in relation to a review are to make a copy of—

- (a) the review documents;
- (b) any notice given under regulation 10(1); and
- (c) any procedure notice,

available for inspection at an office of the planning authority until such time as the review is determined.

(2) The planning authority are until such time as the review is determined to afford to any person who so requests the opportunity to inspect and, where practicable, take copies of any review documents (or any part thereof).

## **PART 4**

### **Procedure for Determination**

#### **Determination without further procedure**

**12.** Where the local review body consider that the review documents provide sufficient information to enable them to determine the review, they may determine the review without further procedure.

#### **Decision as to procedure to be followed**

**13.**—(1) Where the local review body do not determine the review without further procedure, the local review body may determine the manner in which the review is to be conducted and are to do so in accordance with this regulation.

(2) The local review body may determine at any stage of the review that further representations should be made or further information should be provided to enable them to determine the review.

(3) Where the local review body so determine, the review or a stage of the review is to be conducted by one of or by a combination of the procedures mentioned in paragraph (4).

(4) The procedures are—

- (a) by means of written submissions;
- (b) by the holding of one or more hearing sessions; and

- (c) by means of an inspection of the land to which the review relates.
- (5) Where the local review body consider that such further representations should be made or information should be made available or provided by means of—
  - (a) written submissions, regulation 15 applies;
  - (b) a hearing session, the Hearing Session Rules apply; or
  - (c) an inspection of the land, regulation 16 applies.
- (6) Notices given under regulation 15(1) or rule 1(1) of the Hearing Session Rules may be given separately or combined into a single notice.

### **Pre-examination meetings**

- 14.**—(1) The local review body may hold a meeting (“a pre examination meeting”) to consider the manner in which the review or any stage of the review is to be conducted with a view to securing that the review or any stage of the review is conducted efficiently and expeditiously.
- (2) The local review body are to determine (and may subsequently vary) the date, time or place for the holding of a pre-examination meeting.
- (3) The local review body must give such notice of the holding of a pre-examination meeting and of the date, time and place where it is to be held (and any subsequent variation thereof) as may appear to the local review body to be reasonable in the circumstances, to—
  - (a) where a pre-examination meeting is to be held in connection only with the conduct of a particular hearing session, those persons entitled to appear at that hearing session; and
  - (b) in any other case to the applicant, the planning authority and any interested party.
- (4) The local review body are to determine the matters to be discussed and the procedure to be followed at the pre-examination meeting.

### **Written Submissions**

- 15.**—(1) Where the local review body have determined that further representations should be made or further information should be provided by means of written submissions, the local review body may request such further representations or information and are to do so by written notice to that effect to—
  - (a) the applicant; and
  - (b) any other body or person from whom the local review body wish to receive further representations or information.
- (2) The notice given under paragraph (1) is to—
  - (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 is to be sent to the local review body; and
  - (c) provide the name and address of any other body or person to whom a request for such further representations or information has been made.
- (3) Any further representations or information made in response to the procedure notice are to be sent to the local review body on or before the date specified for that purpose in the procedure notice and a copy of any such further representations or information is to be sent on or before that date to the applicant and to such other bodies or persons (and at the address) specified in the procedure notice.
- (4) Within a period of 14 days from receipt of a copy of such further representations or information, the applicant or such other body or person may send comments to the local review body

in reply to it and when doing so is to send a copy of such comments to the applicant and to such other bodies or persons (and at the address) specified in the procedure notice.

### **Site inspections**

**16.—**(1) The local review body may at any time make—

- (a) an unaccompanied inspection of the land to which the review relates; or
- (b) an inspection of the land in the company of such of the persons notified under paragraph (3) as desire to do so.

(2) Where the local review body intend to make an unaccompanied inspection, the local review body are to inform the applicant that they propose to do so.

(3) Where the local review body intend to make an accompanied inspection, the local review body are to give such notice of the date and time at which they propose to do so as may appear to them to be reasonable in the circumstances, to—

- (a) the applicant; and
- (b) any interested party.

(4) The local review body is not bound to defer an inspection if any person to whom notice was given under paragraph (3) is not present at the time appointed.

### **New evidence**

**17.—**(1) If after the conclusion of any further procedure conducted by virtue of regulation 13, the local review body propose to take into consideration any new evidence which is material to the determination of the review, the local review body must not reach a decision on the review without first affording the applicant and any other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation “relevant party” means—

- (i) where the new evidence relates to a specified matter considered at a hearing session any person entitled to appear at that hearing session;
- (ii) where the new evidence relates to matters in respect of which further written representations or information was sought by a procedure notice under regulation 15, any person to whom such notice was sent.

## **PART 5**

### **General**

#### **Further copies of documents etc**

**18.—**(1) The local review body may require any person who has submitted documents, materials or evidence under these Regulations in connection with the review to—

- (a) provide to the local review body such number of additional copies of such of those document, materials or evidence as they may specify; and
- (b) provide to such other persons as they may specify such copies or additional copies of any document, materials or evidence as they may specify.

(2) The planning authority are, until such time as the review is determined, to make copies of such documents, materials or evidence provided under paragraph (1)(a) available for inspection at

an office of the planning authority and, where practicable, are to afford any person who so requests a reasonable opportunity of taking copies of such documents (or any part thereof).

### **Compliance with development management procedures**

**19.** The local review body must, to the extent not already done so comply with regulations 18 (notification by the planning authority), 19 (notification of minerals applications), 20 (publication by the planning authority) and 25 (consultation by the planning authority) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008<sup>(3)</sup> before determining the review.

### **Appointment of assessor**

**20.**—(1) The local review body may appoint a person to sit with the local review body at a hearing session to advise them on such matters arising as they may specify (“an assessor”) and where they do so they are to notify every person entitled to appear at the hearing session of the name of the assessor and of the matters on which the assessor is to advise them.

(2) Where an assessor has been appointed, the assessor may (and if so required by the local review body, must), after the close of the hearing session, make a report in writing to the local review body in respect of the matters on which the assessor was appointed to advise.

### **Decision Notice**

**21.**—(1) The local review body must—

- (a) give notice (“a decision notice”) of their decision to the applicant; and
- (b) notify every person who has made (and not subsequently withdrawn) representations in respect of the review that a decision on the review has been made and where a copy of the decision notice is available for inspection.

(2) A decision notice must, in addition to the matters required by section 43A(12)(a) of the Act—

- (a) in the case of an application for planning permission—
  - (i) include the reference number of the application;
  - (ii) include a description of the location of the proposed development, including where applicable, a postal address;
  - (iii) include a description of the proposed development (including identification of the plans and drawings showing the proposed development) for which planning permission has been granted, or as the case may be, refused;
  - (iv) include a description of any variation made to the application in accordance with section 32A of the Act<sup>(5)</sup>;
  - (v) specify any conditions to which the decision is subject;
  - (vi) include a statement as to the effect of section 58(2) or 59(4) of the Act, as the case may be, or where the planning authority have made a direction under section 58(2) or 59(5) of the Act, give details of that direction;
  - (vii) if any obligation is to be entered into under section 75 of the Act in connection with the application state where the terms of such obligation or a summary of such terms may be inspected; and

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(3) S.S.I. 2008/432.

(5) Section 32A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 8 of the Planning etc. (Scotland) Act 2006 (asp 17).



- (viii) include details of the provisions of the development plan and any other material considerations to which the local review body had regard in determining the application;
- (b) in the case of an application for a consent, agreement or approval required by a condition imposed on a grant of planning permission include—
  - (i) a description of the matter in respect of which approval, consent or agreement has been granted, or as the case may be, refused;
  - (ii) the reference number of the application; and
  - (iii) the reference number of the application for the planning permission in respect of which the condition in question was imposed.
- (3) A decision notice must in the case of refusal or approval subject to conditions be accompanied by a notification in the terms set out in Schedule 2 to these Regulations.

### **Electronic communications**

**22.**—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

- (2) The criteria are—
  - (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
  - (b) that the document transmitted by the electronic communication is—
    - (i) capable of being accessed by the recipient;
    - (ii) legible in all material respects; and
    - (iii) sufficiently permanent to be used for subsequent reference.
- (3) The local review body and any person sending a document using electronic communications are to be taken to have agreed—
  - (a) to the use of such communications for all purposes relating to the review which are capable of being carried out electronically; and
  - (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.
- (4) Deemed agreement under paragraph (3) shall subsist until that person gives notice to revoke the agreement.
- (5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, agreement, decision, representation, statement, report or other information or communication;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(4);

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(4) 2000 c. 7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

St Andrew’s House,  
Edinburgh  
22nd December 2008

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers