



CIRCULAR

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PLANNING APPEALS

■ circular

Scottish Planning Series

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Planning Appeals

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PLANNING SERIES:

Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

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INTRODUCTION

1. Part 3 of the Planning etc. (Scotland) Act 2006 (the 2006 Act) introduced important changes to the way in which the planning appeal system will operate in Scotland. The changes described in this circular are designed to significantly improve the efficiency of the planning appeal system whilst retaining the high quality of determination provided.
2. The planning system can make an important contribution to the Scottish Government's objective of increasing sustainable economic growth. Through the reforms of the planning system, the Government is determined to remove unnecessary planning delays and speed up decisions on planning applications and appeals. The changes introduced to the appeal process, as explained in this circular, are intended to ensure that examination procedures are proportionate and efficient; that the appeal process is transparent and fair; and that decisions are both robust and based upon a review of the proposals that were originally considered by the planning authority.
3. The changes to the planning appeal system introduced by the 2006 Act include removal of the automatic right to appear before and be heard by a person appointed by Scottish Ministers, restrictions on the introduction of new material in the appeal process and prohibition of variation of a proposal once an appeal has been made.
4. **This circular accompanies The Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the regulations), which come into force on 3 August 2009¹ as amended².** The regulations set out the detailed statutory procedures for planning appeals within the framework provided in the primary legislation: they do not restate provisions from the primary legislation. The circular is intended to provide an overview of the new planning appeal procedures explaining how the two sets of requirements from the Act and the Regulations fit together.

¹ SSI 2008 No 434 The Town and Country Planning (Appeals) (Scotland) Regulations 2008
http://www.oqps.gov.uk/legislation/ssi/ssi2008/ssi_20080434_en_1

² The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009



SCOPE OF THE REGULATIONS

5. Historically, all appeals against refusal or failure to take decisions on planning applications have been made to the Scottish Ministers. But changes introduced by the 2006 Act will result in fewer appeals being made to the Scottish Ministers in the future. Instead in many cases, an applicant's right to challenge a local authority's delegated decision on a planning application for a local development will be by means of seeking a review of the delegated decision by that planning authority rather than making an appeal to Scottish Ministers. This follows the principle that decisions on local issues should be made by the local authority. The local review process only applies where the original planning decision is made by a person appointed under the terms of the council's new section 43A scheme of delegation introduced by the 2006 Act which has a link to local review. The procedures for seeking and carrying out a review are set out in The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations³ 2008 and explained in Circular 7/2009.
6. This circular explains the processes involved in appeals to Scottish Ministers only, as set by the Town and Country Planning (Scotland) Appeals Regulations 2008. These new regulations set out the procedures that will apply to appeals in respect of:
 - Decisions on planning applications, or the failure to take such decisions (including those appeals recalled for a decision by Scottish Ministers);
 - Enforcement notices;
 - Notices requiring replacement of trees;
 - Amenity notices; and
 - Refusals of certificates of lawful use or development.

The regulations also set the relevant processes for handling planning applications called-in from planning authorities for decision by Scottish Ministers.

³ SSI 2008 No 433 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

http://www.oqps.gov.uk/legislation/ssi/ssi2008/ssi_20080433_en_1

7. There are a small number of appeals against other decisions which are unaffected by the 2006 Act because the arrangements for dealing with them are contained in other legislation. These include appeals against decisions in relation to applications for: listed building consent; conservation area consent; advertisement control; and hazardous substances consent. In the meantime, statutory appeals procedures in relation to these regimes remain unchanged. A revised statutory instrument setting out the procedures for such appeals has been made separately to provide clarity around the procedures for those appeals⁴. But the principles of the new appeals regulations will be applied wherever possible, particularly to avoid unnecessarily protracted processes. The Scottish Government intends to formally align these appeals with the procedures set out in the new appeals regulations when opportunities arise to review the relevant primary legislation.

⁴ SSI 2009 No 212 The Town and Country Planning (inquiries Procedure) (Scotland) Amendment Rules 2009

http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090212_en_1



PLANNING APPEAL PROCESS

THE NOTICE OF APPEAL

8. An appeal to the Scottish Ministers against a decision on a planning application (or a failure to make a decision) needs to be made in writing. Regulation 3 requires the notice to be given in a form obtained from the Scottish Ministers. Appeals may be submitted online; forms and guidance for doing so are available online at www.eplanning.scotland.gov.uk. The notice of appeal needs to be served within a period of three months from the date of the decision notice or, in the case of an appeal against non-determination, three months from the expiry of the prescribed period for determining the application. This is a change from previous practice which allowed appeals to be made within six months of these relevant dates, although that six month period will continue to apply where the relevant date is before 3rd August 2009. Once the prescribed period has passed there is no scope for an appeal to be lodged.

9. Regulation 3 sets out what is required to accompany a notice of appeal to the Scottish Ministers. The notice of appeal must include the following information:-

- The name and address of the appellant;
- The date and reference number of the relevant planning application;
- The name and address of any representative of the appellant for correspondence purposes; and
- A statement setting out full particulars of the appeal including a note of what matters the appellant feels should be taken into account in determining the appeal and by which procedure (or combination of procedures) the appellant would prefer the appeal to be conducted.

The appeal form provided by the Scottish Government will prompt the provision of all of this information. Appeals will not be accepted if they are submitted without this information.

10. All matters that the appellant intends to raise in the appeal must be set out in the notice of appeal (on a form obtained from the Scottish Ministers) or in the accompanying documents. All documents, including a copy of the planning application and all accompanying certification, decision notice if appropriate, and copies of plans submitted to the planning authority and any other evidence that the appellant intends to use to support his case should also accompany the notice of appeal.

11. The appellant is only entitled under the regulations to raise additional matters at a later stage either to respond to any new matter raised by the planning authority, representations from interested parties or where the person appointed by the Scottish Ministers to consider the appeal (referred to as the “appointed person”) has specifically requested further information. It may be therefore, that the point of lodging the appeal will be the only opportunity the appellant will have to provide supporting information; so it is essential that a full case is stated at that time.
12. The 2006 Act inserts a new provision at section 32A of the Town and Country Planning (Scotland) Act 1997 confirming that an application is not to be varied after an appeal has been made. Section 47 as amended by the 2006 Act confirms that the applicant may appeal to the Scottish Ministers against the decision. This provides clarity about the extent to which the appeal process should focus on the proposal that was considered by the planning authority. Where an applicant considers that it would be beneficial to revise a proposal, a new planning application should be submitted for consideration by the planning authority.

INTIMATION TO PLANNING AUTHORITY

13. At the same time that the appellant gives notice of appeal to Scottish Ministers the appellant must also inform the planning authority. Regulation 4 requires that the appellant sends to the planning authority a copy of the notice of appeal, a list of all documents, materials and evidence which the appellant intends to rely upon and which accompanied the notice of appeal. There is no need for the appellant to send the planning authority copies of documents the appellant has already submitted to that authority. The appellant should however also send to the planning authority a copy of any documents, materials and evidence which – for whatever exceptional reason – had not already been provided to the planning authority while it had been considering the application.



PLANNING AUTHORITY RESPONSE

14. Having received the notice of appeal from the appellant, regulation 4 (2) requires the planning authority to provide a response within 21 days. The planning authority should send to the Scottish Ministers and the appellant the following information:

- A note of the matters that the planning authority considers should be taken into account in determining the appeal and by what procedure (or combination of procedures) the authority thinks these should be examined.
- A copy of the documents (other than those specified by the appellant in his list of documents, materials and evidence) which were taken into consideration by the planning authority in making its decision.
- A copy of any report on the authority's handling of the planning application.
- The conditions which the planning authority consider should be imposed in the event that planning permission is granted.

The Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) provide a form to help order this submission; available at <http://www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/dpea>.

15. Regulation 4(3) allows that having received the planning authority's response the appellant can within 14 days, send to Scottish Ministers and to the planning authority any comments on the matters raised by the planning authority which had not previously been addressed in the decision notice. At the same time, the appellant can also provide any further documents or other evidence in support of those additional comments. Planning authorities are expected to provide full reasons in their decision notice and so this regulation should only need to be used infrequently. This is not intended to be a chance for appellants to add to their response to issues raised in the decision notice.

16. Under the terms of the regulations, no additional response will routinely be sought from the planning authority; although the appointed person may specifically request further submissions from the appellant, planning authority and any other specified party through a subsequent procedure notice (see paragraphs 21 to 36 below).

NOTIFICATION TO INTERESTED PARTIES

17. Regulation 5 requires planning authorities to give interested parties notice of the appeal within 14 days of the authority being notified of the appeal. "Interested parties" are any statutory consultees or any other persons who made representations to the planning authority during the authority's consideration of the planning application, which were not subsequently withdrawn. Interested parties should be advised of where the notice of appeal can be inspected, and also that the representations they previously made will be sent to the Scottish Ministers and the appellant by the planning authority. As representations previously made and lodged with the planning authority by interested parties will be taken into account before a decision is reached on the appeal; there is no need or expectation for the same matters to be raised again with the Scottish Ministers. Nevertheless, regulation 5(4) allows that interested parties may make further representations to the Scottish Ministers in respect of the appeal within 14 days from the date of being notified of the appeal. In turn, the regulations require Scottish Ministers to send a copy of any representations received by them to the appellant and to the planning authority, each of whom are provided with an opportunity to respond, again within 14 days from issue.
18. The planning authority are to make all the relevant appeal papers available for inspection and for copying at an office of the planning authority.

DEADLINES FOR PROVISION OF STATEMENTS AND OTHER EVIDENCE

19. As noted above, the regulations set a number of statutory deadlines, for the provision of:
 - the planning authority's response to the appeal (21 days);
 - the appellant's further comments (14 days);
 - the planning authority's notification to interested parties (14 days);
 - further representations from interested parties (14 days); and
 - appellant's and planning authority's comments on representations from interested parties (specified date, not less than 14 days)

In the interests of efficiency in decision-making, the Government expects parties to provide this information at the earliest opportunity.



MATTERS WHICH MAY BE RAISED IN AN APPEAL

20. Section 47A of the Act restricts the introduction of material in the appeal process which was not before the planning authority at the time the decision that is the subject of the appeal was made. Parties are not entitled to raise any such matter unless they can demonstrate that it could not have been introduced earlier in the process, or that it arises as a consequence of exceptional circumstances. This does not alter the entitlement to have the provisions of the development plan or any other material considerations taken into account in the decision-making process. These changes, together with the restrictions introduced around variation of proposals described in paragraph 12 above, are consistent with the Government's intention that the planning system should be frontloaded.

PROCEDURE FOR DETERMINATION

21. Once the exchange of information set out in the paragraphs above, has been completed, and where the person appointed to decide the appeal has sufficient information to make a decision, regulation 7 allows the decision to be made, without there being any further procedure or information gathering. It is at the appointed person's discretion whether further procedure would be needed. For example, it does not follow that, where either the appellant or the planning authority has requested a public local inquiry, that an inquiry would be arranged. As soon as the appointed person feels they have sufficient information to allow them to make a decision, the regulations provide that they may determine the appeal.

FURTHER EVIDENCE

22. If, however, the appointed person decides that further information or additional representations are required to enable him to determine the appeal, the appointed person may do this by one of, or by a combination of the procedures set out in regulation 8 (further written submissions, hearing sessions, inquiry sessions or a site inspection). The appointed person will identify each of the matters on which further information is needed, and also the procedure to be used to obtain it. This will be clearly set out to the parties involved in what the regulations refer to as a *procedure notice*.

SITE INSPECTIONS

23. Irrespective of whether there is sufficient written evidence available to reach a decision, the appointed person may, at any stage, consider it necessary to carry out a site inspection before making a decision. Regulation 11 sets out details about site inspections. Site inspections may be either unaccompanied or accompanied. Where the appointed person intends to make an unaccompanied inspection of the site they will inform the appellant and the planning authority. If for any reason the appointed person considers an accompanied site inspection would be appropriate, then the appellant, the planning authority and all interested parties will be informed of the arrangements, including the date and time. The appointed person is not obliged, or likely, to defer the site inspection if any of the parties or interested persons is not present or available on the set date.

PRE-EXAMINATION MEETINGS

24. In some instances it will be helpful for the appointed person to hold a pre-examination meeting to consider how the appeal or a particular stage of it can best be conducted efficiently and expeditiously. Regulation 9 provides a procedure for this and for involving the appellant, the planning authority and the interested parties. The arrangements for holding and giving notice of such a meeting and for deciding the matters to be discussed are for the appointed person to determine. It is likely that pre-examination meetings will only be required in a small number of complex cases.

WRITTEN SUBMISSIONS

25. Regulation 10 sets out the procedure for seeking further written submissions on the appeal. The appointed person is free to seek additional representations or information from the appellant, the planning authority or from any other body or person. The procedure notice will set out what information is required and by what date and will provide details of those who have been requested to provide the additional information. Parties providing such further information to the appointed person should at the same time send copies to all parties specified in the procedure notice, including the appellant and the planning authority. All of these parties then have an opportunity to send comments on such further information to the appointed person within 14 days again providing copies to the appellant, planning authority and others specified in the procedure notice. The timetables for the provision of this information must be observed; late submissions may not be taken into consideration in the final decision.



HEARING SESSIONS

26. Schedule 1 to the regulations sets out the hearing sessions rules. These provide the appointed person with scope to determine what procedure should be followed at a hearing into specified matters that are set out in the procedure notice. The hearing is intended to take the form of a discussion led by the appointed person. Formal cross examination of participants will not be allowed. While the rules provide discretion for the procedure the appointed person thinks appropriate to follow during the hearing, they also provide a framework to ensure that the relevant parties have clear notice of the hearing session, the other participants in the process and clarity about the issues and evidence to be considered.
27. Where a hearing session forms part of the appeal process, the appointed person is required to give written notice of that to the appellant, to the planning authority and to those parties who made representations into specified matters. Any party intending to participate in the hearing must inform the appointed person within 14 days from the date of the notice as set out in Rule 2. Only those matters in the procedure notice are to be considered at the hearing. Because of that, only those who made related representations are to be given notice of the hearing: it is not the intention that all parties who made other representations on the appeal should participate in the hearing. The appointed person may also give notice to any other body or person who is to provide further representations on the specified matters.
28. It is for the appointed person to give, those entitled to appear, notification of when and where the hearing is to take place and to give whatever notice the appointed person considers to be reasonable in the circumstances (Rule 3). Those who are entitled to appear at a hearing session may be required to send a hearing statement and any supporting documents to the other parties entitled to appear at the hearing and to the appointed person (Rule 4). This will not be required in every case and will be for the appointed person to determine. Rule 4(5) confirms a hearing statement to be a written statement outlining the case relating to the specified matters on which the appointed person has sought information in the procedure notice, together with a list of supporting documents to be relied upon and a list of any other persons who are to speak at the hearing session including the matters to be covered by each person and their relevant qualifications. The rules are intended to ensure that all parties are clear on the issues and evidence to be considered at the hearing session.

29. At the start of the hearing session the appointed person is to explain the procedure they intend to adopt, taking into account submissions made by any of the parties entitled to appear. Parties may be represented or, where two or more persons have a similar interest, one or more may appear for the benefit of some or all.

INQUIRY SESSIONS

30. Schedule 2 to the regulations sets out inquiry session rules. In common with the procedure for hearing sessions, the inquiry sessions will examine only those specified matters on which the appointed person sought further information, as set out in the procedure notice. The parties entitled to appear at inquiry sessions will be;

- the appellant;
- the planning authority; and
- those who made, or who the appointed person wishes to make, representations into the specified matters (where they have confirmed they intend to appear at the inquiry in line with Rule 1(4)).

Those provided with written notice on the inquiry session by the appointed person must confirm their intention to attend the session within 14 days of the date of the notice.

31. Rule 3 requires the appointed person to provide such notice of the date, time and place fixed for the holding of the inquiry session as they consider reasonable, to those parties entitled to appear at the inquiry session. However the appointed person may also require the planning authority to take one or more of the following additional steps to publicise the inquiry session:-

- Publish notices in a local newspaper and on a website not less than 14 days before the inquiry session; or
- Serve notice of the inquiry session in a form and on such parties as the appointed person specifies.

32. Where required to by notice from the appointed person, those entitled to appear at the inquiry session need to provide copies of an inquiry statement to the appointed person and to the appellant and planning authority. This should set out the particulars of the case relating to the specified matters, a list of documents to be relied upon, and a list of any other persons who are to speak at the inquiry session including the matters to be covered by each



person and their relevant qualifications. The appointed person will provide those entitled to appear at the inquiry session with details of when information should be submitted.

33. The inquiry session rules require that precognitions outlining evidence that a witness will give to the inquiry should not exceed 2000 words in length.
34. The rules provide the appointed person with scope to determine the procedure at the inquiry session but he is to state at commencement of the session what the procedure will be, taking account of submissions from those entitled to appear. The rules require the appointed person to explain the order in which specified matters are to be considered and the order in which those entitled to appear are to be heard. Parties may be represented or, where two or more persons have a similar interest, one or more may appear for the benefit of some or all.
35. Those entitled to appear at an inquiry session may call evidence, cross-examine witnesses and make closing statements. However, the appointed person can refuse to permit this wherever he considers that to be irrelevant or repetitious.

NEW EVIDENCE

36. Where, following conclusion of the examination procedure, the appointed person intends to take into account new evidence the regulations require them to give the appellant, the planning authority and other relevant parties described in the regulations an opportunity to make representations on the evidence before a decision can be made on the appeal. Regulation 12 defines "relevant party" as being those who were entitled to appear at a hearing session or inquiry session in relation to the specified matter which is subject of the new evidence or who were previously involved in providing further written evidence on the matter.

APPEALS UNDER SECTIONS 130(2) ENFORCEMENT NOTICES, 169(1) TREE REPLACEMENT NOTICES AND 180(2) AMENITY NOTICES APPEALS

37. The regulations provide under Part 4 (Regulations 13-15) some detailed procedural requirements for appeals against:

- enforcement notices;
- tree replacement notices; and
- amenity notices,

which are different from the processes for considering planning permission appeals described above.

38. The 2006 Act introduced a change to the grounds for appealing against an enforcement notice by removing the provision at section 130(1) to appeal on the basis that planning permission ought to be granted for the breach of control contained in the enforcement notice, or that the relevant condition or limitation should be discharged. This is a significant alteration to the grounds for appealing against the terms of an enforcement notice. The related provision at section 133 of the Act enabling Scottish Ministers to grant planning permission on determination of an enforcement notice appeal has also been revoked by the 2006 Act.

39. The regulations supplement the provisions in the 1997 Act setting out the procedure for providing information in support of these appeals, exchanging relevant information and informing other parties in a way that is consistent with the new provisions for planning application appeals.

STATEMENT OF APPEAL

40. The 1997 Act requires that a statement should be provided by an appellant specifying the grounds for appeal and providing such other information as may be prescribed. Regulation 13 requires that the statement should include the following information, consistent with the approach for planning permission appeals:-

- All matters which the appellant intends to raise in the appeal;
 - The name and address of the appellant;
 - A copy of the notice against which the appeal is made;
 - The name and address of any representative of the appellant for correspondence purposes;
 - A note of what matters the appellant considers require determination and by what procedure they should be examined.
41. The statement is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely upon in the appeal. The appellant may subsequently only raise additional matters to those set out in the statement of appeal and related documents either in response to particular matters raised by the planning authority or where further information or evidence is specifically requested by the appointed person, through written submissions, hearing sessions or inquiry sessions, as described above. It may be therefore, that the point of lodging the appeal will be the only opportunity the appellant will have to provide supporting information; so it is essential that a full case is stated at that time.

INTIMATION TO THE PLANNING AUTHORITY AND RESPONSE

42. At the same time as giving notice of appeal to the Scottish Ministers, regulation 14 requires the appellant to send to the planning authority a copy of the notice of appeal, the statement of appeal and all supporting documents, materials and evidence to be used to support their case. The planning authority has a statutory period of 21 days following receipt of this information within which it must provide its response. This is to take the form of a statement incorporating a response to each ground of appeal, stating the matters that the planning authority consider require determination and by what procedure the authority wishes the appeal to be conducted. The planning authority must also send to the appellant and to Scottish Ministers copies of all documents that were before it and taken into account in reaching the decision to issue the notice subject of the appeal.
43. The appellant is entitled to send to the Scottish Ministers and the planning authority comments on any matters raised in the planning authority's response. This must be done within 14 days. Regulation 14(4) requires that the planning authority is to make copies of the appeal papers available for inspection and for copying at an office of the planning authority.

NOTIFICATION TO OTHER PARTIES

44. Regulation 15 requires that the planning authority must give notice of the appeal to each person other than the appellant on whom the notice was served. This notice is to set out the following information:-
- The name of the appellant and the address of the land subject of the appeal;
 - The steps required by the notice;
 - That representations can be made to the Scottish Ministers; and
 - Explain how and when these can be made and where a copy of the notice of appeal can be inspected.
45. The period allowed for making responses is 14 days from the date of the notice issued by the planning authority.
46. Parts 3 and 7 of the regulations and the schedules describing hearing sessions and inquiry rules apply to these appeals in the same way as they do to planning permission appeals.



APPEALS UNDER SECTION 154 CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

47. Regulation 16 supplements the provisions in the 1997 Act for appealing against refusal or failure to determine an application for a certificate of lawful use or development within the prescribed period. The regulation requires the notice of appeal to be served within three months from the date of the decision or from the expiry of the period allowed for that.
48. An appeal made in relation to such a certificate is required to follow the following steps, in common with the processes for considering planning application appeals:
 - The same provisions for notifying Scottish Ministers of the appeal as set out in paragraphs 3 to 5 of regulation 3 (see paragraph 8-10 above)
 - The same provisions for notifying the planning authority and for the response to that as set out in regulation 4 (see paragraphs 13 -16 above) with the exception of the provisions for reports of handling and planning conditions.
 - Parts 3 and 6 of the regulations
 - The hearing session rules and the inquiry session rules.

CALLED-IN APPLICATIONS AND NON-DELEGATED APPEALS

49. Regulations 17 and 18 confirm that the essential interpretations set out in Part 1 of the regulations, the procedures set out for determining appeals in Part 3, the general provisions in Part 7 as well as the hearing session rules and the inquiry session rules apply to called-in applications and to non-delegated appeals in the same way as they do to planning permission appeals under section 47 generally.

GENERAL PROVISIONS

50. Part 7 of the regulations set out general provisions covering the copying of documents, compliance with development management procedures, the appointment of assessors, the decision notice and the use of electronic communications in the process.

FURTHER COPIES OF DOCUMENTS

51. Regulation 19 enables the appointed person to require any party who has submitted documents, materials or evidence under the regulations to provide the appointed person or others such additional copies as the appointed person specifies. The appointed person may also require the planning authority to make copies of the documents materials or evidence available for inspection at an office of the planning authority until the appeal is determined and to allow anyone reasonable opportunity to inspect the documents, and where practicable to take copies of them.

COMPLIANCE WITH DEVELOPMENT MANAGEMENT PROCEDURES

52. Regulation 20 requires the appointed person to take action which has not been taken by the planning authority in the earlier process to secure compliance with The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. This allows the appointed person to ensure that neighbour notification is carried out or completed, that any necessary consultation is completed and that any publication not carried out in the development management process can be completed.

APPOINTMENT OF ASSESSORS

53. Infrequently the Scottish Ministers may appoint an assessor to sit with the appointed person at a hearing session or at an inquiry session to advise him on such matters as Scottish Ministers may specify. Where this happens the Scottish Ministers must notify every person entitled to appear at the inquiry or hearing session of the name of the assessor and of the matters that the assessor is to advise upon.

DECISION NOTICE

54. The appointed person is required by regulation 22 to give notice of the decision (the decision notice) to the appellant and to the planning authority and to notify every person who has made and not withdrawn representations in respect of the appeal that a decision has been made and where a copy of the decision notice is available for inspection.



ELECTRONIC COMMUNICATION

55. Regulation 23 enables key transactions under the regulations to be carried out electronically and to have the same effect as if they had been provided in hard copy. There are certain conditions to be met in order to facilitate this use of electronic communications as follows:-
- The recipients have agreed or are deemed to have agreed to receive the information electronically;
 - Any person sending information electronically is to be taken to have agreed to the use of electronic communication for the purpose of the appeal; and
 - The transmitted document is capable of being accessed by the recipient, that it is legible and sufficiently permanent for subsequent reference.
56. Consent to use electronic communication can be withdrawn by parties by giving notice and this will take effect not later than 7 days from that notice.

TRANSITIONAL PROVISIONS

57. Regulation 24 set out transitional arrangements in terms of the time period for making an appeal. It ensures that were a person is entitled to make an appeal before the 3rd August 2009 (the date the regulations come into force) that such person will have six months in which to make an appeal. Such an appeal made after 3rd of August 2009 is to be made in accordance with the regulations.
58. In cases of “local developments” where a right of appeal for non-determination of an application first arises before 3rd August 2009 then the applicant continues to have a right of appeal for non-determination of the case under section 47(2) and not a right to require a review under the new section 43A.
58. For appeals made before 3rd August the current law applies. Where notice of appeal is given to the Scottish Ministers under section 47(3), 130(2), 154(2), 169(2) or 180(2) of the Act before 3rd August 2009 –
 - (a) sections 47, 48, 130, 131, 133 and 155 of and Schedule 4 to the Act, as the case may be, shall continue to apply for the purposes of that appeal as those provisions had effect immediately before that date; and
 - (b) section 47A shall not apply for the purposes of that appeal.

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