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**Changes to legislation:** Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, SCHEDULE 3 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 3

Sections 20(4) and 35(5).

#### DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

##### Modifications etc. (not altering text)

- C1** Sch. 3 savings for effects of 2011 asp 3 s. 21 (1.12.2011) by [The Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(Saving, Transitional and Consequential Provisions\) Order 2011 \(S.S.I. 2011/377\)](#), arts. 1(1), **6(b)**

##### *Determination of appeals by appointed person*

- 1 (1) The Secretary of State may by regulations prescribe classes of appeals under sections [F15B,] 18 and 35 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Those classes of appeals shall be so determined except in such classes of case—
- (a) as may for the time being be prescribed, or
  - (b) as may be specified in directions given by the Secretary of State.
- (3) Such regulations may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (4) This paragraph shall not affect any provision contained in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
- (5) A person appointed under this paragraph is referred to in this Schedule as an “appointed person”.

##### Textual Amendments

- F1** Word in Sch. 3 para. 1(1) inserted (27.2.2015 for specified purposes) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 3 para. 23(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.

##### *Powers and duties of appointed person*

- 2 (1) An appointed person shall have the same powers and duties—
- [F2(za) in relation to an appeal under section 5B as the Scottish Ministers have under section 5C and paragraph 2(1A) of schedule 1,]
  - (a) in relation to an appeal under section 18 as the Secretary of State has under subsection (1) of section 20 and paragraph 2 of Schedule 1, and
  - (b) in relation to an appeal under section 35, as he has under section 37(1), (2) and (4) and paragraph 2 of Schedule 1.

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<sup>F3</sup>(2) .....

<sup>F3</sup>(3) .....

<sup>F3</sup>(4) .....

(5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.

(6) Except as provided by sections 57 and 58, the decision of an appointed person on any appeal shall be final.

**Textual Amendments**

**F2** Sch. 3 para. 2(1)(za) inserted (27.2.2015 for specified purposes) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 3 para. 23(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.

**F3** Sch. 3 para. 2(2)-(4) repealed (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 21(b)(i)**, 33(2); S.S.I. 2011/372, art. 2, sch.

*Determination of appeals by Secretary of State*

3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.

(2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the planning authority, any person who made representations relating to the subject matter of the appeal which the authority are required to take into account by regulations made under section 10(2) and, if any person has been appointed under paragraph 1, on him.

(3) Where in consequence of such a direction an appeal under section [<sup>F4</sup>5B,] 18 or 35 falls to be determined by the Secretary of State himself, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.

<sup>F5</sup>(4) .....

<sup>F5</sup>(5) .....

(6) In determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

**Textual Amendments**

**F4** Word in [Sch. 3 para. 3\(3\)](#) inserted (27.2.2015 for specified purposes) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 3 para. 23(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.

**F5** Sch. 3 para. 3(4)(5) repealed (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 21(b)(ii)**, 33(2); S.S.I. 2011/372, art. 2, sch.

4 (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

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- (2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account by regulations made under section 10(2).
- (3) Where such a further direction has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.

#### *Appointment of another person to determine appeal*

- 5 (1) At any time before the appointed person has determined the appeal the Secretary of State may—
  - (a) revoke his appointment, and
  - (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require—
  - (a) [<sup>F6</sup>the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person), or]
  - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

#### **Textual Amendments**

- F6** Sch. 3 para. 5(3)(a) and word repealed (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 3 para. 23\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### *Local inquiries and hearings*

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
  - (a) may hold a local inquiry in connection with the appeal, and
  - (b) shall do so if the Secretary of State so directs.
- (2) Where an appointed person—
  - (a) holds a hearing <sup>F7</sup>..., or
  - (b) holds an inquiry by virtue of this paragraph,

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an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.

- (3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry shall be paid by the Secretary of State.
- (4) Subsections (4) to (13) of section 265 of the principal Act apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- (5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
- (6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section shall be read as references to the appointed person.
- [<sup>F8</sup>(7) Subsections (2) to (13) of section 265A of the principal Act apply to the holding of an inquiry under this paragraph as they apply to the holding of an inquiry under section 265 of that Act.]

#### Textual Amendments

- F7** Words in Sch. 3 para. 6(2)(a) repealed (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 21\(b\)\(iii\), 33\(2\); S.S.I. 2011/372, art. 2, sch.](#)
- F8** Sch. 3 para. 6(7) inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 91\(2\) \(with s. 111\); S.I. 2004/2097, art. 2; S.I. 2006/1281, art. 3](#)

#### *Supplementary provisions*

#### Modifications etc. (not altering text)

- C2** Sch. 3 para. 7 modified (1.7.1999) by [S.I. 1999/1351, art. 17\(7\)\(b\); S.I. 1998/3178, art. 3](#)

- 7 (1) The <sup>M1</sup>Tribunals and Inquiries Act 1992 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (2) The functions of determining an appeal and doing anything in connection with it conferred by this Schedule on an appointed person who is [<sup>F9</sup> a member of the staff of the Scottish Administration shall be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.<sup>F9</sup>]

#### Textual Amendments

- F9** Words in Sch. 3 para. 7(2) substituted (23.10.2002) by [Scottish Public Services Ombudsman Act 2002 \(asp 11\), s. 25, Sch. 6 para. 18; S.S.I. 2002/467, art. 2](#)

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**Marginal Citations**

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