



# Planning (Scotland) Act 2019

## 2019 asp 13

### PART 3

#### DEVELOPMENT MANAGEMENT

##### *Delegation of development decisions*

#### **27 Delegation of development decisions**

- (1) Subsection (6A) of section 56 (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 is repealed.
- (2) Subsection (2) of section 14 (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 is repealed.

#### **Commencement Information**

**II** S. 27 in force at 1.3.2020 by S.S.I. 2019/385, reg. 3

PROSPECTIVE

#### **28 Schemes of delegation**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) For section 43A substitute—

##### **“43A Schemes of delegation**

- (1) A “scheme of delegation” is a scheme prepared by a planning authority by which an application falling within subsection (4) is to be determined by a person appointed by them (an “appointed person”).
- (2) A planning authority must prepare and keep under review a scheme of delegation and, without limit to that generality, must review it—

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- (a) at such intervals as are provided in regulations made under section 43AB, and
  - (b) whenever required to do so by the Scottish Ministers.
- (3) A planning authority may make changes to their scheme of delegation following a review.
- (4) The applications falling within this subsection are—
- (a) an application for planning permission for a development within the category of local developments,
  - (b) an application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of local developments,
  - (c) an application for any approval of the planning authority required under a development order,
  - (d) an application for a certificate of lawfulness of existing use or development under section 150,
  - (e) an application for a certificate of lawfulness of proposed use or development under section 151,
  - (f) an application for advertisement consent required by virtue of regulations made under section 182.
- (5) References in subsection (4)(a) to a development do not include references to a development of a class mentioned in section 38A(1).
- (6) A planning authority may, if they think fit, decide to determine an application which would otherwise fall to be determined by the appointed person under the scheme of delegation.
- (7) Where the planning authority make such a decision they must—
- (a) include in the decision a statement of the reasons as to why it has been made, and
  - (b) serve a copy of the decision on the applicant.
- (8) A planning authority may not delegate the determination of applications falling within subsection (4) to an officer of the authority otherwise than in accordance with a scheme of delegation prepared under this section.

#### **43AA Schemes of delegation: effect and operation**

- (1) A determination of an appointed person is to be treated as that of the planning authority (other than for the purposes of section 43AC, section 47 and section 154).
- (2) Where an application for planning permission falls to be determined by an appointed person, sections 27A(2), 27B(2), 30(3), 32A, 37(1) to (3), 38, 39, 40, 41(1) and (2), 42, 43(1) to (2), 46, 58, 59 and 60 and Part 1 of schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (3)), as they apply to an application which falls to be determined by the planning authority.
- (3) The modification referred to in subsection (2) is that, in paragraph 1(6) of schedule 3, paragraph (b) is to be read as if there were substituted—

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“(b) is to be regarded for the purposes of section 43AC as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under section 43AC.”.

- (4) Where an application for an approval of the planning authority required under a development order falls to be determined by an appointed person, the development order applies, with any necessary modifications, as it applies to an application which falls to be determined by the planning authority.
- (5) Where an application for a certificate under section 150 or section 151 falls to be determined by an appointed person, section 150 or, as the case may be, section 151, and section 152 apply, with any necessary modifications, as they apply to an application which falls to be determined by the planning authority.
- (6) In this section, “appointed person” is to be construed in accordance with section 43A(1).

#### **43AB Schemes of delegation: further provision and guidance**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the required form and content of a scheme of delegation, and
  - (b) the procedures for preparing, adopting, reviewing and changing such a scheme.
- (2) Without limiting the generality of subsection (1), the regulations may require the planning authority to—
  - (a) provide the Scottish Ministers with a draft of a scheme of delegation or any proposed changes,
  - (b) make such modifications as are specified by the Scottish Ministers before adopting the scheme,
  - (c) comply with such directions as are given by the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation.
- (3) A planning authority must have regard to any guidance issued by the Scottish Ministers when preparing, adopting, reviewing or changing a scheme of delegation.

#### **43AC Review of decisions of appointed person**

- (1) Where an appointed person—
  - (a) refuses an application for planning permission or grants it subject to conditions,
  - (b) refuses an application for any consent, agreement or approval of the planning authority required by a condition imposed on a grant of planning permission or grants it subject to conditions,
  - (c) refuses an application for any approval of the planning authority required under a development order or grants it subject to conditions,
  - (d) refuses an application for a certificate under section 150 or 151 (in whole or in part), or
  - (e) has not given notice of the appointed person's decision within the relevant period,

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the applicant may require the planning authority to review the case.

- (2) A requirement to review may not be made by virtue of paragraph (e) of subsection (1) if, within the relevant period, notice has been given to the applicant that—
  - (a) the power under section 39 to decline to determine the application has been exercised, or
  - (b) the application has been referred to the Scottish Ministers in accordance with directions given under section 46.
- (3) Where a requirement to review is made by virtue of paragraph (e) of subsection (1), the appointed person is, for the purposes of the review, to be deemed to have decided to refuse the application.
- (4) On a review, the planning authority may—
  - (a) in relation to a review of a decision required by virtue of paragraph (d) of subsection (1)—
    - (i) grant or refuse the applicant a certificate under section 150 or 151 accordingly (in whole or in part),
    - (ii) modify the certificate granted by the appointed person,
    - (iii) uphold the determination to refuse the application (or to refuse it in part),
  - (b) in relation to any other review—
    - (i) uphold, reverse or vary any part of the determination (whether the review relates to that part of it or not), and
    - (ii) deal with the application as if it had not been delegated to the appointed person.
- (5) Except as provided under section 239, the decision of a planning authority in a case reviewed by virtue of this section is final.
- (6) In this section, “appointed person” is to be construed in accordance with section 43A(1).
- (7) For the purposes of this section, the “relevant period” is—
  - (a) such period as may be prescribed by regulations or a development order, or
  - (b) such other period as may be agreed in writing between the applicant and the planning authority (or the appointed person on their behalf) in respect of the application (whether before or after it is made).

#### **43AD Review of decisions of appointed person: further provision**

- (1) The Scottish Ministers may by regulations or a development order make provision as to the form and procedures of any review conducted by virtue of section 43AC.
- (2) Without limiting the generality of subsection (1), the regulations or order may—
  - (a) make different provision for different cases or types of case,
  - (b) make different provision for different stages of a case,

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- (c) provide that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority,
  - (d) make provision in relation to oral or written submissions and to documents in support of such submissions (and also about the consequences of any failure to make such submissions),
  - (e) subject to section 43B, make provision about what matters may be raised in the course of the review,
  - (f) make provision in relation to time limits (including a time limit for requiring the review),
  - (g) require the planning authority to give notice to the person who has required the review about how the review has been dealt with.
- (3) Any notice given by virtue of subsection (2)(g)—
- (a) must include a statement of—
    - (i) the terms in which the planning authority have decided the case, and
    - (ii) the reasons on which the authority based that decision, and
  - (b) may include such other information as is prescribed by the regulations or the order.”.
- (3) In section 47 (right to appeal against planning decisions and failure to take such decisions)—
- (a) in subsection (2), after paragraph (a) insert—
    - “(aa) notice of their decision on a review required by virtue of paragraph (e) of section 43AC(1),”
  - (b) after subsection (2) insert—
    - “(2A) Subsection (2)(a) does not apply where the applicant may require a review under section 43AC(1)(e).”.
- (4) In section 154 (appeals against refusal or failure to give decision on application for certificates under section 150 and 151)—
- (a) in subsection (1)—
    - (i) the “or” at the end of paragraph (a) is repealed,
    - (ii) after paragraph (b) insert “or
    - (c) the planning authority do not give notice to the applicant of their decision on a review required by virtue of paragraph (e) of section 43AC(1) within such period as is prescribed by regulations or a development order or within such extended period as may at any time be agreed in writing by the applicant and the authority,”
  - (b) after subsection (1) insert—
    - “(1A) But—
    - (a) an appeal may not be made under subsection (1)(a) in relation to any such action on the part of the planning authority as is mentioned in section 237(3A),

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- (b) an appeal may not be made under subsection (1)(b) where the applicant may require a review under section 43AC(1)(e).”,
- (c) in subsection (3)(b), after “(1)(b)” insert “ or (c) ”.

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