
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 49

The Felling (Scotland) Regulations 2019

PART 6

APPEALS

Appeals: who may appeal

13.—(1) An owner or occupier of land who is subject to a decision of a type referred to in section 68(1) of the Act may appeal to the Scottish Ministers against that decision.

(2) In this Part-

- (a) the person making an appeal under paragraph (1) is referred to as “the appellant”,
- (b) the decision referred to in paragraph (1) is “the relevant decision”.

Appeals: notice of appeal

14.—(1) To make an appeal, the appellant must send a notice of appeal to the Scottish Ministers in accordance with this regulation.

(2) The notice of appeal must be received by the Scottish Ministers—

- (a) in the case of decisions of the types referred to in section 68(1)(a), (b), (e) to (h), (j) and (k) of the Act, within 40 working days beginning with the date on which notice of the decision was sent, or
- (b) in the case of decisions of the types referred to in section 68(1)(c), (d) and (i) of the Act, within 40 working days beginning with the date on which the restocking direction, felling direction or remedial notice was sent.

(3) The notice of appeal, which must be on a form obtained from the Scottish Ministers, must include or, as the case may be, be accompanied by—

- (a) the name, address and telephone number of the appellant,
- (b) the date of the relevant decision,
- (c) the reference number, if any, assigned to the relevant decision,
- (d) a copy of the relevant decision, including any statement of reasons and any document or other material that accompanied that decision,
- (e) a statement setting out the full particulars of the appeal, including all submissions and matters that the appellant considers should be taken into account in determining the appeal, and
- (f) all documents, materials and evidence on which the appellant relies in support of the appeal.

(4) Where a notice of appeal is received by the Scottish Ministers in relation to a decision of the type referred to in section 68(1)(a)(ii), (c), (d) or (i) of the Act, the effect of that decision is suspended until the appellant is notified of-

- (a) a new decision made by the Scottish Ministers or an appointed person, or
 - (b) refusal of the appeal,
- pursuant to regulation 15 or 16.

Appeals: determination by the Scottish Ministers

15.—(1) Following consideration of the material provided under regulation 14(3), the Scottish Ministers must—

- (a) determine the appeal by upholding it (whether wholly or partly), or
- (b) refer the appeal to be determined by a person appointed by them for that purpose.

(2) If the Scottish Ministers determine the appeal they must substitute a new decision for the relevant decision.

(3) For all purposes (including the right to appeal under section 68(1) of the Act), the new decision is deemed to have been made under the same provision of the Act as the relevant decision.

(4) When making and notifying the new decision, the Scottish Ministers must comply with any requirement of the Act or regulations made under it that applied to the making and notification of the relevant decision.

Appeals: determination by an appointed person

16.—(1) Where the Scottish Ministers refer an appeal for determination under regulation 15(1) (b), they must send to the appointed person-

- (a) all material provided to them by the appellant under regulation 14(3),
- (b) in so far as not covered by paragraph (a), a copy of any other material that was before them when they made the relevant decision,
- (c) a note of response to the appeal, setting out all submissions and matters that they consider should be taken into account in determining the appeal, and
- (d) any other documents, materials and evidence that they consider should be taken into account in determining the appeal.

(2) The Scottish Ministers must, at the same time as sending the material referred to in paragraph (1) to the appointed person-

- (a) notify the appellant that they have referred the appeal to the appointed person, and
- (b) send a copy of the material referred to in paragraph (1)(b) to (d) to the appellant.

(3) The appointed person must not determine the appeal without first giving the appellant the opportunity to consider and respond to the material provided to the appellant by the Scottish Ministers under paragraph (2)(b).

(4) The appointed person may decide that the appeal is to be conducted by one of, or by a combination of, the following procedures:-

- (a) written submissions,
- (b) the holding of one or more oral hearings,
- (c) an inspection of the land to which the appeal relates,

and may otherwise follow such procedure as the appointed person considers to be conducive to the effective and efficient determination of the appeal.

(5) In determining the appeal the appointed person may decide to-

- (a) uphold the appeal (wholly or partly) and refer the matter back to the Scottish Ministers for reconsideration and a new decision,

(b) uphold the appeal (wholly or partly) and substitute the appointed person's decision for the relevant decision, or

(c) refuse the appeal.

(6) For all purposes (including the right to appeal under section 68(1) of the Act), a new decision made by the Scottish Ministers following reconsideration after referral under paragraph (5)(a), or the appointed person's decision under paragraph 5(b), is deemed to have been made under the same provision of the Act as the relevant decision.

(7) When making and notifying a decision pursuant to paragraph (5)(a) or (b), the Scottish Ministers, or as the case may be, the appointed person, must comply with any requirement of the Act or regulations made under it that applied to the making and notification of the relevant decision.

(8) A decision made under paragraph (5)(b) or (c) is not subject to a right of appeal under section 68(1) of the Act.