

PLANNING

# **Modernising Planning Appeals**

*Consultation Paper*

February 2008



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scotland  
SCOTTISH GOVERNMENT

# **Modernising Planning Appeals**

*Consultation Paper*

## **MODERNISING PLANNING APPEALS**

### **Responding to this consultation paper**

We are inviting written responses to this consultation paper by 9 May 2008. Please send your response to:

planningappeals@scotland.gsi.gov.uk

or

MODERNISING PLANNING APPEALS  
Directorate for the Built Environment  
The Scottish Government  
2H, Victoria Quay  
Edinburgh  
EH6 6QQ

If you have any queries on the content of the consultation paper or the consultation process, please contact April Workman on 0131 244 7543. Please indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

In the Directorate of the Built Environment we are changing our methods of distribution, with electronic publication for all our publications, subject to only a very small list of exceptions which will also be published in hard copy, such as the National Planning Framework. In addition, we are creating an improved e-newsletter system which will provide an effective way of alerting you to new e-publications, including consultations. To register for electronic newsletters about planning, please register your details at [www.scotland.gov.uk/Topics/planning](http://www.scotland.gov.uk/Topics/planning) as soon as possible.

The Scottish Government also has an email alert system for all consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations. SEconsult complements the new planning e-publications system described above and allows you to register for consultations on specific topic areas across the Government. Please follow the SEconsult link above if you wish to register.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and

return the **Respondent Information Form** which forms part of this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Publishing responses**

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in The Scottish Government Library and on the [SEconsult](#) web page within 6 weeks of the close of the consultation. Where agreement to publish has been given, we will check all responses for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next ?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the draft regulations. Final regulations will require to be laid in Parliament. Further details on the timing of this process will be available through the Modernising Planning page on the Scottish Government's Planning Homepage at [www.scotland.gov.uk/Topics/planning](http://www.scotland.gov.uk/Topics/planning) .

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to April Workman on 0131 244 7543.

## RESPONDENT INFORMATION FORM: MODERNISING PLANNING APPEALS

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual  go to Q2a/b and then Q4
- (b) on behalf of a group/organisation  go to Q3 and then Q4

### INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all  We will treat your response as confidential

- 2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

### ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No  We will treat your response as confidential

### SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

## Equal Opportunities Questionnaire

This Equal Opportunities Questionnaire is requested in order that the Scottish Government can build an accurate picture of the make up and diversity of the people and groups that our planning policies impact on, and to ensure that the way in which we carry out our consultations is inclusive and not unwittingly discriminatory. If you have responded to this consultation as an individual it would be helpful if you could complete the form. This information is **only** used for this purpose.

If you have a disability that requires us to make a reasonable adjustment to enable you to complete this form, please notify us.

Name	
Consultation to which you are responding	
Gender	Male <input type="checkbox"/> Female <input type="checkbox"/>

### Ethnic origin

How would you describe your ethnic or cultural origin?		
White Scottish <input type="checkbox"/>	White British <input type="checkbox"/>	White European/Other <input type="checkbox"/>
Black Scottish <input type="checkbox"/>	Black British <input type="checkbox"/>	Black African <input type="checkbox"/>
Black Caribbean <input type="checkbox"/>	Black Other <input type="checkbox"/>	
Asian Scottish <input type="checkbox"/>	Asian British <input type="checkbox"/>	
Indian <input type="checkbox"/>	Pakistani <input type="checkbox"/>	Chinese/Other Asian <input type="checkbox"/>
Bangladeshi <input type="checkbox"/>		
Mixed Racial Origin <input type="checkbox"/>		Other

### Age

Under 25 <input type="checkbox"/>	25-39 <input type="checkbox"/>	40 – 54 <input type="checkbox"/>	55- 65 <input type="checkbox"/>	65 + <input type="checkbox"/>
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### Disability

<p>Do you have a disability as defined by the Disability Discrimination Act 1995 (DDA)?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The definition of a disability under the DDA is “a physical or mental impairment which has a substantial and long term adverse effect on a person’s ability to carry out normal day to day activities.”</p>
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## THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a consultation paper inviting answers to specific questions or more general views about the material presented. Consultation papers are distributed to organisations and individuals with an interest in the issue, electronically or in hard copy and are placed on the Scottish Government's consultations webpage<sup>1</sup> to allow for participation from a wider audience. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [SEconsult](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

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<sup>1</sup> <http://www.scotland.gov.uk/consultations>

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# MODERNISING PLANNING APPEALS

## CONSULTATION PAPER

### INTRODUCTION

1. This consultation paper seeks comments on proposed changes to the planning appeal system in Scotland. The Government's proposals are intended to make the process for challenging planning decisions more efficient without reducing the high quality of determination provided under present arrangements.
2. It is important that applicants who are unhappy with the terms of a planning decision have recourse to a process that enables an effective review of the decision to take place. It is also clear that people should continue to have an appropriate opportunity during the planning process to make representations about proposals that affect them or their communities. The Scottish Government wants the planning system to be fit for purpose and for its response to applications or appeals to be proportionate. We also need to ensure that the appeal process avoids unnecessary complexity or lengthy procedures that do not add value to the quality of decision.
3. The White Paper, *Modernising the Planning System*, published in 2005, (the White Paper) signalled the intention to modernise the planning system and the Planning etc. (Scotland) Act 2006 (the 2006 Act) now provides the primary legislative framework for change. This consultation paper and the accompanying draft regulations set out in detail how those changes are intended to operate. Because there are important connections between our proposals for more effective decision taking locally and those for appeals made to Scottish Ministers, the proposals for schemes of delegation, local review bodies and appeals are all considered in this consultation paper. Your views are sought on a range of questions covering the detailed changes. Draft regulations covering all the proposed changes are set out in the three annexes to this paper.
4. Our proposals to modernise the planning appeals system should not be viewed in isolation. They form part of the wider agenda for modernising the planning system in Scotland. Part of those wider proposals include a new hierarchy for planning aimed at delivering a more proportionate response from the planning system to the proposals that come before it for consideration. At the top of the hierarchy, a number of national developments will be identified in the National Planning Framework. A category of major developments will then be identified, these being relatively complex proposals which raise significant environmental or economic issues. All applications which are neither national developments nor major applications will be classed as local developments. Some of these local developments will be determined under new schemes of delegation and in turn will be

subject of a review procedure by the planning authority rather than an appeal to Scottish Ministers. This paper explains how these new arrangements are intended to work. A public consultation paper on the draft regulations for the planning hierarchy has separately issued for consultation available online at <http://www.scotland.gov.uk/Publications/2007/12/11104120/0>

### ***Towards a more efficient appeal system***

5. The appeal system in Scotland is regarded as providing a fair, transparent and independent mechanism for reviewing planning decisions. While these are important strengths, it is also considered by many to be difficult for ordinary people to engage with. There is also little doubt that the time taken to process some cases contributes to the impression that the present planning system is inefficient.
6. The White Paper underlined the need for planning decisions to be made quickly so that the Scottish economy is not disadvantaged. It also highlighted the importance of allowing those wishing to make their views known to do so without being intimidated by the process. It proposed that the right to examination by formal inquiry process should be reserved for those issues where the subject matter could not be addressed through less formal procedures such as by conducting a hearing or by an exchange of written submissions. While appellants and planning authorities would be asked how they considered issues should best be examined, the decision on the method of examination - inquiry, hearing, written submissions, or a combination of these would be taken by Scottish Ministers. The person appointed to determine the case by Scottish Ministers would be given greater scope to enforce a timetable for the process and parties' rights to delay consideration would be limited. The 2006 Act now provides a framework for delivering the greater efficiency required.
7. The White Paper also set out the need to curb the tendency for proposals to change during the planning and appeal process and for the justification for them to alter without reference to the local community. This aspiration is consistent with the principle of front-loading the planning system. Provisions in the 2006 Act confirm that while there is some scope to agree a variation of an application with the planning authority once it has been made, the proposals cannot be varied after an appeal has been lodged. While decisions taken by planning authorities or by Scottish Ministers in reviewing cases are essentially new determinations, the intention is that the system in future should focus on reviewing the material that was before the planning authority in the first instance. Those making determinations under the Planning Acts must take into account all material considerations and this will continue to be the case. However, in the interests of efficiency we want to avoid maintaining a cycle of comment and counter-comment on proposals by the various parties. This does not

necessarily add value to the system and can be inefficient. Instead, we want to ensure that the decision taker gains access to the appropriate level of information to enable a fully considered decision to be taken on any particular case.

8. The 2006 Act provides that only exceptionally would additional material to that which was before the planning authority and community be permitted to be introduced. While this does not reduce the need to have regard to the provisions of the development plan or any other material considerations, the shift in emphasis is important. It is not intended to remove the rights of parties to introduce material in support of their respective cases but it underlines the importance of doing so at the appropriate point in the planning process. This should be while the application is before the planning authority and not late in the process. If we are to deliver a more efficient system then all parties to the process must understand the importance of making their views and any supporting material available to the planning authority early in the process.
9. Early determination of appeals was also proposed in the White Paper in cases where a decision on the appeal could be made without more extensive consideration involving the principal parties. These proposals were intended to improve the efficiency of the system and they subsequently received strong support during the Bill process in the Scottish Parliament. The draft regulations provide that it will be for the decision-taker, either the planning authority in a review case or the Scottish Ministers on an appeal, to take a decision when they are in possession of sufficient information to do so. This is not intended to remove rights to provide information in support of an appeal - although such information should be provided early in the process rather than during an appeal. There will nevertheless be cases where a decision at appeal can be taken swiftly, based on the material before the planning authority when the application was determined together with the additional material provided in the grounds of appeal and in the planning authority's response. In such cases further procedure would not add value to the process.

### ***A New Role for Planning Authorities***

10. The White Paper highlighted the efficiency gains that can be delivered by delegation to officers. The intention is that greater use should be made of delegation, allowing elected members to focus their attention on more complex or more controversial applications. We propose that officers should be able to take the full range of decisions on applications for local developments unless there are clear reasons why the decision should be taken by elected members- for example where applications are significantly contrary to the development plan, involve EIA development, have attracted a substantial body of objection or where the planning authority has a financial interest in the development. Elected members would continue to take decisions on

such applications. Paragraphs 13 to 19 set out further detail on preparing schemes of delegation.

11. Appeals against decisions taken by the planning committee will continue to be made to Scottish Ministers but for those falling within the terms of a scheme of delegation appeals would be determined locally. The 2006 Act provides that where an applicant is dissatisfied with a decision on a planning application determined under a s.43A scheme of delegation that they would seek a review of the decision by the planning authority rather than appealing to Scottish Ministers. We propose that the review function should be conducted by elected members meeting together to form a local review body supported by officials who were not involved in reaching the decision under review. The majority of reviews of local developments would be determined quickly and locally, recognising that local authorities are best placed to take decisions on such local issues. We want to ensure that the revised arrangements operate to a high standard and that processes for reviewing decisions locally ensure the highest standards of fairness, independence, transparency and customer care. The draft regulations set out the timescales and approach that should be taken in handling reviews. Finalised regulations will be accompanied by guidance on the operation of local review bodies.
12. The timescale for either seeking either a review of a delegated decision or for making an appeal to Scottish Ministers will be reduced from six months to three in line with the proposals set out in the White Paper. Paragraphs 20 to 29 set out further detail on local reviews.

#### ***Approach to Change***

- ***A requirement to introduce new schemes of delegation***
- ***Elected members to focus on the most complex or controversial local cases***
- ***Reviews of delegated cases by Local Review Body rather than Ministers***
- ***Reduction of the timescale for appeal or review to 3 months***
- ***Method of consideration of an appeal to be decided by Ministers***
- ***A restriction in the introduction of new material***
- ***Frontloading the system by requiring information early in the process***
- ***Maintaining existing high standards of process***

## **SCHEMES OF DELEGATION**

### ***The scope of new schemes of delegation***

13. The 2006 Act contains provisions requiring each planning authority to prepare a scheme of delegation whenever required to do so by Scottish Ministers. Section 17 introduces new section 43A into the

Town and Country Planning (Scotland) Act 1997 which allows Ministers to prescribe the form and content of such schemes. The scheme of delegation will enable certain applications within the category of local developments to be determined by an officer of the Council rather than by elected members. The draft regulations propose that subsequent schemes of delegation should be reviewed at intervals of no more than five years. It is proposed that officials will be able to take the full range of decisions on applications under these provisions: approval; approval with conditions: and refusals.

14. The provisions at new section 43A of the Town and Country Planning (Scotland) Act 1997 on schemes of delegation are concerned with applications for planning permission and associated agreements or approvals required by condition only. As indicated earlier in this paper, the intention is to link decisions on these applications to a local review process rather than by appeal to Scottish Ministers. That is the principal change being introduced in relation to schemes of delegation. Planning authorities currently adopt schemes of delegation under the provisions of the Local Government (Scotland) Act 1973. These delegate authority from members to enable officials to take decisions on a wide range of other planning matters such as determining applications for listed building consent and conservation area consent as well as decisions on a range of other administrative processes which may include enforcement action, negotiating planning agreements and providing advice to stakeholders in the planning system. These existing powers for delegation of decisions in relation to other applications remain unaffected by the modernising proposals. Only delegated decisions made under the scheme of delegation introduced by new section 43A of the 1997 Act will be subject to a review by the planning authority instead of Scottish Ministers. These are restricted by section 43A (1)(a) of the 1997 Act to certain delegated decisions within the category of local developments. The regulations set out the types of local developments that should continue to be determined by elected members and these are described in paragraph 15 below. We expect that planning authorities should take the opportunity afforded by planning modernisation to look afresh at their approach to delegation generally to ensure that it promotes the increased efficiencies the Scottish Government requires.
15. The intention is that local developments which are neither complex nor controversial should be delegated for decision by officials to promote efficiency. There will remain a range of applications which should continue to be dealt with by elected members. Accordingly draft regulation 3 requires that the following types of application should not be determined under the new schemes of delegation:
  - applications subject to an unresolved objection from a statutory consultee;
  - applications made by the planning authority or a member of the planning authority;

- applications relating to land in the ownership of the planning authority or to land in which the planning authority have a financial interest;
  - applications requiring Environmental Impact Assessment;
  - applications relating to development that is significantly contrary to the terms of the development plan;
  - applications subject to a substantial body of objections; and,
  - applications of a class mentioned in s38A of the 2006 Act (these being applications subject to enhanced scrutiny, including a pre-determination hearing by the planning authority).
16. All other planning applications for local development are intended to be within the scope of delegation by officers.

**Q1 - Do you agree with the above scope of schemes of delegation?**

**Q2 - Are there other categories of decision which should not be delegated to officials?**

***Procedure for adopting schemes of delegation***

17. In addition to powers on the form and content of schemes of delegation, new section 43A (4)(a) of the 1997 Act provides powers for regulations to set out the form and content of a scheme of delegation and the procedures for preparing and adopting a scheme. The overall intention is that the arrangements for decision taking within planning authorities should promote efficiency whilst ensuring that complex or controversial proposals continue to be dealt with by elected members as envisaged in the White Paper. While it is entirely appropriate that authorities should have the scope to put in place administrative arrangements that suit local circumstances this should not prevent applications for local developments consistent with the development plan being processed through the system quickly. Draft regulation 4 requires that planning authorities proposing to adopt a scheme of delegation should send a copy of the scheme to Scottish Ministers and that the authority cannot adopt the scheme less than 28 days following submission. Scottish Ministers may extend the 28 day period for consideration of the scheme and may also require the authority to consider modifying the scheme in accordance with their recommendations. The planning authority will be expected to provide reasons why any recommendations for modification have not been accepted and draft regulation 4(5) enables Scottish Ministers to notify the planning authority that a scheme should not be adopted until it has been approved by Scottish Ministers. The draft regulations do not require planning authorities to consult on schemes of delegation.
18. Once the planning authority has agreed the proposed scheme of delegation draft regulation 6 provide that copies of the scheme should be made available in public libraries and on the authority's website.

The requirement to advertise the planning authority's list of applications (as proposed in the draft development management regulations currently out for consultation) will involve the inclusion of a reference to where the scheme of delegation may be inspected.

**Q3 - Should planning authorities be required to undertake local consultation on their proposed scheme of delegation?**

**Q4 - Do you agree with the proposed approach to preparing and adopting the scheme of delegation?**

19. Once a scheme of delegation has been adopted, the new section 43A (6) of the 1997 Act still enables an application which is within the scheme of delegation to be determined by members rather than by an official under delegated powers. This is intended to provide a degree of flexibility that can be used on a case by case basis. Where a decision is taken to refer an application to elected members in this way, the Act requires a statement of reasons to be provided to the applicant. It is important to inform applicants as soon as possible of a change in the way in which their application is to be dealt with. The draft development management regulations include provisions requiring the decision notice to state clearly which route, either a review to a local review body or an appeal to Scottish Ministers is available where an applicant is dissatisfied with the terms of a decision.

## **LOCAL REVIEWS**

### ***Principles***

20. Where an applicant is dissatisfied with the decision, or failure to take a decision, in respect of an application for planning permission or for approval required by condition under a scheme of delegation, they will be entitled to require the planning authority to review the case. This is a significant change to existing arrangements whereby such appeals are made to Scottish Ministers.
21. There are important efficiencies to be made overall in making the review of local developments the responsibility of local authorities. However, the Scottish Government recognises that this significant change must not result in a reduction in the quality of examination, one of the key strengths of the existing system. It is essential that any local review process is underpinned by high standards: those with responsibility for participating as members or chairing a local review body must be fully trained; there must be clear timescales for requiring and responding to reviews; those requesting a review must be confident that their case will be dealt with fairly; clear reasons explaining the decision of the review body must be made available and, crucially, the local review body must operate in a way that demonstrates independence from the original decision-taker. Some of

these issues will be best dealt with in guidance rather than regulations. The draft regulations in Annex B set out the procedures, timings and arrangements for communicating decisions on cases reviewed.

### ***Requirement to review***

22. Draft regulation 4(2) provides that a requirement to review a decision must be made within three months of the decision being taken or within three months of a failure to determine the application. This reduction in the current timescale for challenging a planning decision is intended to support efficiency whilst maintaining a reasonable period to enable applicants to consider whether to seek a review or to submit a revised planning application that addresses the issues. The requirement for the planning authority to review the case will be made in writing (a Notice of Review) to the planning authority and should be accompanied by grounds in support of the request that the officer's decision be reversed or varied together with all materials in support of the requirement to review. Draft regulation 5(e) requires that the applicant should explain, where new issues have been raised, why these could not have been raised earlier in the process or what exceptional circumstances apply to support their introduction. This is consistent with the provisions to focus on the material before the planning authority at the point when the delegated decision was taken.
23. Once the planning authority has received a notice of review it should notify those individuals who made unresolved representations or who were consulted on the application. Draft regulation 6 sets out the process for doing so and requires interested parties to be advised that their earlier comments will be taken into account by the review body. They will also be advised that the notice of review and supporting documents can be inspected at the offices of the planning authority but they are not invited to provide further comments on the case. To do so would risk undermining the efficiency of the process by providing a cycle of comment and counter comment without adding value to the process or aiding the local review body in arriving at a decision. This is also consistent with the approach to front-loading the system described earlier in this paper.

<p><b>Q5 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering a review?</b></p>
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### ***The local review body***

24. We consider that a local review body should comprise a small number of elected members - a minimum of three and a maximum of five - and this is provided for in draft regulation 7(1). Each authority should ideally make a larger pool of trained elected members available to ensure that on occasions where a conflict of interest arises, the review

process can still operate effectively. The review body will require administrative support to advise on process and to issue the reasoned decisions reached by the review body. We envisage that support being provided by the authority's legal officer supported as necessary by the planning authority's professional planning expertise drawn from those not involved in the decision under review. The draft regulations do not set out the detailed administrative arrangements that should support operation of the review body. These will vary according to local circumstances but may benefit from future guidance. While we want to promote a degree of flexibility around how each planning authority will implement the review body provisions, draft regulation 7(2) requires that meetings of the review body, either to take decisions on the review or on how the case should be determined, should be held in public. Authorities will be mindful of the need to promote fairness and transparency in decision taking when developing detailed procedures for operation of local review bodies.

**Q6 - Do you consider that the proposed size of the review body is appropriate?**

25. The review process will focus on the material which was before the planning authority and consider whether the decision taken under delegated powers was appropriate. The review body may uphold, reverse or vary the decision. Where the requirement to review follows non-determination (a deemed refusal), the review body will be able to take a decision on the proposal. In cases of non-determination it will be necessary for advice on the planning merits of the case to be provided to the review body and for such material to be made available for comment to the applicant. We envisage that it will be for the authority to provide access to professional planning advice which will most commonly be obtained from the Head of the Planning Service.
26. The 2006 Act removed the automatic right to be heard in planning appeals. While those pursuing an appeal to Scottish Ministers or requiring a review by the planning authority will in future be asked for their view on how their case should be processed, the decision on the method of examination be reserved to Ministers (in cases where an appeal has been made) or to the local review body (where a review is required). The local review body may be in a position to reach a decision in a review without requesting further information or clarification from key parties. In those cases, even though the review will be considered by the review body in public, no further representations may be required. Where the review body requires further information or elucidation from parties to enable them to arrive at a decision they may seek this. The manner of examination, whether by written exchange, hearing, or by a combination of these methods will be for the local review body to determine. However it is not intended that a review process should involve formal inquiry sessions

and accordingly the draft regulations do not provide for that. It will be for the review body to determine whether a site inspection is required in order to arrive at their decision.

27. The review process is not intended to be adversarial. The review body will take into account the material before the planning authority during the planning process, including any report of handling, together with the supporting material lodged by the applicant in seeking a review. It is important that the applicant is aware of the material that will be taken into account by the body in reaching its decision and accordingly regulation 9(4) provides that any new issues not raised in the decision notice which are to be relied upon will be notified to the applicant and for him/her to comment on these within a 14 day period before the case is considered. Where, exceptionally, new material has been introduced into the process at review stage, parties to the review will be given an opportunity to comment on that material. Draft regulation 9(4) provides for a 14 day period for submission of comments on any such material prior to the review body considering the case. Where the local review body consider that additional information or advice is required in order to enable it to arrive at a decision on a case then they will request that, allowing the principal parties to comment on the additional material.
28. We expect the majority of cases to be determined by written submissions. In a limited number of cases the review body may consider that it would be appropriate to hold a hearing to provide further clarification into certain issues. Where that is considered appropriate the format set out in the regulations should be followed. This format is intended to focus on a structured discussion within an informal atmosphere rather than a formal adversarial inquiry.
29. It is important that cases under review are considered through an efficient process with clear timescales for each stage. Cases should be considered promptly with decisions issued not more than two months from the notice to review being received. The local review body should issue the decision notice promptly and record it on the planning register. Reasons for the decision should be set out in full, signed by the Chair of the review body and communicated to all parties, including those who made representations on the application when first considered under delegated powers. This will provide clarity for all parties around the considerations taken into account and the reasons for the decision.

**Q7 - Are the timescales proposed for carrying out a review reasonable?**

**Q8 - Are there additional provisions to those proposed which would improve the process of reviewing the decision?**

## PLANNING APPEALS

30. While reviews of decisions in respect of planning applications subject to the s.43A scheme of delegation will be made to the local review body, all other appeals will be made to Scottish Ministers. As indicated in paragraph 1, the intention is that the appeal system should be made more efficient without losing the key strengths of the current arrangements.
31. In common with the proposed approach for local review, we propose to reduce the timescale for appealing to Scottish Ministers from six months to three months. This will reduce uncertainty for objectors and planning authorities whilst providing appellants with a reasonable period within which to consider whether to appeal or to submit a fresh planning application that addresses the reasons for refusal.
32. The principles of front-loading the system apply equally to appeals to Scottish Ministers as they do to other elements of the planning process. Section 47A of the Act restricts the ability of parties to introduce matters that were not before the planning authority at the time the proposal was considered by them. An appellant wishing to introduce new material into the appeal process will be required to demonstrate either that the material could not have been made available earlier in the process or that it is being produced in consequence of exceptional circumstances. The proposed changes do not reduce the responsibility on those making determinations under the Planning Acts to take account of all material considerations and to have regard to the provisions of the development plan. The proposed changes to the appeal process will prevent proposals significantly changing late in the process. New section 32A introduced by the 2006 Act will prevent proposals from being varied once an appeal has been made. Where an appellant wishes to alter proposals following a decision by the planning authority a revised planning application should be submitted to the planning authority.

### *Method of examination*

33. At present appeals are determined through one of the following methods, or a combination of them:
  - **Written** submissions are considered the most straightforward method of determination, based on an exchange of written representations and are used in 90% of current appeals. We consider that this method is most appropriate where the position of the respective parties is clear and no further discussion or examination is required in order for the appointed decision taker to reach a proper understanding of the issues. In such cases an oral process adds no value in examining the key issues.
  - **Hearings** enable parties to provide further explanation of their opinion within the format of a structured discussion led by the

person appointed to determine the case. Only those issues that require clarification and which are susceptible to this approach would be considered in this way; other matters where the position of parties is clear would be considered on the basis of their written submissions. Hearings can assist in clarifying issues in an atmosphere that is less intimidating than a formal, adversarial, inquiry.

- In future, **inquiry sessions** will be reserved for more complex issues in already complicated cases and for those situations where the factual position is in dispute and effective resolution would be unlikely either through an exchange of written submissions or a hearing. In an inquiry session the process is formal: the appointed person hears evidence from witnesses and that evidence, which may be heard on oath, is subject to cross-examination.
34. In future, Scottish Ministers will take into account the preferred method of determination suggested by the principal parties but the decision on which route should be taken to examine the appeal, whether written submission, hearing, inquiry session, or combination of these, will be made by Scottish Ministers. The existing right to be heard will therefore be changed, avoiding the need to hold hearings or inquiries where these are not necessary to fully examine the issues in the appeal. The inquiry process will thus be reserved for those issues where cross-examination is required. The scope of the inquiry sessions will also be focussed on the key issues which require more rigorous examination. In some cases a combination of the methods outlined above will be applied. In introducing these changes we intend that the appeal process should become more proportionate without reducing the quality of determination.
35. While the appeal by Scottish Ministers is a new decision and one that must take account of all material considerations, the changes being introduced highlight the importance of introducing all supporting material early in the process. It is also important that parties are clear on the positions adopted by others and that the scope for these to shift over time is reduced so that there is greater clarity throughout the process.

### ***The appeal process***

36. When an appeal is made to Scottish Ministers it should be accompanied by full grounds of appeal and any documentation supporting it. Draft regulation 5 sets out what is required to provide adequate notice of the appeal. The notice of the appeal should include full details of the appellant and of the application in respect of which an appeal is made. It should include details of the matters that the appellant considers need to be examined and the preferred method of doing so. The appellant will also be required to identify any material which was not before the planning authority and explain why this was unable to be provided earlier in the process. The notice of appeal and

supporting documents should be copied to the relevant planning authority at the same time notice of appeal is given to Scottish Ministers.

37. Having received a notice of appeal, the planning authority will provide a response to Scottish Ministers within a 14 day period. This will include the authority's view on what issues need to be examined and the appropriate method of doing that together with the relevant documents that were before the authority and taken into account in reaching its decision. The report of handling (in cases where a determination has been made) should also be provided. Where the planning authority has introduced new material the appellant should be given an opportunity to comment on that material. Within 14 days of receiving notice of an appeal, the planning authority will be required to write to interested parties who have made representations advising them of the appeal, and confirming that comments previously made will be taken into account when a decision is made on the appeal. Interested parties will be advised where the notice of appeal, the planning authority's response and supporting documents may be viewed but it is not the intention that additional comments will be canvassed from third parties.

**Q9 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering an appeal?**

38. In some instances, once the appeal and planning authority's response to it have been received, the appeal will be able to be decided without further reference to parties and a decision prepared based on the material submitted. Where Scottish Ministers require additional information in order to arrive at a decision then the draft regulations allow for that to be provided and for the relevant parties to comment on the new material.
39. The draft regulations provide that Scottish Ministers can determine an appeal by one or by a combination of the methods of examination described at paragraph 33 above. The schedules to the draft appeals regulations describe the process that is to be applied in the case of hearing sessions and inquiry sessions.

**Q10 - Do you agree that Ministers should seek to use the method of examination that best fits the circumstances of the case, taking account of the views of the parties?**

40. In notifying interested parties that a hearing is to be held, Scottish Ministers will specify the matters that are to be considered at the hearing. The draft regulations set out the procedure for notifying parties of the hearing and for the exchange of hearing statements between the parties. The hearing process will be as determined by the person appointed to hold it but it is not intended to be adversarial.

41. The draft regulations also set out the procedure to be followed at inquiry sessions. A number of changes are proposed with a view to promoting greater efficiency in these sessions. The existing provisions which include service of statements of case are being changed. Instead, Ministers will serve a procedure notice that will specify what issues are to be considered at the inquiry. In response to this, parties will set out how they intend to present their case at the inquiry and provide details of those appearing to give evidence. While precognitions will be retained, these will be restricted in length to not more than 2000 words to encourage parties to focus on the relevant issues under consideration. With greater emphasis on front-loading the system, the need for lengthy statements, either re-iterating arguments previously made or describing new material, has little place in the framework of examination now proposed.

**Q11 - Do you consider that the framework set out in the accompanying regulations reflects the more proportionate appeals regime envisaged in the White Paper?**

#### **CROWN DEVELOPMENT**

42. Since June 2006 Crown development has been bound by planning legislation. There are certain caveats and alternative procedures set out in primary and secondary planning legislation in this regard to address the particular nature of the Crown. However, for the most part, applications for Crown development are expected to go through the same procedures and processes as any other comparable non-Crown development proposal.
43. The secondary legislation which came into force in 2006 included provisions around inquiries procedures to deal with urgent applications under section 242A of the Town and Country Planning (Scotland) Act – that is where development is of national importance and is required urgently – and applications or appeals to which section 265A of the 1997 Act applies because public disclosure of information would not be in the national interest – where issues of national security are involved for example. We are considering similar provisions in relation to the draft legislation included in this consultation paper.
44. The legislation on schemes of delegation which result in local reviews is a new procedure and which would clearly have implications in relation to, for example, applications involving information which was sensitive on national security grounds. We are considering further the application of these procedures to Crown development.

**Q12 – Are there any particular issues in relation to proposals for Crown development which would require special handling in relation to schemes of delegation, local review and appeals procedures?**

## **CONCLUDING REMARKS**

45. The proposals set out in this consultation paper represent significant procedural changes to existing arrangements. Implementation of revised procedures will, however, benefit from a change in culture that recognises the importance of front-loading the planning system and supporting changes that deliver a system that is fit for purpose.
46. This consultation paper sets out the draft regulations on schemes of delegation, local review bodies and appeals examinations that will sit alongside those powers in primary legislation. We would welcome comment on the content of the draft regulations and on the draft regulatory impact Assessment and draft Equalities Impact Assessment which are attached as annexes. Details of how to respond are provided at the front of this consultation paper.

- Q13 - Are there any potential impacts on the business or voluntary sector that we should be aware of in finalising these regulations?**
- Q14 - Are there any impacts on particular societal groups that we should be aware of in finalising these regulations?**
- Q15 - Do you have any other comments to make on the draft regulations covering schemes of delegation, local review bodies or appeals examinations?**

2008 No. [ ]

**TOWN AND COUNTRY PLANNING****The Town and Country Planning (Schemes of Delegation)  
(Scotland) Regulations 2008**

<i>Made</i> - - - -	2008
<i>Laid before the Scottish Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 43A(1)(a)(ii) and (4) of the Town and Country Planning (Scotland) Act 1997<sup>(a)</sup> and of all other powers enabling them to do so:

**Citation and commencement**

1. These Regulations may be cited as the Town and Country Planning (Schemes of Delegation) (Scotland) Regulations 2008 and shall come into force on [ ].

**Interpretation**

2. In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“appointed officer” means a person appointed by the planning authority for the purposes of section 43A of the Act.

“EIA Development” has the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999<sup>(b)</sup>;

“statutory consultee” means an authority or person with whom the planning authority must consult in accordance with regulation 30 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2007<sup>(c)</sup>.

**Content of scheme of delegation**

3.—(1) A scheme of delegation must describe the classes of development to which the scheme will apply and state with respect to every such class which of the applications mentioned in paragraph (2) are to be determined by an appointed officer and if such application is only to be so determined in particular circumstances the scheme shall specify such circumstances.

(a) 1997 c.8. Section 43A was inserted by section 17 of the Planning etc. (Scotland) Act 2006 (asp 17).

(b) S.S.I. 1999/1.

(c) S.S.I. 2007/ .

(2) The applications are–

- (a) an application for planning permission; and
- (b) an application for consent, agreement or approval required by a condition imposed on a grant of planning permission.

(3) A scheme of delegation must include provision that prohibits an appointed officer from determining an application for planning permission in the circumstances mentioned in paragraph (4).

(4) The circumstances are that–

- (a) an objection to the application has been received from a statutory consultee and has not been withdrawn;
- (b) the application is made by–
  - (i) the planning authority; or
  - (ii) a member of the planning authority;
- (c) the application relates to land in the ownership of the planning authority or to land in which the planning authority have a financial interest;
- (d) the application is an application relating to EIA Development;
- (e) the application relates to development which is significantly contrary to the development plan;
- (f) there is a substantial body of objections to the application; or
- (g) the application is an application for planning permission for development of a class mentioned in section 38A(1) of the Act.

(5) For the purposes of paragraph (4)(f) an application is subject to a substantial body of objections where the appointed officer would, if the appointed officer were to determine the application, when giving reasons for making a determination, consider that the strength of opposition (taking into account the number of representations made which object to the proposed development and whether such representations may be considered to be representative of the views of the local community) to be a significant material consideration to be taken into account when determining the application.

(6) The scheme of delegation must also include provisions which, in the circumstances mentioned in paragraph (4) require the appointed officer to notify the planning authority of such circumstances and that the appointed officer is prohibited from determining the application.

#### **Procedure for preparation and adoption of scheme of delegation**

4.—(1) Where a planning authority propose to adopt a scheme of delegation, the authority is to send a copy of the scheme to the Scottish Ministers and shall not adopt the scheme on a date earlier than the expiration of 28 days from the date upon which the copy was sent to the Scottish Ministers.

(2) The Scottish Ministers may during that period of 28 days notify the authority in writing that a later date shall be substituted for the date of expiry of that period.

(3) At any time before the scheme is adopted the Scottish Ministers may by notice in writing require the authority to consider modifying the scheme in accordance with recommendations contained in that notice.

(4) Where a notice has been served under paragraph (3) but the planning authority propose to adopt the scheme without modifying the scheme in accordance with all of the recommendations contained in that notice, the planning authority must before adopting the scheme give notice to the Scottish Ministers of that proposal and such notice must give reasons as to why some or all (as the case may be) of the recommendations have not been accepted and the scheme modified accordingly.

(5) The Scottish Ministers may, within 28 days of receipt of a notice sent under paragraph (4) notify the planning authority that the scheme of delegation is not to be adopted until the scheme has been approved by the Scottish Ministers.

(6) As soon as reasonably practicable after the scheme of delegation has been adopted the planning authority are to send a copy of the scheme to the Scottish Ministers.

#### **Subsequent schemes of delegation**

5. The planning authority must prepare a scheme of delegation five years after the adoption of the first such scheme in accordance with the regulations and thereafter do so at intervals of no greater than every five years.

#### **Publication of the scheme**

6. The planning authority is to—

- (a) make a copy of the adopted scheme of delegation available for inspection at an office of the planning authority and in every public library in the area of the planning authority; and
- (b) publish the adopted scheme of delegation on the internet.

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh

2008

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

2008 No.

**TOWN AND COUNTRY PLANNING****The Town and Country Planning (Scotland) Local Review  
Procedure Regulations 2008**

<i>Made</i> - - - -	2008
<i>Laid before the Scottish Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Scottish Ministers make the following regulations in exercise of the powers conferred by section 43A(10), (11), (13) and (17), 275 and 275A of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Town and Country Planning (Scotland) Local Review Procedure Regulations 2008 and shall come into force on {insert date}.

**Interpretation**

2. In these Regulations—

“Act” means the Town and Country Planning (Scotland) Act 1997;

“additional party” means in relation to a request for further written representations or information or a hearing session, as the case may be, a body or person other than the applicant to whom the local review body gives a procedure notice;

“appointed officer” means a person appointed by virtue of a scheme of delegation under section 43 of the Act by the planning authority to determine the application which is subject to review;

“consulted person” means an authority or person consulted by the planning authority in compliance with a requirement imposed by virtue of section 43(1)(c) of the Act;

“hearing statement” means, and is comprised of—

- (a) a written statement which contains particulars of the case relating to the specified matters which a person proposes to put forward at a hearing session; and
- (b) a list of documents (if any) which the person putting forward that case intends to refer to, rely on or put in evidence.

(a) 1997 c.8. Sections 43A and 275A were respectively inserted by section 17 and 52 of the Planning etc. (Scotland) Act 2006 (asp 17) (the “2006 Act”). Section 275 was amended by [ ] and section 53(16) of the 2006 Act.

“interested party” means–

- (a) any consulted person from whom representations were received (and not subsequently withdrawn) by the planning authority in connection with the application;
- (b) any other person from whom representations were received (and not subsequently withdrawn), by the planning authority before the end of the period mentioned in section 38(1) of the Act;

“local review body” means, in respect of the review of a case, the planning authority to whom the application for planning permission, consent, agreement or approval, as the case may be, was made;

“new issues” has the meaning given in regulation 9(4);

“reference number of the application” means the unique number assigned by the planning authority to the application;

“specified matters” are–

- (a) in relation to a request for further written submission, those matters which are specified in the procedure notice served in respect of that request;
- (b) in relation to a particular hearing session, those matters which are specified in the procedure notice served in respect of that hearing session.

## PART 1

### Review

#### **Review on failure to determine the application**

**3.**—(1) An applicant may require the local review body to review the case under section 43A(8)(c) of the Act if the appointed officer has failed to give to the applicant notice of their decision or determination or notice of referral of the application to the Scottish Ministers within the period specified in regulation 29(4) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

(2) The period prescribed for the purposes of section 43A(17) of the Act is the period of two months beginning on the date when the requirement to review is made by virtue of section 43A(8)(c).

#### **Notice of Review**

**4.**—(1) An applicant may require the local review body to review a case under section 43A(8) by giving notice in writing in accordance with this regulation and regulation 5.

(2) In the case of a review required by virtue of–

- (a) section 43A(8)(a) or (b) of the Act, the notice must be served on the local review body within the period of three months beginning with the date of notification of the decision; and
- (b) section 43(8)(c) of the Act, the notice must be served on the local review body within–
  - (i) the period of three months beginning with the date of expiry of the period specified in regulation 29(4) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 or;
  - (ii) such extended period as may be agreed upon in writing between the applicant and the local review body.

(3) Subject to paragraph (4)–

- (a) all matters which the applicant intends to raise in the review must be set out in or accompany the notice of review; and

- (b) all documents, materials and evidence which the applicant intends to rely on in the review must accompany the notice of review.

(4) In addition to matters set out in the notice of review, the applicant may raise matters only in accordance with and to the extent permitted by regulation 9 and Schedule 1.

### **Form of Notice of Review**

5. The notice of review must include–
- (a) the name and address of the applicant;
  - (b) the date and, if known, the reference number of the application in respect of which the review is made;
  - (c) the name and address of the representative of the applicant (if any) and whether any notice or other correspondence which is required by these regulations to be sent to the applicant should be sent to the representative instead of the applicant;
  - (d) a statement setting out the applicant’s reasons for requiring the local review body to review the case;
  - (e) a statement identifying any matter raised which was not before the appointed officer at the time the decision in question was made where the applicant can demonstrate why the matter–
    - (i) could not be raised before that time;
    - (ii) could not be raised before that time as a consequence of exceptional circumstances and specifying those circumstances;
  - (f) a statement that the notice is a notice of review.

### **Notification to interested parties and publication**

6.—(1) The local review body must not later than 14 days following notification of the review give notice of the review to each interested party.

- (2) Notice under paragraph (1) shall–
- (a) state the name of the applicant and the address of the site to which the review relates;
  - (b) describe the application;
  - (c) state that copies of any representations previously made with respect to the application, other than representations which the interested party has asked to be treated as confidential, will be sent to the applicant; and will be considered by the local review body when determining the review; and
  - (d) where the interested party may inspect a copy of the notice of review
- (3) The local review body is to–
- (a) make a copy of the notice of review available for inspection at an office of the planning authority; and
  - (b) publish a copy of the notice of review on the internet.

### **Local Review Body**

7.—(1) A review of a case by virtue of section 43A(8) of the Act is to be conducted by a committee of the planning authority comprising at least three and not more than five members of the authority.

- (2) Meetings of the local review body at which decisions–
- (a) under regulation 9 relating to the manner in which the review, or any stage of the review, is to be conducted; or
  - (b) as to how the case under review is to be determined,

are to be held in public.

#### **Determination without further procedure**

8. Where the local review body considers that the notice of review, the decision notice and report on handling provide sufficient information to enable them to determine the review, they may, subject to regulation 9(3), determine the review without further procedure.

#### **Decision as to procedure to be followed**

9.—(1) The local review body may determine the manner in which the review, or any stage of the review, is to be conducted and are to do so in accordance with this regulation and the provisions of Parts 1 and 2 of Schedule 1.

(2) The local review body may determine at any stage of the review that further representations should be made or further information should be made or provided to enable them to determine the review.

(3) Where the local review body so determine, the review or a stage of the review is to be conducted by one of or by a combination of the procedures set out in the provisions of the Schedule and may comprise the holding of one or more hearing sessions.

(4) Where the local review body session proposes to take into consideration any new matter, evidence or any new issue of fact which was not raised in the decision notice (“new issues”), the local review body shall not come to a decision on the case without first notifying the applicant and any interested parties of their proposal and the reasons for it and affording the applicant and any interested parties an opportunity of making representations thereon in writing within 14 days or at a hearing session.

(5) Where, or the extent to which the planning authority considers that such further representations or information are to be made or provided—

- (a) only in writing, the provisions of Part 1 of Schedule 1 apply;
- (b) at a hearing session, the rules set out in Part 2 of Schedule 1 apply.

#### **Decision Notice**

10.—(1) The local review body must give—

- (a) the applicant; and
- (b) every person who has made (and not subsequently withdrawn) representations in respect of the application.

notice (“a decision notice”) as to the manner in which the review has been dealt with within the period mentioned in regulation 3.

(2) A decision notice must, in addition to the matters required by section 43A(12)(a) of the Act—

- (a) in the case of an application for planning permission—
  - (i) any conditions to which the decision is subject;
  - (ii) include a description of the proposed development (including identification of the plans and drawings showing the proposed development) for which planning permission has been granted, or as the case may be, refused;
  - (iii) include a description of the location of the proposed development, including where applicable, a postal address;
  - (iv) include the reference number of the application;
  - (v) include a description of any variation made to the application in accordance with section 32A of the Act;

- (vi) a statement as to the effect of section 58(2) or 59(4) of the Act, as the case may be, or where the planning authority have made a direction under section 58(2) or 59(5) of the Act, give details of that direction; and
  - (vii) if any obligation is to be entered into under section 75 of the Act in connection with the application state where the terms of such obligation or a summary of such terms may be inspected;
- (b) in the case of an application for a consent, agreement or approval required by a condition imposed on a grant of planning permission include—
- (i) a description of the matter in respect of which approval, consent or agreement has been granted, or as the case may be, refused;
  - (ii) the reference number of the application; and
  - (iii) the reference number of the application for the planning permission in respect of which the condition in question was imposed.
- (3) A decision notice must also contain—
- (a) a statement of the number of representations made in respect of the application and a summary of the main issues raised by such representations;
  - (b) details of the authorities and persons consulted by the planning authority in respect of the application and a summary of the responses made by such authorities or persons;
  - (c) a statement as to whether—
    - (i) an appropriate assessment under the Conservation (Natural Habitats &c.) Regulations 1994 was carried out in respect of the proposed development;
    - (ii) a design and access statement was submitted in respect of the proposed development; or
    - (iii) any report on the impact or potential impact of the proposed development (for example the retail impact, transport impact, noise impact or risk of flooding) was submitted in connection with the application,
 and where such a statement or report was submitted or such assessment carried out, a summary of the main issues raised by such statement, report or assessment;
  - (d) a summary of the terms of any planning obligation entered into under section 75 of the Act in relation to the grant of planning permission for the proposed development;
  - (e) details of the provisions of the development plan and any other material considerations (in addition to any to be included under above paragraphs) to which the planning authority had regard in determining the application; and
  - (f) particulars of any direction given under the Act or these Regulations in respect of the application.
- (4) A decision notice must in the case of refusal or approval subject to conditions be accompanied by a notification in the terms set out in Schedule 2.

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh

2008

# SCHEDULE 1

Regulation 9

## PART 1

### Written submissions

1. Where the local review body has determined that further representations should be made or further information should be made or provided by means of written submissions in relation to specified matters, the local review body is to by written notice (a “procedure notice”) request such further representation or information to that effect from–

- (a) the applicant; or
- (b) any interested party who made representations in relation to specified matters;
- (c) any other body or person from whom the local review body wishes to receive further representations or to provide further information in writing on specified matters.

2. The procedure notice is to–

- (a) set out the matters on which such further representations or information is requested; and
- (b) specify the date by which such further representations or information is to be sent to the local review body.

3. Any further representations or information made in response to such a request is to be sent to the local review body on or before the date specified in the procedure notice and a copy of any such further representations or information is to be sent to the applicant.

4. The applicant may, within a period of 14 days from receipt of the response, send further representations or information to the local review body in reply to it.

## PART 2

### Hearing Sessions

#### **Procedure notice and specified matters**

5.—(1) Where the local review body has determined that the review or a stage of the review, is to be conducted by means of the holding of a hearing session to consider specified matters they are to give written notice to that effect (“the procedure notice”) to–

- (a) the applicant; and
- (b) any interested party who made representations in relation to specified matters;
- (c) any other body or person from whom the local review body wishes to receive further representations or to provide further information on specified matters at a hearing session.

(2) The procedure notice is to set out the matters which are to be considered at the hearing and where the hearing is to be held by virtue of regulation 8(4) must include any new issues.

(3) Only specified matters are to be considered at the hearing session.

#### **Date and notification of hearing session**

6.—(1) The date fixed by the local review body for the commencement of a hearing session shall be–

- (a) not later than 6 weeks after date of the procedure notice; or

- (b) where the local review body are satisfied that in all the circumstances of the case it is impracticable to commence the hearing session within such 6 week period, the earliest practicable date after the end of that period.

(2) The place at which the hearing session is to be held shall be determined by the local review body.

(3) The local review body must give not less than 4 weeks' notice of the date, time and place fixed by them for the holding of a hearing session to every person entitled to appear at the hearing session.

(4) The local review body may vary the time or place for the holding of a hearing session (whether or not the revised date is within the applicable period mentioned in paragraph (1)) and shall give such notice of any such variation as appears to them to be reasonable and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

### **Appearances at hearing session**

7. The persons entitled to appear at a hearing session are—

- (a) the applicant; and
- (b) any additional party.

### **Service of hearing statements, etc**

8.—(1) A person entitled to appear at the hearing session shall not later than 4 weeks after the date of the procedure notice serve a hearing statement on the local review body and on each other party entitled to appear at the hearing session.

(2) In addition to the hearing statement served under paragraph (1), each person entitled to appear at the hearing session shall, not later than 2 weeks before the commencement of the hearing session serve upon the local review body a copy of every document or the relevant part of any document which such person intends to refer to or put in evidence.

(3) Any person who has served a hearing statement in accordance with this rule shall—

- (a) when required by notice in writing from the local review body provide such further information about the matters contained in the statement as the local review body may specify; and
- (b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.

### **Notification of appointment of assessor**

9. Where the local review body appoint an assessor, they shall notify the persons entitled to appear at the hearing session of the assessor's name and of the matters on which the assessor is to advise the local review body.

### **Procedure at hearing**

10.—(1) Except as otherwise provided in the rules set out in this Part of the Schedule, the local review body shall determine the procedure at a hearing session.

(2) The local review body is to state at the commencement of the hearing session the procedure the local review body proposes to adopt subject to consideration of any submission by any of the persons entitled to appear at the hearing session.

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the local review body may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) A hearing shall take the form of a discussion led by the local review body and cross-examination shall not be permitted unless the local review body considers that cross-examination is required to ensure a thorough examination of the issues.

(6) A person entitled to appear at a hearing session shall be entitled to call evidence but, subject to paragraphs (8) and (10), the calling of evidence shall otherwise be at the local review body's discretion.

(7) The local review body may require any person appearing or present at a hearing session who, in the local review body's opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit that person to return only on such conditions as the local review body may specify; but any such person may submit to the local review body in writing any evidence or other matter before the close of the hearing session.

(8) The local review body may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.

(9) The local review body may allow any person to alter or add to a hearing statement served under rule 4 so far as may be necessary for the purpose of the hearing session; but the local review body shall (if necessary by adjourning the hearing session) give every other person entitled to appear at the hearing session an adequate opportunity of considering any fresh matter or document.

(10) The local review body may take into account any written representation or evidence or any other document received by the local review body from any person before a hearing session opens or during the hearing session provided that the local review body discloses it either, where practical, in advance of the hearing session by circulating copies of the documents or otherwise, at the hearing session, by ensuring that copies are available for inspection.

(11) The local review body may from time to time adjourn a hearing session, and

- (a) if at the hearing session the local review body announces the date, time and place for reconvening the adjourned hearing session no further notice shall be required, but
- (b) if the local review body makes no such announcement the local review body shall give such notice as the local review body considers reasonable and appropriate.

### **Site inspections**

**11.—**(1) The local review body may at any time make an unaccompanied inspection of the land without giving notice of the local review body's intention to the persons entitled or permitted to appear at the hearing session.

(2) Subject to the provisions of this rule, the local review body may, before or during the hearing session, inspect the land during or after the close of the hearing session in the company of such of the persons entitled under paragraph (3) of this rule to accompany the local review body as desire to do so.

(3) Where the local review body intends to make an inspection by virtue of paragraph (2) of this rule, the local review body shall during the hearing session announce the date and time at which the local review body proposes to do so and the applicant and all persons entitled or permitted to appear at the hearing session shall be entitled to accompany the local review body on any such inspection.

(4) The local review body shall not be bound to defer an inspection if any person entitled to accompany the local review body is not present at the time appointed.

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions*

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)*

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provisions in connection with

**2008 No.****TOWN AND COUNTRY PLANNING****The Town and Country Planning (Scotland) Appeals  
Regulations 2008**

<i>Made</i> - - - -	2008
<i>Laid before the Scottish Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 47, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997<sup>(a)</sup> and all other powers enabling them to do so.

**PART 1****Preliminary****Citation and commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Scotland) Act 1997 Appeals Regulations 2008 and shall come into force on {insert date}.

(2) These Regulations apply to—

- (a) applications referred to the Scottish Ministers following a direction under section 46(1) of the Act; and
- (b) appeals made to the Scottish Ministers under section 47 of the Act.

**Interpretation**

2.—(1) In these regulations—

the “Act” means the Town and Country Planning (Scotland) Act 1997;

“additional party” means—

- (a) in relation to a request for further written representations or information or a hearing session, as the case may be, a body or person other than the appellant or the planning authority to whom the appointed person gives a procedure notice; and
- (b) in relation to an inquiry session, a body or person other than the appellant or the planning authority to whom the appointed person gives a procedure notice and who has notified

(a) 1997 c.8. The Town and Country Planning (Scotland) Act 1997 was amended by the Planning etc. (Scotland) Act 2006 (asp 17).

the appointed person of an intention to appear at the inquiry session in accordance with rule 1(3) of Part 2 of the Schedule;

“appellant” in the case of an application referred to the Scottish Ministers following a direction under section 46(1) of the Act means the applicant;

“appointed person” mean a person appointed by virtue of Schedule 4 to the Act to determine an appeal instead of the Scottish Ministers;

“consulted person” means an authority or person consulted by the planning authority in compliance with a requirement imposed by virtue of section 43(1)(c) of the Act;

“Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(a);

“document” includes, in addition to a document in writing–

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

“hearing statement” means, and is comprised of–

- (a) a written statement which contains particulars of the representations relating to the specified matters which a person proposes to put forward at a hearing session; and
- (b) a list of documents (if any) which the person putting forward such representations intends to refer to, rely on or put in evidence.

“inquiry session” means a local inquiry held or to be held into matters specified in a procedure notice;

“inquiry statement” means, and is comprised of–

- (a) a written statement which contains particulars of the representations relating to the specified matters which a person proposes to put forward at an inquiry session;
- (b) a list of documents (if any) which the person putting forward such representations intends to refer to, rely on or put in evidence; and
- (c) a list of persons who are to give, or be called to give, evidence at the inquiry session, the matters in respect of which such persons are to give evidence and the relevant application of such persons to do so;

“interested party” means–

- (a) any consulted person from whom representations were received (and not subsequently withdrawn) whether by the planning authority in connection with the application;
- (b) any other person from whom representations were received (and not subsequently withdrawn), whether by the planning authority before the end of the period mentioned in section 38(1) of the Act;

“notice of appeal” has the meaning given in regulation 3;

“period allowed for determination of the application” is the period specified in regulation 29(4) of the Development Management Procedure Regulations 2008 or such extended period as may be agreed in writing between the applicant and the planning authority;

“planning authority” means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(b) which was responsible for dealing with the application;

“planning authority’s response” has the meaning given in regulation 5;

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(a) S.S.I. 2008/ .  
(b) 1994 c39.

“precognition” means a written statement of the evidence which it is proposed that a witness will give to the inquiry session;

“pre-inquiry session meeting” means a meeting held before an inquiry session to consider what may be done with a view to securing that the inquiry session is conducted efficiently and expeditiously, and where two or more such meetings are held references to the conclusion of a pre-inquiry session meeting are references to the conclusion of the final meeting;

“reference number of the application” means the unique number assigned by the planning authority to the application;

“relevant date” means the date on which the procedure notice is given in accordance with rule 2(1) of Part 2 of the Schedule;

“Report on Handling” means, in respect of an application, the Report to be placed in the register of applications in which the planning authority is required to keep under section 36(1) of the Act;

“rule” means a rule set out in Parts 1 or 2 of the Schedule;

“supporting documents” means any document submitted with or referred to in the notice of appeal, the planning authority’s response or any representations made under regulations 7 or 8;

“Schedule” means the Schedule to these Regulations;

“specified matters” are—

- (a) in relation to a request for further written submission, those matters which are specified in the procedure notice served in respect of that request;
- (b) in relation to a particular hearing session, those matters which are specified in the procedure notice served in respect of that hearing session;
- (c) in relation to a particular inquiry session, those matters which are specified in the procedure notice served in respect of that inquiry session.

(2) In the case of—

- (a) an appeal to be determined by the Scottish Ministers rather than by an appointed person; or
- (b) an application referred to the Scottish Ministers following a direction made under section 46(1) of the Act,

references to the “appointed person” in the Schedule are to be treated as references to the Scottish Ministers.

## PART 2

### Appeal

#### **Appeal on failure to determine the application**

3. An applicant may appeal to the Scottish Ministers by virtue of section 47(2) of the Act if the planning authority have failed to give to the applicant notice of their decision or determination or notice of referral of the application to the Scottish Ministers within the period allowed for determination of the application.

#### **Notice of Appeal**

4.—(1) An appeal to the Scottish Ministers under section 47 of the 1997 Act is to be made by giving notice in writing in accordance with this regulation and regulation 5.

(2) In the case of an appeal made by virtue of—

- (a) section 47(1) of the Act, the notice must be served on the Scottish Ministers within the period of three months beginning with the date of notification of the decision; and

- (b) section 47(2) of the Act, the notice must be served on the Scottish Ministers within the period of three months beginning with the date of expiry of the period allowed for determination of the application.
- (3) Subject to paragraph (4)–
  - (a) all matters which the appellant intends to raise in the appeal must be set out in or accompany the notice of appeal; and
  - (b) all documents, materials and evidence which the appellant intends to rely on in the appeal must accompany the notice of appeal.
- (4) In addition to matters set out in the notice of appeal, the appellant may raise matters only in accordance with and to the extent permitted by regulations 6 and 10 and Parts 1 and 2 of the Schedule.

### **Form of Notice of Appeal**

5. The notice of appeal must include–
- (a) the name and address of the appellant;
  - (b) the date and, if known, the reference number of the application in respect of which the appeal is made;
  - (c) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these regulations to be sent to the appellant should be sent to the representative instead of the appellant;
  - (d) a statement setting out full particulars of the appeal including a note of what matters the appellant considers require determination and by what means these should be determined;
  - (e) a statement identifying any matter raised which was not before the planning authority at the time the decision appealed against was made where the appellant can demonstrate why the matter–
    - (i) could not be raised before that time;
    - (ii) could not be raised before that time as a consequence of exceptional circumstances and specifying those circumstances;
  - (f) a statement that the notice is a notice of appeal.

### **Intimation to planning authority and planning authority's response**

6.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to the planning authority a copy of–

- (a) the notice of appeal; and
- (b) all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 4(3)(b).

(2) The planning authority must, not later than 14 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant–

- (a) a note (“the planning authority’s response”) of what matters the planning authority considers require determination and by what means these should be determined;
- (b) documents which were before the planning authority and which were taken into account in reaching its decision;
- (c) a copy of any Report on Handling prepared in respect of the application; and
- (d) the conditions (if any) which the planning authority presently consider should be imposed in the event that the Scottish Ministers or the appointed person, as the case may be, decide that permission be granted.

(3) The appellant may, within 14 days beginning with the date of receipt of the planning authority’s response send to the Scottish Ministers and the planning authority comments on any

matters raised in the planning authority response which had not been raised in the notice of the planning authority's decision.

- (4) The planning authority is to—
  - (a) make a copy of the notice of appeal and the of the planning authority response available for inspection at an office of the planning authority; and
  - (b) publish a copy of the notice of appeal and the of the planning authority's response on the internet.

#### **Notification to interested parties**

7.—(1) The planning authority must not later than 14 days following notification of the appeal under regulation 6 give notice of the appeal to each interested party.

- (2) Notice under paragraph (1) may be given—
  - (a) by post to any interested person notified or consulted under the Act by them other than by newspaper advertisement; and
  - (b) by post or by advertisement in a newspaper circulating in the locality where the proposed development is situated, to any other interested person.
- (3) Notice under paragraph (1) shall—
  - (a) state the name of the appellant and the address of the site to which the appeal relates;
  - (b) describe the application;
  - (c) state that copies of any representations previously made to the planning authority, other than representations which the interested party has asked to be treated as confidential, will be sent to the Scottish Ministers and the appellant; and will be considered by the Scottish Ministers when determining the appeal;
  - (d) state where the interested party may inspect a copy of the notice of appeal and of the planning authority's response.

#### **Determination without further procedure**

8. Where the Scottish Ministers or the appointed person, as the case may be, consider that no further representations are or information is required to enable the appeal to be determined, the Scottish Ministers or the appointed person may determine the appeal without further procedure.

#### **Decision as to procedure to be followed**

9.—(1) The Scottish Ministers or the appointed person, as the case may be, may determine the manner in which the appeal, or any stage of the appeal, is to be conducted and are to do so in accordance with this regulation, regulation 10 and the provisions of Parts 1 and 2 of the Schedule.

(2) The Scottish Ministers or the appointed person may determine at any stage of the appeal that further representations should be made or further information should be made or provided to enable the appeal to be determined.

(3) Where the Scottish Ministers or the appointed person so determine, the appeal or a stage of the appeal is to be conducted by one of or by a combination of the procedures mentioned in paragraph (4).

- (4) The procedures are—
  - (a) by means of written submissions;
  - (b) by the holding of one or more hearing sessions or inquiry sessions.
- (5) Where, or the extent to which the Scottish Ministers consider that such further representations or information are to be made or provided—
  - (a) by means of written submissions, regulation 10 applies.
  - (b) at a hearing session, the rules set out in Part 1 of the Schedule apply;

- (c) at an inquiry session, the rules set out in Part 2 of the Schedule apply.

### **Written Submissions**

**10.**—(1) Where the Scottish Ministers have or, as the case may be, the appointed person has determined that further representations should be made or further information should be made or provided by means of written submissions, the Scottish Ministers or the appointed person may request such further representations or information by written notice (a “procedure notice”) to that effect from—

- (a) the appellant;
- (b) the planning authority; or
- (c) any other body or person from whom the Scottish Ministers or the appointed person wishes to receive further representations or information on specified matters.

(2) The procedure notice is to—

- (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 is to be sent to the Scottish Ministers or the appointed person; and
- (c) provide the name and address of any other body or person to whom a request for such further representations or information has been made.

(3) Where a procedure notice is not sent to the appellant and the planning authority, a copy of the procedure notice must be sent to them.

(4) Any further representations or information made in response to such a request is to be sent to the Scottish Ministers or the appointed person, as the case may be, on or before the date specified in the procedure notice and a copy of any such further representations or information is to be sent to the appellant, planning authority and all the other bodies or persons to whom the request was made.

(5) Any body or person to who is to receive a copy of such response may, within a period of 14 days from receipt of the response, send further representations or information to the Scottish Ministers or the appointed person in reply to it and when doing so is to send a copy of such reply to the appellant, planning authority and all the other bodies or persons to whom the request was made.

## **PART 3**

### **Referred Applications**

#### **Call-in of applications by Scottish Ministers - procedure**

**11.**—(1) Where, following a direction made under section 46(1) of the Act, an application has been referred to the Scottish Ministers to determine instead of being dealt with by the planning authority, the Scottish Ministers may, if they consider that further representations or further information is required to enable them to determine the application, consider the application by one of or by a combination of the following—

- (a) by means of written submissions;
- (b) by the holding of one or more hearing sessions or inquiry sessions.

(2) Where, or the extent to which the Scottish Ministers consider that the application should be considered—

- (a) by means of written submissions, regulation 10 applies.
- (b) at a hearing session, the rules set out in Part 1 of the Schedule apply;
- (c) at an inquiry session, the rules set out in Part 2 of the Schedule apply.

(3) Regulations 18, 19, 28, 29 and 30 of the Development Management Procedure Regulations apply to the consideration and determination of such an application but the Scottish Ministers are not required to give notice to or consult with any person in connection with the application under such provisions if the planning authority has already done so.

## PART 4

### General

#### **Decision Notice**

**12.** The Scottish Ministers or the appointed person, as the case may be, is to give–

- (a) the appellant; and
- (b) every person who has made (and not subsequently withdrawn) representations in respect of the application or appeal,

notice (“a decision notice”) as to the manner in which an appeal or an application referred to the Scottish Ministers following a direction under section 46(1) of the Act has been dealt with.

St Andrew’s House,  
Edinburgh

2008

Authorised to sign by the Scottish Ministers

## PART 1

## Hearing Sessions Rules

**Procedure notice and specified matters**

1.—(1) Where the appointed person has determined that a hearing session should be held to consider specified matters the appointed person is to give written notice to that effect (“the procedure notice”) to—

- (a) the appellant;
- (b) the planning authority;
- (c) any interested party who made representations in relation to specified matters; and
- (d) any body or person who the appointed person wishes to make further representations or to provide further information on specified matters at the hearing session.

(2) Only specified matters are to be considered at the hearing session.

**Appearances at hearing session**

2. The persons entitled to appear at a hearing session are—

- (a) the applicant;
- (b) the planning authority; and
- (c) any additional parties.

**Date and notification of hearing session**

3.—(1) The date fixed by the appointed person for the commencement of a hearing session shall be—

- (a) not later than 12 weeks after date of the procedure notice; or
- (b) where the appointed person is satisfied that in all the circumstances of the case it is impracticable to commence the hearing session within such 12 week period, the earliest practicable date after the end of that period.

(2) The place at which the hearing session is to be held shall be determined by the appointed person.

(3) The appointed person shall give not less than 4 weeks’ notice of the date, time and place fixed by the appointed person for the holding of a hearing session to every person entitled to appear at the hearing session.

(4) The appointed person may vary the time or place for the holding of a hearing session (whether or not the revised date is within the applicable period mentioned in paragraph (1)) and shall give such notice of any such variation as appears to the appointed person to be reasonable and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

**Service of hearing statements, etc**

4.—(1) A person entitled to appear at the hearing session must, not later than 14 days after the relevant date and in any case not later than 4 weeks before the date fixed for the holding of the hearing session, serve a hearing statement on the appointed person and on all other persons entitled to appear at the hearing session.

(2) In addition to the hearing statement served under paragraph (1) each person entitled to appear at the hearing session shall, not later than 4 weeks before the commencement of the hearing session serve upon the appointed person a copy of every document or the relevant part of any document which such person intends to refer to or put in evidence.

(3) Any person who has served a hearing statement in accordance with this rule shall—

- (a) when required by notice in writing from the appointed person provide such further information about the matters contained in the statement as the appointed person may specify; and
- (b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.

(4) Any person who has served a hearing statement in accordance with this rule and who wishes to comment on another person's hearing statement shall, not later than 2 weeks after receipt of such hearing statement, send further comments in writing to the appointed person, the applicant and the person whose hearing statement is the subject of the comment.

### **Notification of appointment of assessor**

5. Where the appointed person appoint an assessor, the appointed person shall notify the persons entitled or permitted to appear at the hearing session of the assessor's name and of the matters on which the assessor is to advise the appointed person.

### **Procedure at hearing**

6.—(1) Except as otherwise provided in this Part of the Schedule, the appointed person shall determine the procedure at a hearing session.

(2) The appointed person is to state at the commencement of the hearing session the procedure the appointed person proposes to adopt subject to consideration of any submission by any of the persons entitled to appear at the hearing session.

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the appointed person may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) A hearing shall take the form of a discussion led by the appointed person and cross-examination shall not be permitted.

(6) If the appointed person consider that cross-examination is required to ensure a thorough examination of the main issues the appointed person shall consider, after consulting the persons entitled to appear at the hearing session, whether the hearing should be closed and an inquiry session be held instead.

(7) The appointed person may require any person appearing or present at a hearing session who, in the appointed person's opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or may permit that person to return only on such conditions as the appointed person may specify; but any such person may submit to the appointed person in writing any evidence or other matter before the close of the hearing session.

(8) The appointed person may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.

(9) The appointed person may from time to time adjourn a hearing session, and

- (a) if at the hearing session the appointed person announces the date, time and place for reconvening the adjourned hearing session no further notice shall be required, but
- (b) if the appointed person makes no such announcement the appointed person shall give such notice as the appointed person considers reasonable and appropriate.

### **Site inspections**

7.—(1) The appointed person may at any time make an unaccompanied inspection of the land without giving notice of the appointed person's intention to the persons entitled to appear at the hearing session.

(2) Subject to the provisions of this rule, the appointed person may before or during the hearing session, inspect the land during or after the close of the hearing session in the company of such of the persons entitled under paragraph (3) of this rule to accompany the appointed person as desire to do so.

(3) Where the appointed person intends to make an inspection by virtue of paragraph (2) of this rule, the appointed person shall during the hearing session announce the date and time at which the appointed person proposes to do so and the appellant, the planning authority and all persons shall be entitled to accompany the appointed person on any such inspection.

(4) The appointed person shall not be bound to defer an inspection if any person entitled to accompany the appointed person is not present at the time appointed.

## **PART 2**

### **Inquiry Session Rules**

#### **Procedure notice**

8.—(1) Where the appointed person has determined that the appeal or a stage of the appeal, is to be conducted by means of the holding of an inquiry session to consider specified matters the appointed person is to give written notice to that effect ("the procedure notice") to—

- (a) the appellant;
- (b) the planning authority;
- (c) any interested party who made representations in relation to specified matters; and
- (d) any body or person who the appointed person wishes to make further representations or to provide further information on specified matters at the inquiry session.

(2) Only specified matters are to be considered at the inquiry session.

(3) An additional party who intends to appear at the inquiry session must within 14 days of the date of receipt of the procedure notice notify the appointed person in writing of that intention.

#### **Pre-inquiry session meetings**

9.—(1) The appointed person may hold a pre-inquiry session meeting if the appointed person thinks it desirable.

(2) The appointed person shall arrange for not less than 2 weeks' written notice of a meeting the appointed person proposes to hold under paragraph (1) of this rule to be given to the appellant, the planning authority and any additional party.

(3) The appointed person where the appointed person proposes to hold a meeting under paragraph (1) of this rule shall preside and shall determine the matters to be discussed and the procedure to be followed at the meeting.

#### **Appearances at inquiry**

10. The persons entitled to appear at the inquiry session shall be—

- (a) the appellant;
- (b) the planning authority; and
- (c) any additional party.

### **Service of inquiry statements**

11. A person entitled to appear at the inquiry session must, not later than—
- (a) where no pre-inquiry session meeting is held pursuant to rule 2, 14 days after the relevant date, or
  - (b) where a pre-inquiry session meeting is held pursuant to rule 2, 14 days after the conclusion of that meeting,

and in any case not later than 4 weeks before the date fixed for the holding of the inquiry session, serve an inquiry statement on the appointed person and on all other persons entitled to appear at the inquiry session.

### **Precognitions**

12.—(1) A person entitled to appear at an inquiry session who proposes to give, or to call another person to give, evidence at the inquiry by reference to a precognition shall send a copy of the precognition to the appointed person.

(2) A precognition must not, unless the appointed person otherwise so agrees, contain more than 2000 words.

- (3) The precognition and any summary shall be sent to the appointed person—
- (a) not later than 4 weeks before the date fixed for the holding of the inquiry session; or
  - (b) by such other date as the appointed person may specify.

(4) Where a person sends a copy of a precognition to the appointed person in accordance with paragraph (1), that person shall at the same time send a copy of that precognition and any summary to the planning authority, the appellant and each additional party.

(5) Where an appointed person agrees that a precognition may contain more than 2000 words, the appointed person may require a written summary to be provided along with the precognition, and where this is done only that summary shall be read out at the inquiry, unless the appointed person permits or requires otherwise.

(6) Any person required by this rule to send a copy of a precognition to any other person shall send with it a copy of the whole, or the relevant part, of any document referred to in it, unless a copy of the document or part of the document in question is already available for inspection pursuant to rule 6(2) or has already been provided to that other person pursuant to rule 6(3).

(7) The planning authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any precognition, summary or document sent to or by them in accordance with this rule.

### **Service of inquiry statements, documents and precognitions**

13.—(1) Any person who serves an inquiry statement on the planning authority shall not be obliged to serve with it a copy of any document, or of the relevant part of any document, if a copy of the document or part of the document in question is already available for inspection pursuant to paragraph (2) of this rule.

(2) The planning authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any inquiry statement (or any part thereof) or other document which, or a copy of which, has been served on them in accordance with this rule or rule 4 or of their inquiry statement (or any part thereof); and shall specify in their inquiry statement the time and place at which the opportunity will be afforded.

(3) Where any party intends to rely on or put in evidence any documents, that party shall, by the date 4 weeks before the day fixed for the holding of the inquiry session, provide copies of those documents (or the relevant parts of those documents) to the other person entitled to appear at the inquiry session and where that party is the planning authority, such copies shall be provided to the appointed person and the planning authority shall, for the purposes of compliance by them with

the duty imposed by paragraph (2) of this rule in respect of their inquiry statement, make such statement available by said date.

(4) The appointed person, on the application of a party, may vary any time limit imposed on that party by rule 1, 2, 4 or 5 above or by paragraph (3) of this rule.

#### **Notification of appointment of assessor**

**14.** Where the Scottish Ministers appoints an assessor, they shall notify every person entitled to appear at the inquiry session of the name of the assessor and of the matters on which the assessor is to advise the appointed person.

#### **Date and notification of inquiry**

**15.—(1)** The date fixed by the appointed person for the holding of an inquiry session shall be, unless the appointed person considers such a date impracticable, not later than—

- (a) 20 weeks after the relevant date; or
- (b) in a case where a pre-inquiry session meeting is held pursuant to rule 2, 8 weeks after the conclusion of that meeting.

(2) Where the appointed person consider it impracticable to fix a date in accordance with paragraph (1), the date fixed shall be the earliest date which the appointed person considers to be practicable.

(3) Subject to paragraphs (1) and (2) of this rule, a date, time and place for the holding of the inquiry session shall be fixed by the appointed person who shall give not less than 4 weeks' notice in writing of such date, time and place to the parties entitled to appear at the Inquiry Session.

(4) With the consent in writing of the appellant and of the planning authority the appointed person may give such lesser period of notice than that specified in paragraph (3) of this rule as may be agreed with them and in that event the appointed person may specify a date for service of the inquiry statement other than the date prescribed in rule 4.

(5) The appointed person may vary the date, time and place fixed for the holding of the inquiry session and the appointed person shall give such notice of the variation to the parties entitled to appear at the inquiry session as may appear to the appointed person to be reasonable in the circumstances.

(6) Without prejudice to the foregoing provisions of this rule and, where the appointed person have not already done so, the appointed person may require the planning authority to take one or more of the following steps—

- (a) not less than 2 weeks before the date fixed for the holding of the inquiry session, to publish in one or more newspapers circulating in the locality in which the land is situated such notices of the inquiry session as they may direct; or
- (b) to serve notice of the inquiry session in such form and on such persons or classes of persons as the appointed person may specify,

but the requirements as to the period of notice contained in paragraph (3) of this rule shall not apply to any such notices.

#### **Representatives of the Scottish Ministers or government departments at inquiry**

**16.—(1)** Where either—

- (a) the Scottish Ministers have given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined; or
- (b) any government department have expressed in writing to the Scottish Ministers or to the planning authority a view on the application,

any of the persons entitled to appear at the inquiry session may, not later than 2 weeks before the date of the inquiry, apply in writing to the appointed person for a representative of the Scottish Ministers or government department concerned to be made available at the inquiry session.

(2) Where an application is made to the appointed person under paragraph (1) of this rule the Scottish Ministers shall make a representative of their department available to attend the inquiry session, or, as the case may be, transmit the application to the other government department concerned who shall make a representative of that department available to attend the inquiry session.

(3) A representative who, in pursuance of this rule, attends an inquiry session shall state the reasons for the Scottish Ministers' direction, or, as the case may be, the reasons for the view expressed by the department which that person represents and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in this rule shall require a representative of the Scottish Ministers or a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy and the appointed person shall disallow any such question.

### **Procedure at inquiry session**

17.—(1) Except as otherwise provided in the rules in this Part of the Schedule, the procedure at the inquiry session shall be such as the appointed person shall in the appointed person's discretion determine.

(2) The appointed person shall state at or before the commencement of the inquiry session the procedure which, subject to consideration of any submission by the parties, the appointed person proposes to adopt.

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested.

(5) Unless in any particular case the appointed person otherwise determines, the appellant shall begin and shall have the right of final reply; and other persons entitled to appear shall be heard in such order as the appointed person may determine.

(6) Subject to paragraph (7) of this rule, the appellant, the planning authority and any interested party entitled to appear at the inquiry session shall be entitled to call evidence and to cross-examine persons giving evidence and to make closing statements but any other person appearing at the inquiry session may do so only to the extent permitted by the appointed person.

(7) The appointed person may refuse to permit—

- (a) the giving or production of evidence;
- (b) the cross-examination of persons giving evidence; or
- (c) the presentation of any other matter,

which the appointed person considers to be irrelevant or repetitious.

(8) The appointed person shall not require or permit the giving or production of any evidence whether written or oral, which would be contrary to the public interest; but save as aforesaid and without prejudice to rule 9(4) and section 265(4) to (7) of the Act (evidence at local inquiries) any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled to appear at the inquiry session and that facilities be afforded to that person to take or obtain copies thereof.

(9) The appointed person may at the inquiry session allow any party to alter or add to the case contained in any inquiry statement served under rule 4(1) or to any list of documents or witnesses which accompanied such statement, so far as may be necessary for the purpose of determining the questions in dispute between the parties, but shall (if necessary by adjourning the inquiry session)

give the appellant or the planning authority, as the case may be, and all additional parties an adequate opportunity of considering any such alterations or additions.

(10) If any person entitled to appear at the inquiry session fails to do so, the appointed person may proceed with the inquiry session at the appointed person's discretion.

(11) The appointed person shall be entitled (subject to disclosure thereof at the inquiry session) to take into account any written representations or statements received by the appointed person before or during the inquiry session from any person, but shall circulate such documents, so far as they have not already been made available to the parties entitled to appear at the inquiry session, in advance of the inquiry session where the appointed person considers this to be practicable.

(12) The appointed person may from time to time adjourn the inquiry session and, if the date, time and place of the adjourned inquiry session are announced before the adjournment, no further notice shall be required.

### **Site inspections**

**18.—**(1) The appointed person may at any time make an unaccompanied inspection of the land without giving notice of the appointed person's intention to the persons entitled to appear at the inquiry session.

(2) Subject to the provisions of this rule, the appointed person may before or during the inquiry session, inspect the land during or after the close of the inquiry session in the company of such of the persons entitled under paragraph (3) of this rule to accompany the appointed person as desire to do so.

(3) Where the appointed person intends to make an inspection by virtue of paragraph (2) of this rule, the appointed person shall during the inquiry session announce the date and time at which the appointed person proposes to do so and the appellant, the planning authority, all statutory parties and any other party to the inquiry session shall be entitled to accompany the appointed person on any such inspection.

(4) The appointed person shall not be bound to defer an inspection if any person entitled to accompany the appointed person is not present at the time appointed.

### **Procedure after inquiry session**

**19.—**(1) Where an assessor has been appointed, the assessor may (and if so required by the appointed person, shall), after the close of the inquiry session, make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

(2) If the appointed person after the close of the inquiry session proposes to take into consideration any new evidence or any new issue of fact (not being a matter of government policy) relating to a specified matter which was not raised at the inquiry session, the appointed person shall not come to a decision on the case without first notifying the appellant, the planning authority and all other persons who appeared at the inquiry session of their proposal and the reasons for it and affording them an opportunity of—

- (i) making representations thereon in writing within 3 weeks; or
- (ii) if the appointed person has received new evidence or taken into consideration any new issue of fact not being a matter of government policy, asking within 3 weeks for the reopening of the inquiry session.

(3) The appointed person may in any case if they think fit cause the inquiry session to be reopened, and shall cause it to be reopened if asked to do so in accordance with paragraph (4) of this rule, and if the inquiry session is reopened, paragraph (3) to (6) of rule 8 shall apply to the reopened inquiry session with the substitution in paragraph (3) of the words "3 weeks" for the words "4 weeks".

**Allowing further time**

20. The appointed person may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the rules in this Part of the Schedule and references in such rules to a day by which, or a period within which, any step is required or enabled to be taken shall be construed accordingly.

**Service of notices by post**

21. Notices or documents required or authorised to be served or sent under the provisions of any of the rules in this Part of the Schedule may be sent by post.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provisions in connection with

## PARTIAL REGULATORY IMPACT ASSESSMENT

### 1. Title of Proposal

1.1 The proposed measures to which this partial RIA relates are:-

- The Town and Country Planning (Schemes of Delegation) (Scotland) Regulations 2008
- The Town and Country Planning (Scotland) (Local Review Procedure) (Scotland) Regulations 2008
- The Town and Country Planning (Scotland) Appeals Examination Regulations 2008

A holistic approach to assessing the impact of the three regulations has been adopted given their interrelated nature.

### 2. Purpose and intended effect

#### **Objectives**

- 2.1 The Regulations are required to implement sections 17 and 19 of Part 3 of the Planning etc. (Scotland) Act 2006, regarding schemes of delegation, local reviews and appeals. The regulations are expected to be brought into force towards the end of 2008.
- 2.2 The proposals are intended to make the process for challenging planning decisions more efficient without losing the high quality of service provided under present arrangements. The Government's intention is for the planning system to be fit for purpose and for its response to applications or appeals to be proportionate. Accordingly we need to ensure that the appeal process avoids unnecessary complexity or lengthy procedures that do not add value to the quality of decision.

#### **Background**

- 2.3 The White Paper *Modernising the Planning System* signalled the intention to modernise the planning system and the Planning Etc (Scotland) Act 2006 now provides the primary legislative framework for change.
- 2.4 The White Paper underlined the need for planning decisions to be made quickly so that the Scottish economy is not disadvantaged. It also highlighted the importance of allowing those wishing to make their views known without being intimidated by the process. It proposed that the right to examination by formal inquiry process should be restricted to those issues where the subject matter could not be addressed

through less formal procedures such as by a hearing or by written submissions.

- 2.5 The White Paper also set out the need to curb the tendency for proposals to change during the planning and appeal process and for justification for them to alter without reference to the local community. This is consistent with the principle of front-loading the planning system.
- 2.6 The Government Economic Strategy (November 2007) identifies five Strategic Priorities required to deliver increasing sustainable economic growth. The Strategic priority relating to Infrastructure Development and Place sets a number of key strategic approaches which the Scottish Government will pursue including “*A planning and development regime which is joined up, and combines greater certainty and speed of decision making within a framework geared towards achieving good quality sustainable places and sustainable economic growth*”. Effective schemes of delegation and appeals and review procedures support the overall objective of promoting sustainable economic growth.

### ***Rationale for Government intervention***

- 2.7 The regulations are required by the Planning etc. (Scotland) Act 2006. Sections 17(1), 17(4), 17(10) and 19(5) of Part 3 of the 2006 Act give Scottish Ministers powers to make regulations covering schemes of delegation, local reviews and appeals. The expectation among stakeholders is that these powers will be used, and the regulations are required to make it clear how the system should operate in practice.

## **3. Consultation**

### **Within Government**

- 3.1 The draft regulations have been subject of discussion and internal consultation with the Directorate for Planning and Environmental Appeals, Historic Scotland and Transport Scotland. Various individual points have been discussed with other relevant parts of the Scottish Government including Civil Justice, Law Reform and International Division and the Public Service Reform Directorate.

### **Public Consultation**

- 3.2 The proposals subject of this consultation have been discussed with a number of organisations and bodies, including:

- Scottish Committee of the Council on Tribunals/ Administrative Justice and Tribunals Council (AJTC)
- The Standards Commission for Scotland
- Scottish Society of Directors of Planning (SSDP)
- Society of Local Authority Lawyers and Administrators in Scotland (SOLAR)
- COSLA

- Local authorities
- Homes for Scotland
- Scottish Property Federation
- The Law Society

## 4 SCHEMES OF DELEGATION

### **Background**

4.1 The intention is that greater use should be made of delegation to officials, particularly for applications classed as local under the planning hierarchy<sup>1</sup> allowing elected members to focus attention on the more complex or controversial applications.

4.2 Planning authorities already have delegation schemes in place under powers from the Local Government (Scotland) Act 1973 and generally about 83 -85% of all applications each year are delegated to officers. This equates to 44,000-47,000 applications each year across Scotland. The rate for householder applications is slightly higher and increasing (over 90%) as shown in the table below.

	2004-05		2005/06		2006-07	
	Decided	% Delegated	Decided	% Delegated	Decided	% Delegated
Householder	28276	91.6	25756	92.4	25707	93.8
Minerals	56	48.2	44	59.1	85	55.3
Dwellings (Major)	980	40.6	1104	39.0	1014	38.3
Dwellings (Minor)	9219	69.5	8645	68.4	9103	71.7
Business & Industry (Major)	404	61.1	482	62.7	451	55.7
Business & industry (Minor)	3438	78.8	3802	80.8	3876	83.4
Telecoms Developments	278	59.4	622	60.6	646	78.6
All other Development (Major)	598	43.8	572	56.8	479	48.2
All Other Development (Minor)	6877	79.9	5709	80.0	6107	81.4
LBC	3614	84.6	3583	85.7	3679	86.2
Advertisement Consent	2282	93.3	2422	91.7	2740	93.2
Hazardous Substances Consent	16	56.3	20	90.0	15	60.0
Other Consents	825	83.2	630	88.9	695	80.7
<b>SCOTLAND</b>	<b>56720</b>	<b>83.5</b>	<b>53391</b>	<b>83.7</b>	<b>54597</b>	<b>85.3</b>

[Statistics from returns collated by the Scottish Government from local authorities]

4.3 Use of delegation frees up Committee time and can enable decisions to be issued on straightforward cases more quickly. Currently many schemes of delegation limit decisions to approvals. The intention is that the full range of decisions should be available to officials dealing with applications within the category of local developments, including

<sup>1</sup> Draft Regulations on the Planning Hierarchy : Consultation Paper  
<http://www.scotland.gov.uk/Publications/2007/12/11104120/0>

refusals of permission. The draft regulations set out which applications should be referred to elected members for decision.

- 4.4 The new schemes of delegation under the 2006 Act have direct links to local review procedures. Where applicants are dissatisfied with a decision delegated to an officer, they will be entitled to seek a review of the decision by the planning authority (a local review body) rather than by appealing to Scottish Ministers. The regulations set out circumstances of cases which officers will be prohibited from determining under a section 43A scheme of delegation. These applications will continue to be subject of appeals to Scottish Ministers.

### **Consultation**

- 4.5 There was strong support following the White Paper for this proposal which was seen as extending practices that most stakeholders were already familiar with. Respondents highlighted the need for clarity to manage the delegation process in an open and transparent way.
- 4.6 Respondents raised concerns about the scope for different definitions of, terms such as “significant or substantial bodies of objection” and “significantly contrary to the development plan”. Some considered that there should be national guidelines and criteria, others argued for more flexibility. There were suggestions that there could be a national minimum scheme but councils could choose to do more than this, alternatively, that there could be local discretion, but that such schemes would need ministerial approval. The draft regulations include provisions to assist in the understanding of the term substantial body of objection.
- 4.6 There were some concerns, from the voluntary and community sectors, that officers were less likely to take community views into account than their members, and that the process was open to abuse by developers. There were also alternative views that some developers would prefer member decisions. A professional body felt that decisions should only be delegated to professionally qualified planners and drew attention to the need to amend the National Parks (Scotland) Act to enable the full range of powers for delegation to be available in National Parks.<sup>1</sup>

### **Options**

- 4.7 In relation to Schemes of Delegation the key areas where choices were to be made relate to the following issues:

- **Scope of Schemes** - ensuring an appropriate balance between complex and controversial cases going to committee and more simple cases being determined by officers. Consideration was given to whether new schemes of delegation should be able to include refusals of applications where, had it been intended to

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<sup>1</sup> Modernising the Planning System – Analysis of Responses  
<http://www.scotland.gov.uk/Publications/2005/12/0195339/53401>

recommend approval/ approve the application, notification to Scottish Ministers would otherwise have been required. This is because any review of the decision would be conducted by a Local Review Body who need not have recourse to Scottish Ministers before issuing their decision.

- **Adopting Schemes** - the draft regulations include provisions for adopting a scheme of delegation. It is proposed that local authorities will have to submit their draft schemes to Scottish Ministers, who would in turn provide comments on the scheme, the authority would then be obliged to demonstrate if they had taken on board these comments and if not provide reasons why, Scottish Ministers would have the power to prevent the authority from adopting the scheme.
- **Level of prescription in the regulations** - the extent to which there should be local flexibility as opposed to a level of consistency across Scotland. The issue about consistency is important given the potential implications for appeals/ review procedures, for example if in one part of the country a certain type of case were delegated under a s43A Scheme of Delegation and the appeal route would be to a local review body, and elsewhere a similar case would have gone to Committee and the appeal route would be to Scottish Ministers. We wish to ensure that applications would receive similar levels of service across the country.

### ***Benefits***

- 4.8 The intention is that local developments which are neither complex nor controversial should be delegated for decision by officials to promote efficiency. The draft regulations contain safeguards to prohibit certain cases being delegated under this type of scheme.
- 4.9 While the majority of authorities already operate effective delegation systems, an increase in the level of delegation is thought to assist authorities in meeting time targets for the determination of applications. This is primarily by avoiding difficulties in timing and scheduling of applications within the normal committee cycle and the Officer input in applications at Committee.
- 4.10 Marginal savings to the planning service may arise either through a reduced case officer burden in preparing and presenting to committee and also from shorter/fewer committees. However, given additional changes proposed through removing minor applications from planning control it is not possible to accurately quantify overall savings. If, however, the reduced burden of Committee workload were to translate into an average time-saving of one hour per week for one FTE

Manager of the Planning Service then this would equate to an estimated cost saving of £134,150.<sup>1</sup>

### **Sectors and groups affected**

#### **General**

4.11 Greater rates of delegation could lead to faster decisions for all groups of applicants.

#### **Public Sector**

4.12 Local authorities will be required to prepare schemes of delegation at intervals of no greater than every 5 years under the terms of the draft regulations and whenever required to do so by Scottish Ministers. Local authorities will also have to make copies of the scheme available for view at the planning office, local libraries and on the internet. The schemes will enable local authorities to deal with planning applications effectively and efficiently.

## **5 LOCAL REVIEW BODIES**

### **Background**

- 5.1 Where an applicant is dissatisfied with the decision taken under a new scheme of delegation they will be entitled to require the authority to review the case. This is a significant change to existing arrangements whereby such appeals are made to Scottish Ministers.
- 5.2 To carry out the reviews, each authority will need to establish a local review body (LRB), which will comprise a small number of elected members supported by officials who were not involved in reaching the decision under review. The majority of reviews of local developments would be determined quickly and locally, recognising that local authorities are best placed to take decisions on such local issues.
- 5.3 We want to ensure that local review bodies operate to a high standard and that processes for reviewing decisions locally ensure the highest standards of fairness, independence, transparency and customer care. Elected members will continue to have regard to Councillor's Code of Conduct, and its key principles, when carrying out the function of a local review body.

### **Consultation**

5.4 The responses to the White Paper raised some concerns about local review bodies and these have been reiterated in recent stakeholder discussions. Concerns include the independence of the review body, the need for training, resources and about the potential for further appeals.

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<sup>1</sup> Planning Reforms: An Impact Assessment (December 20, 2005)  
<http://www.scotland.gov.uk/Publications/2005/12/1694823/48239>

- 5.5 The majority of respondents, across all respondent groups, raised concerns about the potential independence and likely competence of the proposed LRBs. Many observations queried how the LRB was to be constituted and indicated some concern over a panel composed entirely of local members. It was felt that this would make the allegation of bias, with the authority being judge and jury in its own cause, more difficult to resist and could undermine public confidence in the system.
- 5.6 Respondents suggested there was a need for training and development in planning matters and appeal procedures for members with no expertise in that area.
- 5.7 Some concerns were raised about the resource implications of the proposal with views expressed that there would be a substantial increase in member and officer workloads. There were queries regarding the availability of planning advice (with some specific concerns about architectural and ecological matters) to the LRB, since officers involved in the decision reviewed may not be involved in the review. Some considered that there would be a greater need for planning consultants, others that local authority lawyers could do much of the work. There was a strand of opinion which felt that the distinction between reviewing the decision and considering the proposal afresh may be difficult to maintain in practice. One council considered that there should be a detailed investigation of the resource implications of transferring SEIRU functions to local authorities. A developer sought reassurance that fees would not rise as a consequence of the new arrangements.
- 5.8 Several commentators felt that the arrangement may not be Article 6 compliant, in terms of the European Convention on Human Rights. A number of respondents sought clarification of what was intended to be available to applicants in terms of further appeal rights. The White Paper indicates that LRB decisions could be the subject of “statutory appeal or judicial review”. There were concerns, particularly from local authorities, that if a “second appeal” were available this would duplicate the process with further timescale and resource implications. The alternative view, mainly from developers/businesses, was that existing statutory appeal rights should continue to be available to applicants following a refusal by the LRB.
- 5.9 Some respondents made a number of alternative suggestions to a local review but there was no consensus on what an alternative format might be. There was no consensus amongst respondents as to whether the proposed arrangements would speed up or slow down the process. Some considered that the proposals would merely move a burden of casework from SEIRU to the local authorities, who were already “overburdened and understaffed”. The alternative view was that for the vast majority of straightforward applications it would provide a quicker and less problematical route to a decision.

## **Options**

5.10 In relation to Local Review Bodies the key areas where choices were to be made relate to:

- **Composition of the Local Review Body** - including the size of the LRB, it is intended (reflecting experience of other review bodies or panels) that the LRB should have between 3-5 members. There were also choices about whether the review body, should have; representatives from the Planning Committee, who would be familiar with planning policies or whether it should be more distant from the planning committee and; whether constituency interest should bar a member from sitting on a particular review case.
- **Format of the review** – including whether the LRB should be required to meet in public, whether there would be a right for people to be heard and the overall method of examination. It is proposed that there will not be an automatic right to be heard, in order to have a consistent approach with the appeals provisions, where for appeals the decision taker will determine the means of examination necessary in each case. It is considered that the body should, however meet in public.
- **Level of prescription of the regulations** - The regulations permit a degree of flexibility around how each planning authority will implement the review body provisions. It is intended to provide clarity in the regulations about key issues, such as the various time periods involved. This will be supplemented in due course with guidance on operation of the review bodies.

## **Benefits**

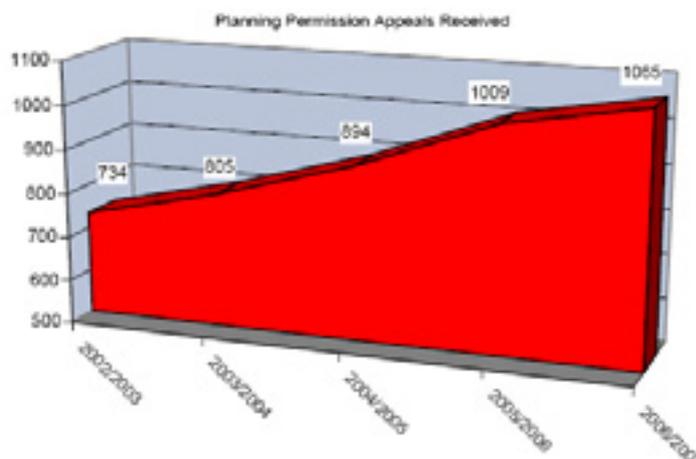
5.11 Some efficiencies may be made in making the review of local developments the responsibility of local authorities. Even if delegation only resulted in modest time savings for senior staff, this could translate into a significant saving when considered across the system as a whole. In terms of Management input into the Committee process, if increased delegation resulted in an average time saving of one hour per week for one FTE Manager this would equate to an overall saving of around £134,000<sup>1</sup>. However, this is unlikely to result in an 'actual' cost saving (i.e. budget/staff cuts) but would be felt through increased productivity and turnaround of applications. Cases being processed at local review will reduce the need for officials to contribute to appeals to Scottish Ministers including preparing for some hearing and inquiry sessions.

5.12 There are potential resource benefits for the Directorate for Planning and Environmental Appeals, of having minor appeals considered by a local review body. Currently the total number of planning permission

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<sup>1</sup> Planning Reforms: An Impact Assessment (December 20, 2005)  
<http://www.scotland.gov.uk/Publications/2005/12/1694823/48239>

appeal cases continues to increase as demonstrated in the graph below<sup>1</sup>.



In particular the number of householder development appeals cases which DPEA (formerly SEIRU) received during the last five years has been increasing from 285 householder cases in 2002/03 to 364 in 2006/07, (a 28% increase over the 5 years). In 2006-07 householder cases accounted for 34% of the number of appeal cases DPEA received. Reducing the number of householder and other minor appeals cases which DPEA receive, would help to free up the reporters' time and could enable resources to be focussed on the more major appeal cases and on development plan examinations, making the system more efficient overall.

Type of Development	Number of Cases	% of Total
Householder	364	<b>34.00</b>
Single Houses	207	<b>19.44</b>
Dwellings: 2-9	97	<b>9.11</b>
Dwellings: 10 or more	71	<b>6.67</b>
Telecommunications	67	<b>6.29</b>
Business and Industry: minor	42	<b>3.94</b>
Other: minor	45	<b>4.23</b>
Hot food shops	28	<b>2.63</b>
Dwelling with multiple occupancy	22	<b>2.07</b>
Non-householder (alter and extend building)	18	<b>1.69</b>
Retailing: minor	17	<b>1.60</b>
Cafes / Restaurants	13	<b>1.22</b>
Leisure and Recreation	13	<b>1.22</b>
Retailing: major	12	<b>1.13</b>
Hotels and permanent visitor accommodation	11	<b>1.03</b>
Caravans and Camp sites	10	<b>0.94</b>
Energy Development: Wind Farm/ Turbines	9	<b>0.84</b>
Business and Industry: major	4	<b>0.37</b>
Waste Disposal	3	<b>0.28</b>
Agricultural and Horse Management	3	<b>0.28</b>
Other: major	3	<b>0.28</b>
Minerals	2	<b>0.18</b>
Demolition	2	<b>0.18</b>

<sup>1</sup> The Directorate for Planning and Environmental Appeals Review of the Year 2006-07  
<http://www.scotland.gov.uk/Publications/2007/08/10152920/0>

Institutional	1	<b>0.09</b>
Energy Development: Other	1	<b>0.09</b>
All planning appeals received	1065	<b>100</b>

### **Costs**

- 5.13 There are some cost implications on local authorities associated with establishing local review bodies. The resource cost of local review bodies is likely to depend on the membership level/composition of each body, the frequency/demand for meetings and the level of preparatory work required for each meeting. The review will focus on material already before the authority when the application was originally considered. While the body may occasionally consider cases where oral representations need to be managed it is anticipated that in the majority of cases consideration of the issues will not involve complex process or lengthy procedure.
- 5.14 Staff requirements are likely to vary on a case-by-case basis according to the need for planning or other specialist input but it appears that associated costs would not be greater than those associated with any other committee of the Council.

## **6. Sectors and groups affected**

### **General**

- 6.1 Local review procedures may make the review procedure more accessible for members of the public, unhappy with the outcome of the decision on a minor planning matter, rather than having to appeal to Scottish Ministers.

### **Business**

- 6.2 Some sectors of industry have expressed concerns about the credibility and impartiality of local review bodies and that they would be an inadequate replacement for appeals to Scottish Ministers which they consider to offer a more independent process.

### **Public Sector**

- 6.3 Local authorities will be required to set up LRBs, which will require to be serviced by a clerk and supported by officials, particularly in preparing and issuing the decisions.

### **Voluntary**

- 6.4 We are not aware of any impacts on the voluntary sector as a result of the proposed changes.

## 7. APPEALS

### METHOD OF EXAMINATION / HYBRID APPROACH

#### *Background*

- 7.1 There are currently three methods by which planning appeals can be determined - written submissions, hearings or inquiry. The current appeal system allows the principal parties to select the appeal method, which means a party can insist on an inquiry or a hearing even for the least complex of appeal cases. It is intended to provide more powers for the appointed person to direct the manner in which to carry out the examination of the case and how best to arrive at a decision.
- 7.2 When an appeal is made to Scottish Ministers it should be accompanied by full grounds of appeal and any documentation supporting the appeal. The planning authority will be required to provide such additional material as was before it and which was taken into account in reaching its decision. This principle is therefore reinforced that the appeal examines whether or not the planning authority reached a decision that was appropriate based on the material that was before it at the time. In acting in this way we are responding to the concern that the appeal process allows developers to alter their proposals, or the justification for them, and others to shift their position over time – so that uncertainty is reduced and those involved are not faced with a cycle of submission and rebuttal.
- 7.3 We propose that Scottish Ministers will take into account the principal parties' preferred method of determination. However, the decision on which route should be taken to determine the appeal whether written submission, hearing, inquiry session, or combination of these will be made by Scottish Ministers. In some instances this will mean that an appeal can be decided based on the material submitted and without further reference to parties. The existing right to be heard will therefore be removed, avoiding the need to hold hearings or inquiries where these are not necessary to fully examine the issues in the appeal.
- 7.4 The inquiry process will thus be reserved for those issues where cross-examination is needed. The scope of the Inquiry session will also be focussed on the key issues which require that more rigorous examination. Generally a combination of the methods outlined above will be applied. We propose that the appeal process should become more proportionate without reducing the quality of decision.
- 7.5 Currently over 90%<sup>1</sup> of the Directorate for Planning and Environmental Appeals' casework is dealt with by the exchange of written submissions. Under this procedure a structured and timetabled series of written exchanges takes place involving the appellant, the planning authority and any other persons who have indicated their interest.

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<sup>1</sup> Directorate for Planning and Environmental Appeals 'Review of the Year 2006-2007'  
<http://www.scotland.gov.uk/Resource/Doc/194746/0052312.pdf>

These are considered by the reporter, who inspects the site, generally in the presence of the parties, and then issues his or her decision or a report and recommendation.

### **Consultation**

7.6 The (then) Scottish Executive carried out a consultation on Modernising Public Local Inquiries in 2003 in response to which there was significant support for changes being introduced to improve efficiency. More recently, in the responses to the White Paper, some concerns were expressed about how decisions on the method of examination might be reached

### **Benefits**

7.7 It is proposed that the decision on the method of examination would be taken by Scottish Ministers. It is likely that fewer cases would go to examination at inquiry and that there would be time savings for all parties to an appeal as a result. The intention is that appeals become

- More efficient
- Faster decisions
- Less adversarial

### **Costs**

7.8 It is anticipated that the proposal would be cost neutral or result in saving for local authorities.

7.9 Of all the different cases DPEA deal with the average cost to them of a case in 2006/07 was £1,648. The slight increase in the cost per case this year can be accounted for by year on year inflation; a slight reduction in the number of cases processed; but an increase in the complexity of the public local inquiries dealt with. Although the number of public local inquiries and hearings is lower than last year, the cases dealt with took up a greater proportion of reporters' time. The nature of the information held on the Directorate's current Case Handling System, limits the possibility to carry out more sophisticated statistical analysis of case costs, for example of the costs of individual inquiries, or by the method of examination. However it is expected that providing Scottish Ministers with the power to direct how the appeal will be dealt with has potential to reduce costs to DPEA and parties to the appeal.

<b>Category</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>
<b>Written Submission appeals</b>	961	1,019	1,015
<b>Public Inquiries and Hearings</b>	90	124	117
<b>Withdrawn or sisted</b>	179	151	149
<b>TOTAL Cases processed</b>	1,230	1,294	1,281
<b>Average Cost per Case *Costs to DPEA</b>	£1,536	£1,575	£1,648

## **APPEALS BASED ON ORIGINAL MATERIAL / REVIEW OF DECISION**

### ***Background***

7.10 The principles of front-loading the system apply to appeals to Scottish Ministers as they do to the rest of the planning process. Section 47A of the Act restricts the ability of parties to introduce matters that were not before the planning authority at the time the proposal was considered by them. An appellant wishing to introduce new material into the appeal process will be required to demonstrate either that the material could not have been made available earlier in the process or that it is being produced in consequence of exceptional circumstances. Whilst the proposed changes do not reduce the responsibility on those making determinations under the Planning Acts to take account of all material considerations and to have regard to the provisions of the development plan, the appeal process should not be used as an opportunity to significantly change proposals or to produce supporting material that should properly have been made available to the planning authority and the community earlier in the process. Where an appellant wishes to alter proposals following a decision by the planning authority a revised planning application should be submitted to the planning authority.

### ***Consultation***

7.11 The core objection to this proposal cited by many respondents to the White Paper was the fact that it would potentially prevent the consideration of an improved scheme and that an appeal could therefore be sustained on an earlier, inferior development application. Some responses reflected that the proposal may encourage planning applications to attempt to provide all information that could potentially be later required as evidence to an appeal, this could increase planning officer workloads and was felt to be neither practical nor efficient.

7.12 It was felt by some that there was a risk of injustice where new relevant information came to light and was not taken into account, and that this was always possible in a dynamic process such as planning. There was also a view that, even on a restricted interpretation of new information, the introduction of additional presentational material, which would assist all the parties in understanding the issues at stake, should be permitted.

7.13 Alternatives to the White Paper proposals which were mentioned, included restricting the right of deemed refusal where significant information was only provided after the appeal had been lodged and amending the expenses rules to allow reporters to penalise applicants/appellants who submitted information which could have been made available prior to the appeal.

### ***Benefits***

7.14 Compared to current practices that involve significant document review and preparation, a greater focus on review of the material before the planning authority could present time/resource savings, particularly at

Case Officer level, although it is not possible at this stage to quantify that.

### **Costs**

- 7.15 It is still likely that at least the Case Officer, and possibly any specialist appeals staff or Management would want to attend any appeal hearing if that were the chosen form for resolution. In the case of written submissions, the time impact to the authority would be negligible on the basis that existing material would be used to determine the appeal.
- 7.16 The costs associated with this proposal are assumed to be minor to negligible depending on the form the appeal hearing takes, and the effect of other proposals on the overall level of appeals. Appeal work (also including Enforcement) is currently estimated to cost almost £6.4m across the planning system. A significant proportion of the appeal component of this cost could be reduced under these proposals.

## **REDUCED TIME PERIOD FOR APPEALS TO BE LODGED**

### **Background**

- 7.17 Applicants for planning permission currently have 6 months from the date of the decision within which to appeal to Ministers against refusal of planning permission or against the conditions subject to which permission is granted. In light of concerns about the length of this period of uncertainty it is proposed to reduce the time period allowed for appeals to 3 months.

### **Consultation**

- 7.18 Overall, views were evenly balanced in terms of support for and opposition to this measure but different stakeholder groups tended to take different positions on the issue. Local authorities and the voluntary sector broadly supported the proposed arrangements whereas businesses and professional bodies were generally opposed. Those who object to this element of the proposals refer to a lack of time to fully consider objections and options, including submission of a revised planning application.

### **Benefits**

- 7.19 This proposal would reduce the period of uncertainty among communities and local authorities as to whether an appeal would be lodged.

### **Costs**

- 7.20 Some respondents indicated that a reduced period for submitting an appeal could result in an increase in planning appeals being lodged. This would need to be considered against other measures to restore balance and fairness in the appeal system and there is no indication that costs overall would increase.

## **8.0 Small / Micro Firms Impact Test**

- 8.1 The existing appeal system often demands a significant outlay of time and funds, so the use of simpler, faster and more transparent procedures should reduce costs for all businesses, and mean that small companies are not disadvantaged in comparison with better resourced firms.

## **9.0 Legal Aid Impact Test**

- 9.1 The impact of these regulations on the legal aid system should be minimal. Civil legal aid will not be available for legal representation at planning examinations. It will remain available for appeals to the Court of Session on points of law but there is nothing to suggest that the regulations will increase the likelihood of that. Initial Advice and Assistance under Legal Aid will still be available to enable eligible individuals to receive advice from a solicitor concerning a planning matter. The new planning examination system is, however, intended to be less legalistic and adversarial in operation. Proposed changes should not, therefore, increase the requirement for legal advice for individuals engaging with it.

## **10. “Test Run” of Business Forms**

- 10.1 The draft regulations do not contain business forms.

## **11. Enforcement, sanctions and monitoring**

- 11.1 The regulations will have the strength of law and so the proper exercising of the proposed duties contained in them can ultimately be tested in the courts.
- 11.2 Under the terms of the 2006 Act, planning authorities are required to keep their Scheme of Delegation under review, and are to prepare a scheme whenever required to do so by the Scottish Ministers.
- 11.3 The Directorate of the Built Environment also liaises closely with local authorities and representatives of the business community, and so the Government will be made aware of any dissatisfaction with the way the new appeals and reviews procedures are operating.

## PARTIAL EQUALITY IMPACT ASSESSMENT

### SCHEMES OF DELEGATION, LOCAL REVIEW PROCEDURES, APPEALS REGULATIONS

1. Equality impact assessment (EQIA) is about considering how policy (by policy we mean activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.
2. The Scottish Government has a statutory duty to consider and address the impact of policy on particular groups (disabled people, women & men and different ethnic groups). In addition to these statutory responsibilities the Government also has a commitment to promoting equality in the areas of religion and belief, age and sexual orientation. This partial EQIA recognises that we are not currently able to identify in all cases **who** these people might be and **what** specific needs they may have.
3. The Scottish Government has developed the following 10 step process to aid the EQIA process.

Step 1	Define the aims of the policy
Step 2	What is already known about the diverse needs and/or experiences of the target audience?
Step 3	What else do we need to know to help us understand the diverse needs and/or experiences of the target audience?
Step 4	What does the information we have tell us about how this policy might impact positively or negatively on the different groups within the target audience?
Step 5	What, if any, changes will be made to the policy?
Step 6	Does the policy provide the opportunity to promote equality of opportunity or good relations?
Step 7	Based on the work we have done – rate the level of relevance of the policy – HIGH, MEDIUM OR LOW
Step 8	Do we need to carry out a further impact assessment?
Step 9	Explain how we will monitor and evaluate this policy to measure progress
Step 10	Sign off and publish the impact assessment

4. This partial EQIA covers the first three steps. We are seeking your views on the conclusions made and particularly where you consider that the policy may impact disproportionately on equalities groups.

## Step One

### Defining the aims of the policy

Title of Policy	Schemes Of Delegation, Local Review Procedures, Appeals Regulations
Name of Branch, Division	E-planning, Planning Policy and North Division
Department or Agency	Directorate of the Built Environment
What is the purpose of the proposed policy (or changes to be made to the policy)?	A new set of regulations to govern the preparation and content of schemes of delegation under the Planning etc. (Scotland) Act 2006 and the modernised procedures for local reviews and planning appeals.
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	Principally planning authorities and parties who wish to seek a review or an appeal of a planning decision, which they are dissatisfied with.
How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?	Mainly planning authorities and the Directorate for Planning and Environmental Appeals. Scottish Ministers will also have responsibilities.
How does the policy fit into our wider or related policy initiatives?	The draft regulations fit into the strategic aims of the Scottish Government to produce a: <ul style="list-style-type: none"> <li>• Wealthier and Fairer Scotland, enabling businesses and people to increase their wealth , by increasing the speed and efficiency of the planning appeals process, and ensuring that that the issues raised are fairly considered.</li> <li>• Greener Scotland, improving Scotland's natural and built environment and the sustainable use and enjoyment of it, the appeals and review processes have a role to play in ensuring that inappropriate development does not take place.</li> <li>• Overall the proposals will support the Scottish Government's objective of promoting sustainable economic growth by increasing efficiency whilst maintaining the quality of service</li> </ul>
Do you have a set budget?	No

## Step Two

### What is already known about the diverse needs and/or experiences of the target audience?

To understand the different needs and experiences of those affected by the policy, we have gathered the following information about the target audience.

The evidence and information contained in this EQIA primarily comes from consultations undertaken over the past few years by the Scottish Government on modernising the planning system. It is supported by work of the Scottish Parliament's Communities Committee in its consideration of the Planning etc. (Scotland) Bill and specific research projects.

A summary of the range of information can be found in the summary table with specific evidence and information highlighted below.

Do we have information on	Yes	X	No	
Age	Yes	X	No	
Disability	Yes	X	No	
Gender	Yes	X	No	
Lesbian, Gay, Bisexual & Transgender	Yes		No	X
Race	Yes	X	No	
Religion and Belief	Yes	X	No	

Age	<p>Evidence: Research contained in <i>Planning and Community Involvement</i> indicated that generally the people likely to volunteer their views on a planning application come from a narrow age profile dominated by the middle aged and the elderly.</p> <p>Consultation: In its pre-legislative consultation on the Planning Bill, the Scottish Parliament's Communities Committee heard from a representative of the Scottish Youth Parliament that there is a need to consider how the planning process can be made more open and transparent so that it is easier to understand and that young people should be consulted in a proactive and non-tokenistic manner.</p> <p>Summary of Evidence of Getting Involved In Planning  <a href="http://www.scotland.gov.uk/Publications/2002/10/15638/12159">http://www.scotland.gov.uk/Publications/2002/10/15638/12159</a></p> <p>Planning and Community Involvement in Scotland.  <a href="http://www.scotland.gov.uk/Publications/2004/07/19666/40347">http://www.scotland.gov.uk/Publications/2004/07/19666/40347</a></p>
Disability	<p>Local authorities amongst others have a specific duty to prepare and publish a Disability Equality Scheme setting out how they will meet these duties under the Disability Discrimination Act 2005.</p>

Gender	<p>Evidence: Defra funded focus groups (organised by the Women’s Network) aimed primarily at looking at environmental decision-making for women. <i>Women in decision-making</i> sets out views of women on barriers to participation.</p> <p>In addition, research contained in Planning and Community Involvement showed that women were slightly more likely than men to become involved in the planning process, but significantly more likely to oppose a planning application.</p> <p>Consultation: Results from the Scottish Household Survey set out in <i>Getting Involved in Planning: Summary of Evidence</i> showed that broadly men and women were equally interested in the planning of their area and considered it was important that people should be involved in the planning of their area.</p>
Lesbian, Gay, Bisexual & Transgender	No information available
Race	<p>Research contained in <i>Planning and Community Involvement</i> indicated that Planning and Community Involvement in Scotland indicated that White Caucasians dominated the responses. Of the 142 responses to the questionnaire, only three (two percent) were from an ethnic minority. This is broadly in line with the ethnic mix across Scotland. However, in two of the three areas there was no involvement from people who were non white.</p> <p>Evidence from across Britain indicates that planners have little understanding of the relationship between planning and race equality. Research published in 2004 by the Office of the Deputy Prime Minister (ODPM), which covered England, found that, ‘issues about diversity and planning are not that well understood or a priority in planning practice and procedure.’ The research also discovered that while a majority of planning officers had received some training on diversity issues, the training rarely made the link between planning and diversity. Although there is no equivalent research into planning in Scotland, the CRE’s knowledge of individual planning situations would indicate that the situation in Scotland is no different.</p> <p><a href="http://www.scotland.gov.uk/Publications/2004/07/19666/40347">http://www.scotland.gov.uk/Publications/2004/07/19666/40347</a> - Research highlighting the age, gender and race demographic of those involved in the planning system.</p>
Religion and Belief	We have very limited information on the response to the proposals from faith groups. The Brethren Gospel Trusts responded to the proposals in the White Paper agreeing that in general delegated decision making appears to work

	satisfactorily. They raised objections to the proposals to alter the current appeal arrangements.
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### Step Three

**What else do we need to know to help us understand the diverse needs and/or experiences of the target audience?**

Age				<p>We have limited information on the potential impact of this policy on this group. We will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate the broad age category they are in.</p> <p>We will also look at the arrangements during the public consultation to engage with organisations representative of such groups.</p>
Disability				<p>We have some information on the views of organisations representative of disabled people on the broad principles of the overarching primary legislation.</p> <p>We are therefore looking for views on the more detailed proposals set out in the secondary legislation. Additionally we will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate whether they consider themselves to be disabled.</p>
Gender				<p>We have some limited information on the potential barriers to engagement for a part of this group.</p> <p>We will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate their gender.</p> <p>We will also look at the arrangements during the public consultation to engage with organisations representative of such groups.</p>
Lesbian, gay, bisexual and transgender				<p>We have no information on the potential impact of this policy on this group. We will look at the arrangements during the public consultation in an attempt to engage with organisations representative of the LGBT community.</p>

Race			
	<p>We have limited information on views regarding the broad principles of the overarching primary legislation. We have no information on the proposals contained in the secondary legislation.</p> <p>We will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate their ethnicity.</p> <p>We will also look at the arrangements during the public consultation in an attempt to engage with organisations representative of such groups.</p>		
Religion and Belief			
	<p>We have no information on the potential impact of this policy on this group. We will look at the arrangements during the public consultation in an attempt to engage with organisations representative of religious and belief groups.</p>		

#### References to Published Information

*A Gender Audit of Statistics* (Scottish Executive 2007)

<http://www.scotland.gov.uk/Publications/2007/03/27104158/1>

*Draft PAN: Community Engagement – consultation responses* (Scottish Executive 2006)

<http://www.scotland.gov.uk/Publications/2006/12/08125517/0>

*Getting Involved in Planning – Summary of Evidence* (Scottish Executive 2002)

<http://www.scotland.gov.uk/Publications/2002/10/15638/12159>

*Planning and Community Involvement* (Scottish Executive 2004)

<http://www.scotland.gov.uk/Publications/2004/07/19666/40347>

Scottish Parliament Communities Committee: *Reports of Pre-legislative events: Planning etc (Scotland) Bill* (Scottish Parliament 2006)

<http://www.scottish.parliament.uk/business/committees/communities/reports-06/cor06-05-Vol02-01.htm#6>

*Women in decision-making* (Women's Environmental Network 2007)

[http://www.wen.org.uk/general\\_pages/resources.htm](http://www.wen.org.uk/general_pages/resources.htm)

**LIST OF CONSULTATION QUESTIONS**

Q1 - Do you agree with the above scope of schemes of delegation?

Q2 - Are there are other categories of decision which should not be delegated to officials?

Q 3 - Should planning authorities be required to undertake local consultation on their proposed scheme of delegation?

Q4 - Do you agree with the proposed approach to preparing and adopting the scheme of delegation?

Q5 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering a review?

Q6 - Do you consider that the proposed size of the review body is appropriate?

Q7 - Are the timescales proposed for carrying out a review reasonable?

Q8 - Are there additional provisions to those proposed which would improve the process of reviewing the decision?

Q9 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering an appeal?

Q10 - Do you agree that Ministers should seek to use the method of examination that best fits the circumstances of the case, taking account of the views of the parties?

Q11 - Do you consider that the framework set out in the accompanying regulations reflects the more proportionate appeals regime envisaged in the White Paper?

Q12 – Are there any particular issues in relation to proposals for Crown development which would require special handling in relation to schemes of delegation, local review and appeals procedures?

Q13 - Are there any potential impacts on the business or voluntary sector that we should be aware of in finalising these regulations?

Q14 - Are there any impacts on particular societal groups that we should be aware of in finalising these regulations?

Q15 - Do you have any other comments to make on the draft regulations covering schemes of delegation, local review bodies or appeals examinations?



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