
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

The Additional Powers Request (Scotland) Regulations 2019

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Additional Powers Request (Scotland) Regulations 2019 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the Act” means the Islands (Scotland) Act 2018,

“additional power” means the function, duty or responsibility to which an additional powers request pertains,

“additional powers request” means a request by a relevant local authority that the Scottish Ministers—

(a) transfer a function, duty or responsibility to that local authority, or

(b) promote legislation devolving a function, duty or responsibility to that local authority,

“decision notice” means the notice issued by the Scottish Ministers under regulation 13(1)(a),

“determination notice” means the notice issued by the Scottish Ministers under regulation 26(1)(a),

“extend the additional power” has the meaning given by regulation 12(5)(b),

“give effect to an additional powers request” has the meaning given by regulation 12(5)(a),

“Hearing Session Rules” means the rules set out in the schedule,

“interested party” means any person—

(a) from whom the Scottish Ministers received representations (which were not subsequently withdrawn) in connection with the additional powers request, and

(b) who provided an address to the Scottish Ministers,

“proposed additional power” means the function, duty or responsibility that the relevant local authority proposes to request in an additional powers request,

“relevant authority” means a body, office-holder or other person listed in the schedule of the Act,

“relevant island community” means the island community or island communities which, in the opinion of the requesting local authority, are likely to have an interest in or be affected by the exercise of the additional power by the requesting local authority,

“relevant local authority” means a local authority listed in the schedule of the Act,

“requesting local authority” means the relevant local authority making an additional powers request,

“review documents” means—

- (a) the decision notice in respect of which the application for review is made,
- (b) the application for review, and
- (c) all documents accompanying the application for review in accordance with regulation 16,

“review panel” means the persons appointed by the Scottish Ministers under regulation 19 to consider the additional powers request and to report to them on it,

“rule” means a rule set out in the schedule,

“specified matters” are, in relation to a request for further written representations or information under regulation 22 or to a particular hearing session, those matters which are set out in the notice given under regulation 22(1) or rule 1(1) of the Hearing Session Rules,

“validation date” is the date on which the additional powers request is taken to have been made in terms of regulation 8,

“working day” means every day except—

- (a) Saturday and Sunday,
- (b) 1 and 2 January, and
- (c) 25 and 26 December.

PART 2

Additional powers requests: procedure

Requests for additional powers

3. A relevant local authority may make an additional powers request to the Scottish Ministers in accordance with these Regulations.

Reasonable cause

4. Prior to making an additional powers request, the requesting local authority must be satisfied that it can demonstrate reasonable cause for requesting the proposed additional power.

Consultation on additional powers request

5.—(1) Prior to making an additional powers request, the requesting local authority must consult the consultees in accordance with this regulation.

(2) The consultees referred to in paragraph (1) are—

- (a) the relevant island community,
- (b) the person, body or authority that currently exercises the proposed additional power, if not the Scottish Ministers,
- (c) any other relevant authority that the requesting local authority considers appropriate, and
- (d) any other persons appearing to the requesting local authority to have an interest in the proposed additional power.

(3) The requesting local authority must give the consultees notice of the proposed additional power.

- (4) The notice must—
 - (a) give a summary of the proposed additional power,
 - (b) state the requesting local authority’s reasons for proposing to request the proposed additional power, and
 - (c) give information about how to make written representations on the proposed additional power (including to whom such representations should be submitted).
- (5) The notice must also—
 - (a) state the date of the last day of the consultation period,
 - (b) advise that this is the period within which written representations must be received by the requesting local authority for them to be taken into account, and
 - (c) where the requesting local authority has decided to hold a public meeting or meetings on the proposed additional power, the date, time and place of that meeting or those meetings.
- (6) In this regulation, the “consultation period” is a period (fixed by the requesting local authority) of at least 12 weeks that—
 - (a) starts on the day (or last day) on which the notice required by paragraph (3) is given, and
 - (b) runs continuously.

Form and content of an additional powers request

6.—(1) An additional powers request must be made in writing and must state that it is an additional powers request made under these Regulations.

- (2) An additional powers request must also—
 - (a) state the name of the requesting local authority,
 - (b) give a summary of the additional power,
 - (c) state the name of the person, body or authority that currently exercises the additional power,
 - (d) describe the involvement that the requesting local authority already has in the exercise of the additional power, if any,
 - (e) state the reasons for making the additional powers request,
 - (f) include a report on the consultation carried out under regulation 5,
 - (g) include information on the level and nature of support from the relevant island community for the exercise by the requesting local authority of the additional power,
 - (h) detail the anticipated implications of the exercise of the additional power by the requesting local authority, including any impact on outcomes in that authority’s area,
 - (i) outline how it is proposed that the additional power will be exercised by the requesting local authority,
 - (j) include any other information that the requesting local authority considers is relevant for the purposes of demonstrating reasonable cause for making the additional powers request, and
 - (k) include any evidence that the requesting local authority considers relevant in support of the information or documentation provided under this regulation.

Acknowledgement of requests

- 7.—(1) Where the Scottish Ministers receive an additional powers request which—

(a) complies with regulation 6(1), but
 (b) does not contain, or is not accompanied by, all the information or documentation which the requesting local authority is required to submit in order to comply with regulation 6(2),
 the Scottish Ministers must, within 10 working days of receipt, send the requesting local authority a notice identifying the information or documentation which that authority still requires to submit in order to comply with regulation 6(2).

(2) Where the Scottish Ministers have received—

- (a) an additional powers request which complies with regulation 6(1), and
 (b) all the information or documentation which the requesting local authority is required to submit in order to comply with regulation 6(2),

the Scottish Ministers must send an acknowledgement to the requesting local authority within 10 working days of the validation date.

(3) The acknowledgement sent under paragraph (2) must set out the validation date for the additional powers request.

Validation date

8. An additional powers request is taken to have been made on the date on which the last of the items or information required to be contained in or accompany an additional powers request in accordance with regulation 6(2) is received by the Scottish Ministers (“the validation date”).

Publication of an additional powers request notice

9.—(1) As soon as practicable after the validation date the Scottish Ministers must publish a notice on a website or by other electronic means.

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

- (a) state that an additional powers request has been made to the Scottish Ministers,
 (b) identify the requesting local authority,
 (c) provide details of the additional power,
 (d) state the requesting local authority’s reasons for making the additional powers request,
 (e) state how the additional powers request and any other documents submitted in connection with it may be inspected, and
 (f) state that written representations may be made to the Scottish Ministers and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 20 working days after the date on which the notice is published).

(3) The Scottish Ministers must send a copy of the notice under paragraph (1) to the relevant local authorities except the requesting local authority.

Opportunity for the requesting local authority to comment on representations

10.—(1) The Scottish Ministers must send a copy of any representations received in response to a notice published under regulation 9(1) to the requesting local authority and inform that 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 regulation) it may make comments in writing to the Scottish Ministers on such representations.

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

Publication of request documents

11. Within 10 working days following the validation date, the Scottish Ministers must make copies of—

- (a) the additional powers request,
- (b) the documents or information accompanying the additional powers request, and
- (c) any representations or comments received by the Scottish Ministers by virtue of regulations 9(2) or 10(2),

available for inspection on a website or by other electronic means until such time as the Scottish Ministers publish a decision notice in accordance with regulation 13.

PART 3

Additional powers requests: decisions

Decisions

12.—(1) The Scottish Ministers must decide whether to give effect to or to refuse an additional powers request.

(2) The Scottish Ministers must not unreasonably refuse an additional powers request.

(3) In reaching their decision, the Scottish Ministers must consider the following matters—

- (a) any obligations or restrictions imposed on the Scottish Ministers, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect their powers or ability to give effect to an additional powers request,
- (b) the reasons for the requesting local authority making the additional powers request,
- (c) whether the requesting local authority has demonstrated reasonable cause for making the additional powers request,
- (d) any other information relating to the additional powers request, and
- (e) such other matters (whether or not included in or arising out of the request) as the Scottish Ministers consider relevant.

(4) Where the Scottish Ministers decide to give effect to an additional powers request, the Scottish Ministers may decide to extend the additional power.

(5) In these Regulations—

- (a) to “give effect to an additional powers request” means to—
 - (i) transfer the additional power, or
 - (ii) promote legislation devolving the additional power, to the requesting local authority,
- (b) to “extend the additional power” means to—
 - (i) transfer the additional power, or
 - (ii) promote legislation devolving the additional power, to one or more of the other relevant local authorities.

Time periods for decision

13.—(1) The Scottish Ministers must, within the period mentioned in paragraph (2)—

- (a) issue a decision notice to the requesting local authority,
 - (b) where the Scottish Ministers decide to extend the additional power, give a copy of the decision notice to any relevant local authorities to which the additional power is to be extended under regulation 12(4),
 - (c) publish a copy of the decision notice on a website or by other electronic means, and
 - (d) inform every person who made written representations in respect of the additional powers request (and provided an address) of their decision and where a copy of the decision notice is available for inspection.
- (2) The period referred to in paragraph (1) is—
- (a) the period of 6 months beginning with the validation date, or
 - (b) such longer period as may be agreed between the Scottish Ministers and the requesting local authority.

Decision notice

- 14.**—(1) The decision notice must—
- (a) identify the requesting local authority,
 - (b) describe the additional power,
 - (c) state the Scottish Ministers’ decision under regulation 12(1) and the reasons for that decision,
 - (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,
 - (e) where the Scottish Ministers refuse the additional powers request, provide information about the right to apply for review under regulation 15(2), including—
 - (i) how an application for review may be made, and
 - (ii) the date by which an application for review must be made.
- (2) The date referred to in paragraph (1)(e)(ii) must be a date no earlier than three months after the date of the decision notice.

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. 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.

PART 5

Subsequent action by the Scottish Ministers

Statement of actions

- 28.**—(1) Where the Scottish Ministers decide to give effect to an additional powers request under regulation 12(1) or 25(1)(b), the Scottish Ministers must, within the period mentioned in paragraph (3), publish a statement of actions on a website or by other electronic means.
- (2) The statement of actions must set out—
- (a) the actions that the Scottish Ministers propose to take in order to give effect to their decision under regulation 12(1) or 25(1)(b),
 - (b) where the Scottish Ministers decide to extend the additional power under regulation 12(4) or 25(2), the actions that the Scottish Ministers propose to take in order to give effect to that decision, and
 - (c) proposed timescales for taking those actions.
- (3) The period referred to in paragraph (1) is three months beginning with the date on which—
- (a) the decision notice is issued to the requesting local authority under regulation 13(1)(a), or
 - (b) the determination notice is issued to the requesting local authority under regulation 26(1)(a).
- (4) The Scottish Ministers must give a copy of the statement of actions to the requesting local authority and to any other relevant local authority to which the Scottish Ministers have decided to extend the additional power under regulation 12(4) or 25(2).

PART 6

General

Electronic communication

- 29.**—(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 communication 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 document transmitted by 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) Any person sending a document using electronic communication is to be taken to have agreed—
- (a) to the use of such communication for all purposes relating to the additional powers request which are capable of being carried out electronically, and
 - (b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.
- (4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.
- (5) Notice of withdrawal of consent to the use of electronic communication or of revocation of agreement under paragraph (4) takes effect on the later of—
- (a) the date specified by the person in the notice, or
 - (b) the expiry of the period of 5 working days beginning with the date on which the notice is given.
- (6) In this regulation—
- “address” includes any number or address used for the purpose of such communication or storage,
 - “document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication,
 - “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(1) (general interpretation),
 - “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 submitted or given and cognate expressions are to be construed accordingly.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(1) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.