

## **POLICY NOTE**

### **THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**SSI 2013/157**

#### **Introduction**

1. The above instrument was made in exercise of the powers conferred by section 43A (1)(a)(ii), (4), (10), (11), (13) and (17) and sections 275 and 275A of the Town and Country Planning (Scotland) Act 1997 and sections. The instrument is subject to negative procedure.

#### **Background**

2. In August 2009 amendments to the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (“the 2008 Regulations”) came into force introducing local reviews. They require planning authorities to produce a scheme of delegation for planning applications for local development to be determined by appointed persons (usually planning officers). The applicants in such delegated cases would then have a right to seek a local review of that decision by a local review body made up of authority members, instead of a right of appeal to Scottish Ministers. These changes were intended to improve efficiency in the decision making process whilst retaining high quality decision making.
3. The Town and Country planning (Schemes of Delegation and Local Review Procedure) (Scotland) regulations 2013 (“the 2013 Regulations”) mainly consolidate subsequent amendments made to the 2008 Regulations. In addition, two amendments are included regarding: i) delegation of planning authority interest cases and ii) automatic deemed refusal on certain local review cases. A summary of these regulations as a whole is set out at the end of this paper.

#### **Policy Objectives**

4. This consolidation is to make it more convenient to identify the requirements around schemes of delegation and local review procedures. In addition, the proposed amendments are to help streamline the overall planning process and so improve its role in supporting sustainable economic growth.

#### **Amendments**

5. The 2008 Regulations prevent the delegation of applications in which the planning authority is the applicant or has an interest in the land or which have been made by members of the planning authority. Many applications for relatively minor developments, which would previously have been delegated to an officer for decision, have therefore had to be referred to committee for a

decision. This delays decisions and diverts planning authority resources from other applications. The amendments remove this restriction on delegating applications for local development to officers for decision. The requirements on notifying certain planning authority interest cases to Scottish Ministers before permission can be granted is unchanged.

6. The second amendment concerns the automatic refusal of permission where a local review was sought on the grounds of non-determination of the application. When a local review body does not determine such a review within two months the case is automatically deemed to be refused. Applicants then have the right to appeal to Scottish Ministers. However, the statutory requirements on local reviews mean that it is challenging to issue a decision within two months. The change (Regulation 8(3)) extends the period of determination for local reviews from two to three months. This avoids cases being refused unnecessarily, moving applicants into yet another procedure if they wish to pursue the matter.

## **Consultation**

7. A public consultation took place from March to June 2012 on a number of refinements and amendments to the procedures on development management, appeals, schemes of delegation and local reviews.
8. Of the 94 responses received, most came from planning authorities and developers. Other responses were from community councils, professional bodies, statutory organisations, other organisations, consultants and some individuals.
9. Most respondents agreed with removing the current restriction on delegating planning authority cases, with around a quarter disagreeing. Concerns related to a loss of transparency around how applications are delegated and determined (note: schemes of delegation, decision notices and reports of handling are all required to be publicly available). There were also concerns around conflicts of interest, e.g. officers could feel or be pressured into producing favourable decisions (note: planning authorities can in any event take applications out of the scheme of delegations if they want them determined by members).
10. Those who agreed stressed that most of the applications involved are minor, non-contentious and are generally passed without substantive debate. Some commented that schemes of delegation will distinguish between minor applications and those that are of wider public interest (e.g. many schemes have thresholds on number of objections preventing delegation), ensuring they are considered by committee. Some commented that the change would free up resources and committee time for larger and more complex cases.
11. There was strong support, 83%, to increase the time limit for determining local reviews sought on the grounds of non-determination. Those in favour stressed that local review bodies do not have enough time to make determinations. Those disagreeing felt any increase could legitimise delays and inefficiencies.

12. A full list of those consulted and who agreed the release of information is attached to the consultation report published on the Scottish Government website. <http://www.scotland.gov.uk/Publications/2012/08/1764>

### **Impact Assessments**

13. A final Business and Regulatory Impact Assessment is attached. While we believe these changes will improve the system as a whole, streamlining processing and avoiding the need for appeals to Ministers unnecessarily, these amendments are not expected to have any significant impacts on particular businesses. An Equalities Impact Assessment is also attached, though there are not expected to be any implications for equalities groups arising from these amendments.

### **Summary of the New Regulations**

14. Part 2 of these regulations specifies:
- the content of a scheme of delegation (e.g. the classes of development to which it will apply);
  - the procedure for preparation and adoption of a scheme;
  - how the scheme is publicised (at the planning office, in local libraries and on the internet); and
  - the review by the authority of its scheme of delegation (at least every five years).
15. Part 3 of these regulations specifies:
- that a local review is to be conducted by a committee comprising of at least three members of the authority;
  - that meetings will be held in public;
  - arrangements for notifying parties of meetings;
  - the content of and time period for the applicant to give notice requesting a review of the decision made by a delegated officer or when there has been a failure to determine an application; and
  - the notification of any interested parties and making available the review documents.
16. Part 4 of these regulations deals with the review procedure:
- the review body may consider the review documents sufficient to proceed to a decision;
  - otherwise they will determine the manner in which the review is to be conducted;
  - this will be either by written submissions procedure, the holding of one or more hearing sessions or by means of an inspection of the land in question or a combination of these procedures;
  - these procedures are set out, the discretion to hold pre-examination meetings and how to deal with new evidence (Schedule 1 to these regulations)

contains the Hearing session rules - e.g. who should appear, the date and notification of the session, service of documents, and the procedure at the hearing).

17. Part 5 of these Regulations covers General matters:

- the power for the local review body to request further copies of documents;
- the need to comply with certain planning application procedures if not already carried out by the delegated officer dealing with the application in the first instance;
- the appointment of a person (“an assessor”) to assist the review body on particular issues at review hearings;
- the need for and content of the local review body’s decision notice; and
- electronic communication.

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