

2008 No. 432

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

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Coming into force in accordance with regulation 1(2) and (3)

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 27A(1), 27C, 30(1) and (3), 32, 34, 35(1), (2), (3) and (7), 35A(1), 35B(4) and (5), 35C(2), 36 (as read with section 152(6)), 36A(1) and (2)(b), 38(2)(b), 38A(1), 43, 59, 152 and 275 of the Town and Country Planning (Scotland) Act 1997(a), and section 2(2) of the European Communities Act 1972(b) and all other powers enabling them to do so.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and come into force in accordance with paragraphs (2) and (3).

(2) Parts 1, 2 and 10 of these Regulations come into force on 6th April 2009.

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- (a) 1997 c.8. The functions of the Secretary of State transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46). Sections 27A and 27C were inserted by section 6, sections 35A, 35B and 35C by section 11, section 36A by section 13, section 38A by section 14 and section 59 by section 21 of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”) and sections 32, 34, 36, 43 and 275 were respectively substituted by or amended by sections 7, 10, 12, 17 and 54(16) of the 2006 Act.
 - (b) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”), and section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”). The powers in section 2(2) of the 1972 Act are exercised as regards regulation 30. The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(3) These Regulations (other than Parts 1, 2 and 10) come into force on 3rd August 2009.

Application

- 2.—(1) Subject to regulation 45 and paragraphs (2) and (3), these Regulations apply to—
- (a) applications for planning permission;
 - (b) applications for approval, consent or agreement required by a condition imposed on a grant of planning permission in principle; and
 - (c) applications for a certificate under sections 150 or 151 of the Act,

made on or after 3rd August 2009.

(2) If a special development order is made, or has been made before the commencement of these Regulations, in relation to any land, these Regulations shall apply thereto to such extent only and subject to such modifications as may be specified in that order.

(3) These Regulations do not apply to applications for planning permission made under section 31A of the Act (planning permission in respect of the operation of a marine fish farm).

Interpretation

3.—(1) In these Regulations—

“the 1992 Order” means Town and Country Planning (General Development Procedure) (Scotland) Order 1992(a);

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

“agricultural land” has the meaning given to it by section 35(7) of the Act;

“agricultural tenant” means the tenant of agricultural land any part of which is comprised in the land to which an application relates;

“category A listed building” means a listed building specified as being category A in a list of buildings compiled or approved and amended as the case may be by the Scottish Ministers in accordance with section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(b);

“cemetery” includes a burial ground or any other place of interment for the dead;

“community council” means a community council established in accordance with the provisions of Part IV of the Local Government (Scotland) Act 1973(c);

“conservation area” means an area for the time being designated under section 61 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;

“design statement” and “design and access statement” have the meaning given in regulation 13;

“electronic communications network” has the same meaning as in section 32 of the Communications Act 2003(d);

“the Fees Regulations” means the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004(e);

“the General Permitted Development Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(f);

(a) S.I. 1992/224 as amended by S.I. 1992/20083, S.I. 1994/2585, S.I. 1994/3293, S.I. 1996/467, S.I. 1997/749, S.S.I. 2000/179, S.S.I. 2001/245, S.S.I. 2003/1, S.I. 2003/2155, S.S.I. 2004/332, S.S.I. 2007/177 and S.S.I. 2007/268.

(b) 1997 c.9.

(c) 1973 c.65.

(d) 2003 c.21.

(e) S.S.I. 2004/219 as amended by S.S.I. 2007/253 and S.S.I. 2007/268.

(f) S.I. 1992/223 as amended by S.I. 1992/1078, S.I. 1992/2084, S.I. 1993/1036, S.I. 1994/1442, S.I. 1994/2586, S.I. 1994/3294, S.I. 1996/252, S.I. 1996/1266, S.I. 1996/3032, S.I. 1997/3060, S.I. 1998/1226, S.S.I. 1999/1, S.I. 2000/2040, S.S.I. 2001/266, S.S.I. 2003/341, S.I. 2003/2155, S.S.I. 2004/332, S.S.I. 2006/1157, S.S.I. 2007/209, S.S.I. 2007/135, S.S.I. 2008/74 and S.S.I. 2008/203.

“historic garden or designed landscape” means a garden or landscape identified in the “Inventory of Gardens and Designed Landscapes in Scotland – List of Sites 2007”, published by the Scottish Ministers in 2007, (ISBN 978 1 904966 449);

“ICNIRP declaration” means a declaration by the applicant that the antenna is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12th July 1999(a) on the limitation of exposure of the general public to electro magnetic fields (0Hz to 300GHz);

“landscaping” means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes screening by fences, walls or other means, the planting of trees, hedges, shrubs or grass, the formation of banks, terraces or other earthworks, the laying out or provision of gardens, courts or squares, water features, sculpture, or public art and the provision of other amenity features;

“licensed premises” means premises licensed for the sale of alcoholic liquor pursuant to the provisions of the Licensing (Scotland) Act 2005(b) or premises authorised by a premises licence under Part 8 of the Gambling Act 2005(c) to be used for activities described in section 150 of that Act;

“listed building” means a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;

“marine fish farm development” means the placing or assembly of any equipment in marine waters for the purposes of fish farming (“equipment” and “fish farming” having the same meaning as in section 26(6) of the Act) and any material change of use of equipment so placed or assembled;

“marine planning zone” has the same meaning as in the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007(d);

“marine waters” means the waters described in paragraphs (b) and (c) of subsection (6) of section 26 of the Act;

“minerals application” means an application for planning permission for development consisting of the winning and working of minerals by underground working;

“National Scenic Area” means an area defined as a national scenic area in Part II of ‘Scotland’s Scenic Heritage’ published by the Countryside Commission for Scotland on 26th April 1978(e);

“neighbouring land” means land which is conterminous with or within 20 metres of the boundary of the land for which the development is proposed;

“planning permission in principle” means a planning permission granted pursuant to an application made under regulation 10 for the carrying out of building, engineering, mining or other operations in, on, over or under land which is granted subject to a condition (in addition to any other conditions which may be imposed) that the development in question will not begin until certain matters have been approved by the planning authority or, as the case may be, the Scottish Ministers;

“pre-application consultation report” means a written report prepared in accordance with section 35C of the Act;

“road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984(f);

(a) 1999/519/EC.

(b) 2005 asp 16.

(c) 2005 c.19.

(d) S.S.I. 2007/268.

(e) ISBN no. 0 902226 42 8. Available from the Scottish Natural Heritage website at <http://www.snh.org.uk/publications/online/scotlandsscenicareas/>. Copies are also available on request from Scottish Natural Heritage, Silvan House, 231 Corstorphine Road, Edinburgh, EH9 2AS.

(f) 1984 c.54.

“scheduled monument” has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979(a);

“validation date” is the date on which an application is taken to have been made in terms of regulation 14;

“World Heritage Site” means land appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(b);

(2) In these Regulations “EIA development” and “environmental statement” have the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999(c).

(3) Any reference to a numbered regulation or Schedule is a reference to the regulation or as the case may be the Schedule bearing that number in these Regulations and a reference to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph having that number in the regulation or paragraph in the Schedule in which the reference appears.

(4) References to distance are references to distance measured along a horizontal plane.

(5) Any requirement that a form shall be as set out in a specified Schedule shall be construed as meaning a form as so specified or a form substantially to the like effect.

(6) Any power conferred by these Regulations to give a direction shall be construed as including power to cancel or vary the direction by a subsequent direction.

PART 2

Pre-application consultation

Pre-application consultation – classes of development

4. The classes of development prescribed for the purposes of section 35A(1) of the Act are development belonging to the categories of national developments and major developments.

Content of pre-application screening notice

5.—(1) A notice under section 35A(3) of the Act in addition to the information mentioned in paragraphs (a) to (d) of section 35B(4) of the Act, must also contain a statement as to whether or not the planning authority have adopted a screening opinion or the Scottish Ministers have made a screening direction in respect of the development to which the notice relates.

(2) In this regulation “screening opinion” and “screening direction” have the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999.

Content of proposal of application notice

6. A proposal of application notice must, in addition to those matters required by section 35B(4) of the Act, also contain an account of what consultation the applicant intends to undertake, when such consultation is to take place, with whom and what form it will take.

Pre-application consultation

7.—(1) The prospective applicant is to consult as respects a proposed application every community council any part of whose area is within or adjoins the land where the proposed development is situated and in doing so is to give a copy of the proposal of application notice to such community council.

(a) 1979 c.46.

(b) See command paper 9424.

(c) S.S.I. 1999/1 as relevantly amended by S.S.I. 2002/324, S.S.I. 2003/341 and S.S.I. 2006/614.

- (2) The prospective applicant is to—
- (a) hold at least one public event where members of the public may make comments to the prospective applicant as regards the proposed development; and
 - (b) publish in a local newspaper circulating in the locality in which the proposed development is situated a notice containing—
 - (i) a description of, and the location of, the proposed development;
 - (ii) details as to where further information may be obtained concerning the proposed development;
 - (iii) the date and place of the public event;
 - (iv) a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so; and
 - (v) a statement that comments made to the prospective applicant are not representations to the planning authority and if the prospective applicant submits an application there will be an opportunity to make representations on that application to the planning authority.
- (3) A public event held by the prospective applicant in accordance with paragraph (2)(a) is not to be held earlier than 7 days after notification of the date and place of such event is given under paragraph (2)(b)(iii).

PART 3

Procedure on applications for planning permission

Applications for planning permission

8. Any application made under any of regulations 9 to 12 shall be made to the planning authority within whose district the development to which the application relates is situated.

Form and content of an application for planning permission

9.—(1) An application to a planning authority for planning permission (other than planning permission in principle) is to be made in accordance with this regulation.

- (2) An application for planning permission must contain—
- (a) a written description of the development to which it relates;
 - (b) the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of the land; and
 - (c) the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.
- (3) The application must be accompanied by—
- (a) a plan—
 - (i) sufficient to identify the land to which it relates; and
 - (ii) showing the situation of the land in relation to the locality and in particular in relation to neighbouring land;
 - (b) such other plans and drawings as are necessary to describe the development to which it relates;
 - (c) one or other of the certificates required under regulation 15;
 - (d) where the application relates to—
 - (i) development belonging to the categories of national developments or major developments, a pre-application consultation report;

- (ii) an installation of an antenna to be employed in an electronic communication network, an ICNIRP declaration;
- (e) where required under regulation 13, a design statement or a design and access statement; and
- (f) any fee payable under the Fees Regulations.

Application for planning permission in principle

10.—(1) An application to a planning authority for planning permission in principle is to be made in accordance with the requirements of this regulation.

- (2) An application for planning permission in principle must contain—
 - (a) a written description outlining the development to which it relates;
 - (b) the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of the land; and
 - (c) the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.
- (3) The application must be accompanied by—
 - (a) a plan—
 - (i) sufficient to identify the land to which it relates; and
 - (ii) showing the situation of the land in relation to the locality and in particular in relation to neighbouring land;
 - (b) one or other of the certificates required under regulation 15;
 - (c) where access to the site is to be taken directly from a road, a description of the location of the access points to the proposed development;
 - (d) where the application relates to development belonging to the categories of national developments or major developments, a pre-application consultation report; and
 - (e) any fee payable under the Fees Regulations.

Further applications

- 11.—(1)** Where—
- (a) planning permission has been granted for development, that development has not been commenced and a time limit imposed by or under section 58 (duration of planning permission) or section 59 (planning permission in principle) of the Act has not expired, an application is made for planning permission for the same development; or
 - (b) an application for planning permission is made under section 42 of the Act (applications to develop without compliance with previous conditions),

the application may be made without complying with the provisions of regulation 9 or regulation 10 other than regulation 9(2)(c) and (3)(c), (d)(i) and (f) or regulation 10(2)(c) and (3)(b), (d) and (e).

(2) An application mentioned in paragraph (1) is to be in writing and is to give sufficient information to enable the planning authority to identify the previous grant of planning permission and where it is made under section 42 of the Act is to contain a statement to that effect.

Application for approval of matters specified in conditions

12.—(1) An application to a planning authority for approval, consent or agreement required by a condition imposed on a grant of planning permission in principle must be made in accordance with this regulation.

- (2) An application for such approval, consent or agreement is to be in writing and must—
- (a) identify the planning permission to which it relates;
 - (b) contain a description of the matter in respect of which the application is made;
 - (c) state the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent; and
 - (d) be accompanied by—
 - (i) where the application relates to the alteration or construction of buildings, other structures or roads or to landscaping, plans and drawings describing the matter in respect of which the application is made; and
 - (ii) any fee payable under the Fees Regulations.

Design and access statements

13.—(1) Subject to paragraph (3), an application for planning permission for development belonging to the categories of national developments or major developments must be accompanied by a design and access statement.

(2) Subject to paragraph (3), an application for planning permission for development belonging to the category of local developments where the land to which the application relates is situated within—

- (a) a World Heritage Site;
- (b) a conservation area;
- (c) a historic garden or designed landscape;
- (d) a National Scenic Area;
- (e) the site of a scheduled monument; or
- (f) the curtilage of a category A listed building,

must be accompanied by a design statement other than where the development in question comprises the alteration or extension of an existing building.

(3) This regulation does not apply to—

- (a) an application for planning permission for development of land without complying with conditions subject to which a previous planning permission was granted; or
- (b) an application for planning permission for—
 - (i) engineering or mining operations;
 - (ii) development of an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such; or
 - (iii) a material change in the use of land or buildings.

(4) A design statement is a written statement about the design principles and concepts that have been applied to the development and which—

- (a) explains the policy or approach adopted as to design and how any policies relating to design in the development plan have been taken into account;
- (b) describes the steps taken to appraise the context of the development and demonstrates how the design of the development takes that context into account in relation to its proposed use; and
- (c) states what, if any, consultation has been undertaken on issues relating to the design principles and concepts that have been applied to the development and what account has been taken of the outcome of any such consultation.

(5) A design and access statement is a document containing both a design statement and written statement about how issues relating to access to the development for disabled people have been dealt with and which—

- (a) explains the policy or approach adopted as to such access and, in particular, how—
 - (i) policies relating to such access in the development plan have been taken into account; and
 - (ii) any specific issues which might affect access to the development for disabled people have been addressed;
- (b) describes how features which ensure access to the development for disabled people will be maintained; and
- (c) states what, if any, consultation has been undertaken on issues relating to access to the development for disabled people and what account has been taken of the outcome of any such consultation.

Validation date

14.—(1) An application under any of regulations 9 to 12 is to be taken to have been made on the date on which the last of the items or information required to be contained in or accompany the application in accordance with regulations 9, 10, 11 or 12 respectively is received by the planning authority.

(2) Where the planning authority has received an application for their determination that their approval is required as a condition of permission granted by the General Permitted Development Order and the planning authority has determined that their approval is required, the date when the application is to be taken to have been made is the date when any details required under the General Permitted Development Order and the appropriate fee or the cost of advertising or both, were lodged with the planning authority or where these events did not all occur on the same day, the date when the last of such events occurred.

(3) The date on which an application for any other consent, agreement or approval required by a condition attached to a grant of planning permission is to be taken to have been made is the date on which it was received by the planning authority.

Notices to owners and agricultural tenants under section 35 of the Act

15.—(1) The applicant is to give notice in the form set out in Schedule 1 to any person (other than the applicant) who at the beginning of the prescribed period is the owner of any land to which the application relates or an agricultural tenant.

(2) The applicant must issue a certificate—

- (a) stating whether or not the land or part of the land to which the application relates constitutes or forms part of agricultural land; and
- (b) stating, as appropriate—
 - (i) that at the beginning of the prescribed period no person (other than the applicant) was the owner of any of the land to which the application relates or an agricultural tenant;
 - (ii) that the applicant has given notice to every person (other than the applicant) who at the beginning of the prescribed period was the owner of any land to which the application relates or an agricultural tenant; or
 - (iii) that the applicant is unable to give notice to every such person.

(3) A certificate issued—

- (a) under paragraph 2(b)(ii) or (iii) must set out the name of every person to whom notice was given and the address at and date on which such notice was given;

- (b) under paragraph 2(b)(iii) must certify that the applicant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice.

(4) In the case of a minerals application this regulation applies with the modifications that in paragraphs (1) and (2)(b) for “the owner” substitute “, to the applicant’s knowledge, the owner”.

(5) The applications prescribed for the purposes of paragraph (b) of the definition of “owner” in section 35(7) of the Act are minerals applications, and the minerals prescribed for the purposes of that paragraph are any minerals other than oil, gas, coal, gold or silver.

(6) In this regulation, “prescribed period” means the period of 21 days ending with the date of the application.

PART 4

Procedure by planning authority

Registers of applications

16. The register of applications for planning permission, which every planning authority is required to keep under section 36(1) of the Act, is to be kept in the manner specified in Schedule 2.

Acknowledgment of applications

17.—(1) When the planning authority are in receipt of an application made in accordance with and accompanied by the information and documents required by regulation 9, 10, 11 or 12, as the case may be, the planning authority must send to the applicant an acknowledgement thereof.

(2) The acknowledgement sent under paragraph (1) is to—

- (a) include an explanation of the timescales within which the planning authority are to give notice to the applicant of their decision on the application; and
- (b) inform the applicant of the right to appeal to the Scottish Ministers under section 47 of the Act or to require a review under section 43A(8) of the Act.

(3) Where the application is not made in accordance with and accompanied by the information and documents required by regulation 9, 10, 11 or 12, as the case may be, the planning authority must send to the applicant a notice identifying the information or documentation which the applicant still requires to submit in order to comply with such regulation.

Notification by the planning authority

18.—(1) Subject to regulation 19, a planning authority must give notice in accordance with this regulation that—

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

has been made.

(2) Notice under paragraph (1) is to be given—

- (a) where there are premises situated on the neighbouring land to which the notice can be sent to the owner, lessee or occupier of such premises, by sending a notice addressed to “the Owner, Lessee or Occupier” to such premises; and
- (b) where there are no such premises, by publication of a notice under regulation 20.

(3) The notice to be given in accordance with paragraph (2)(a) must—

- (a) state the date on which the notice is sent;

- (b) state the name of the applicant and, where an agent is acting on behalf of the applicant, the name and address of such agent;
- (c) include the reference number given to the application by the planning authority;
- (d) include a description of the development to which the application relates;
- (e) include the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of the land;
- (f) state how the application, plans or drawings relating to it and other documents submitted in connection with it may be inspected;
- (g) state that representations may be made to the planning authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 21 days after the date on which the notice is sent);
- (h) be accompanied by a plan showing the situation of the land to which the application relates in relation to neighbouring land;
- (i) include a statement as to how information explaining the manner in which applications for planning permission are handled and the procedures which are followed in relation to such applications can be obtained; and
- (j) where the development to which the application belongs is a class of development prescribed for the purposes of section 35A(1) of the Act, include a statement that notwithstanding that comments may have been made to the applicant prior to the application being made, persons wishing to make representations in respect of the application should do so to the planning authority in the manner indicated in the notice.

Notification of minerals applications

19.—(1) In the case of a minerals application the planning authority are to give notice of the application by affixing a notice to objects situated in such places in their district (not exceeding 5 in number).

(2) Notice under paragraph (1) is—

- (a) to be displayed so as to be easily visible to and legible by members of the public;
- (b) to be left in position for not less than 7 days;
- (c) to state that an application for planning permission has been made to the planning authority and give a brief description of the proposed development and its location; and
- (d) to provide information regarding both when and where a copy of the application, plans and other documents submitted may be inspected and how and within which period (being no less than a period of 14 days beginning with the date of the notice) representations may be made on the application to the planning authority.

(3) The planning authority shall not be treated as having failed to satisfy the requirements of paragraph (1), if the notice is, without any fault or intention of the planning authority, removed, obscured or defaced before the period of 7 days has elapsed, if the planning authority have taken reasonable steps for its protection and, if need be, replacement.

Publication of application by the planning authority

20.—(1) Where—

- (a) it is not possible for the planning authority to carry out notification in terms of regulation 18 because there are no premises situated on the neighbouring land to which the notification can be sent;
- (b) the applicant has submitted with an application for planning permission under regulations 9 to 11 a certificate issued under regulation 15(2)(b)(iii);
- (c) the application relates to development of one or more of the classes of development specified in Schedule 3, or

- (d) the application relates to development which does not accord with the provisions of the development plan,

the planning authority must publish a notice in the form set out in Schedule 4 in a newspaper circulating in the locality in which the neighbouring land is situated.

(2) The planning authority are not required to publish a notice in accordance with paragraph (1) where a notice is required to be published by the planning authority in accordance with sections 60(2)(a) and 65(2)(a) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (publicity for applications affecting conservation areas).

(3) Where any of paragraphs (1)(a) to (d) apply but notice has already been published with respect to the application under paragraph (1) the planning authority are not required to publish a further notice.

List of applications

21.—(1) The list of applications to be kept in accordance with section 36A of the Act is to be kept in two sections.

(2) The first section is—

- (a) in relation to applications for planning permission made to the planning authority, to include the information specified in paragraph (4);
- (b) in relation to applications referred to in regulation 12(1) made to the planning authority, to include the information specified in paragraph (4) and also a description of the matter in respect of which the application is made;
- (c) in relation to applications made to the Scottish Ministers in respect of development in the district of the planning authority which have been notified to the planning authority—
 - (i) to include the information specified in paragraph (4);
 - (ii) to identify those applications as having been made to the Scottish Ministers under section 242A; and
 - (iii) to include a statement that representations may be made to the Scottish Ministers and where any such representations should be sent.

(3) The second section must, in relation to proposal of application notices received by the planning authority, include the information specified in paragraphs (a), (b) and (d) of paragraph (4) and—

- (a) details as to how the prospective applicant may be contacted;
- (b) the earliest date on which an application for planning permission in respect of the development may be submitted to the planning authority; and
- (c) where the planning authority give notice to the prospective applicant under section 35B(7) of the Act, specify any additional persons to whom a proposal of application notice is to be given and any additional consultation to be undertaken as regards the proposed development.

(4) The information is—

- (a) the reference number given to the application by the planning authority, or as the case may be, the Scottish Ministers;
- (b) the site location;
- (c) the name of the applicant and, where an agent is acting for the applicant, the name and address of that agent;
- (d) a description of the proposed development to which the application relates; and
- (e) the date of expiry of the period mentioned in section 34(4)(a) (period within which application may not be determined) of the Act.

(5) The list of applications is also to contain a statement as to how further information in respect of an application may be obtained from the planning authority.

Publication of list of applications

22. The planning authority are to publish the list of applications by means of the internet on their website and are to make the list of applications available for inspection at their principal office and at public libraries in their district.

Provision of information to community councils and within public libraries

23.—(1) The planning authority must send to every community council in their district at weekly intervals a list of—

- (a) all applications made to the authority during the previous week under any of regulations 9 to 12; and
- (b) all applications made to the Scottish Ministers in respect of land within the district of the planning authority which were notified to the planning authority during the previous week,

containing the information set out in regulation 21(4) and a statement as to how further information in respect of an application may be obtained from the planning authority.

(2) The planning authority are to make the list sent to community councils under paragraph (1) available for inspection at their principal office and at public libraries in their district.

Further information

24. In respect of an application under regulations 9 to 12 a planning authority may, in addition to the particulars, documents, materials or evidence which are to be included in or accompany an application in accordance with regulation 9, 10, 11 or 12, as the case may be, require from the applicant further particulars, documents, materials or evidence which they consider that they require to enable them to deal with the application.

Consultation by the planning authority

25.—(1) Before determining an application for planning permission the planning authority must consult in accordance with this regulation and Schedule 5.

(2) Scottish Ministers may give a direction to any planning authority requiring that authority to consult with the authorities, persons or bodies named in that direction in any case or class of case specified in the direction before granting or determining any application for planning permission and the planning authority must enter into consultation accordingly.

(3) Where under this regulation and Schedule 5, a planning authority are required to consult with any authority, person or body as to any application, they are to give not less than 14 days' notice to such authority, person or body that such application is to be taken into consideration and must not determine the application until after the expiration of the period of such notice.

(4) Where any authority, person or body with which a planning authority are required to consult under this regulation and Schedule 5 (except under paragraph 4 of Schedule 5) consider that consultation with them is not required in respect of any case or class of case or in respect of development within any area or areas and so inform the planning authority in writing then the planning authority are not required to consult the authority, person or body in respect of any development coming within the case or class of case or within the area or areas specified.

Time periods for decision

26.—(1) Where a planning authority has received—

- (a) an application under any of regulations 9 to 12;
- (b) an application for their determination that their approval is required as a condition of permission granted by the General Permitted Development Order and the planning authority has determined that their approval is required; or

- (c) an application for any other consent, agreement or approval required by a condition attached to a grant of planning permission,

the period within which the authority must give notice to an applicant of their decision or determination or referral of the application to the Scottish Ministers is the period mentioned in paragraph (2).

(2) The period is—

- (a) in the case of an application for planning permission for development within the category of national developments or major developments, four months after the validation date; and
- (b) in any other case, two months after the validation date.

(3) Paragraph (1)—

- (a) does not apply where the applicant and the planning authority agree in writing by virtue of section 47(2) to extend the period within which the planning authority may give notice of their decision to the applicant before the right to appeal under section 47(2) arises;
- (b) is subject to—
 - (i) paragraph (4);
 - (ii) section 34(4) of the Act; and
 - (iii) sections 60(3) and 65(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

(4) An application under any of regulations 9 to 12 is not to be determined until the date, or the latest date, of the expiry of the period allowed for the making of representations in respect of that application specified in notice—

- (a) given in accordance with regulation 18 or 19; or
- (b) published in accordance with regulation 20(1).

Pre-determination hearings

27.—(1) The classes of development prescribed for the purposes of section 38A(1) of the Act are developments within the categories of—

- (a) national developments; and
- (b) major developments which are significantly contrary to the local development plan.

(2) The persons who submit representations to the planning authority in respect of the application in accordance with these Regulations are prescribed for the purposes of section 38A(1) of the Act as persons to whom the planning authority are to give an opportunity of appearing before and being heard by a committee of the authority.

Decision notice

28.—(1) The planning authority must as regards an application mentioned in paragraph (2) within the period mentioned in regulation 26(2)—

- (a) give to the applicant (or where an agent is acting for the applicant, that agent) notice (“a decision notice”) of their decision on the application; and
- (b) inform every person who made written representations in respect of the application (and provided an address) of their decision on the application and where a copy of the decision notice is available for inspection.

(2) The applications are—

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

- (3) A decision notice must, in addition to the matters required by section 43(1A)(a) of the Act—
- (a) in the case of an application under regulation 9 to 11 include—
 - (i) 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;
 - (ii) a description of the location of the proposed development, including where applicable, a postal address;
 - (iii) the reference number of the application;
 - (iv) a description of any variation made to the application in accordance with section 32A of the Act;
 - (v) 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
 - (vi) if any obligation is to be entered into under section 75 of the Act in connection with the application a statement as to where the terms of such obligation or a summary of such terms may be inspected; and
 - (b) in the case of an application under regulation 12 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.
- (4) A decision notice must in the case of refusal or approval subject to conditions be accompanied by a notification in the terms of Form 1 set out in Schedule 6 or, where the application is determined by a person appointed by virtue of section 43A(1) of the Act, by notification in terms of Form 2 set out in Schedule 6.
- (5) Where representations in respect of the application are made by three or more persons in the same document, it is sufficient for the purposes of paragraph (1)(b) that the planning authority notify—
- (a) only the person who sent that document to the planning authority, where it is possible for the planning authority to identify that person; or
 - (b) where it is not possible to do so, only the first named person on the document for whom an address is provided.

Schemes of delegation

29. Where an application is determined by an appointed person by virtue of a scheme of delegation prepared under section 43A(1) of the Act, references to the planning authority in regulations 24, 25, 26, 28, paragraphs 3 and 4 of Schedule 2 and Schedule 5 to the planning authority are to be treated as references to that appointed person.

PART 5

Directions

Directions as to environmental impact assessment Regulations

30. The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in Schedule 2 to the Environmental Impact Assessment (Scotland) Regulations 1999 and of a class described in the direction is EIA development for the purposes of those Regulations.

Directions requiring information or restricting the grant of planning permission

31.—(1) The Scottish Ministers may make directions requiring a planning authority to give to the Scottish Ministers and to such other persons as may be prescribed in directions such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.

(2) The Scottish Ministers may give directions restricting the grant of planning permission by a planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any development or any class of development, as may be so specified.

Directions requiring consideration of condition

32. The Scottish Ministers may give directions to a planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—

- (a) to consider, where the planning authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
- (b) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed.

Provisions supplementary to regulations 30, 31 and 32

33. A planning authority must give effect to any direction given under regulation 30, 31 or 32.

Notice of reference of applications to the Scottish Ministers

34. On referring any application to the Scottish Ministers following a direction under section 46 of the Act, a planning authority are to serve on the applicant notice—

- (a) of the terms of the direction;
- (b) of any reasons given by the Scottish Ministers for requiring the application to be referred to them;
- (c) that the application has been referred to the Scottish Ministers; and
- (d) that the decision of the Scottish Ministers on the application will be final.

PART 6

Marine fish farming

Application to marine fish farming

35.—(1) These Regulations apply to an application for planning permission relating to marine fish farm development subject to the following modifications.

(2) In regulation 7(2)(b) for “in the locality in which the proposed development is situated” substitute, “in the district of the planning authority for the marine planning zone in which the marine fish farm development is proposed”;

(3) In regulation 9—

- (a) for paragraph 2(b) substitute—
“ (b) a description of the location of the development;”;
- (b) for paragraph (3)(a) substitute—
“ (a) a plan sufficient to identify the location of the development;”;

(c) for paragraph (3)(e) substitute—

“(e) where the development belongs to the category of—

(i) major developments; or

(ii) local developments and the land to which the development relates is situated within a World Heritage Site, a National Scenic Area or the site of a scheduled monument,

a design statement;”.

(4) Omit regulations 10, 18 and 38.

(5) In regulation 20—

(a) for paragraph (1) substitute—

“(1) The planning authority must publish a notice in the form set out in Schedule 4 in a newspaper circulating in the district of that planning authority.”; and

(b) omit paragraphs (2) and (3).

(6) In Schedule 5, in paragraph 6 for “within whose area the development is to take place” substitute, “whose area is adjacent to the marine planning zone in which the marine fish farm development is proposed”.

(7) Where an application for planning permission relates in part to marine fish farm development and in part to other development, the modifications specified in this regulation apply only for the purposes of that application to the extent that it relates to marine fish farm development.

PART 7

Cairngorms National Park

Cairngorms National Park

36.—(1) For the purposes of regulation 26(2) the validation date in a case where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003(a) is to be taken as the date on which that direction was issued.

(2) Where an application is made under any of regulations 9 to 12 in respect of development situated in the area of that Authority, the planning authority must within the period of five days beginning with the validation date, give notice of the application to that Authority.

(3) Where it appears to the planning authority that development is likely to affect land in the area of that Authority the planning authority must before determining an application for planning permission consult with that Authority.

PART 8

Notification and display

Notification of initiation of development

37. The notice to be given in accordance with section 27A(1) of the Act by a person intending to carry out development must—

(a) include the full name and address of the person intending to carry out the development;

(b) state if that person is the owner of the land to which the development relates and if that person is not the owner provide the full name and address of the owner;

(a) S.S.I. 2003/1.

- (c) where a person is, or is to be, appointed to oversee the carrying out of the development on site, include the name of that person and details of how that person may be contacted; and
- (d) include the date of issue and reference number of the notice of the decision to grant planning permission for such development.

Display notices

38.—(1) The prescribed classes of development for the purposes of section 27C(1) of the Act are—

- (a) development belonging to the categories of national developments and major developments; and
- (b) development of a class specified in Schedule 3.

(2) A notice displayed in accordance with section 27C(1) of the Act—

- (a) is to be in the form set out in the Schedule 7 and completed in accordance with the notes to that Schedule; and
- (b) must be—
 - (i) displayed in a prominent place at or in the vicinity of the site of the development;
 - (ii) readily visible to the public; and
 - (iii) printed on durable material.

PART 9

Certificates of lawful use or development

Application for certificate of lawful use or development

39. An application for a certificate under section 150(1) or 151(1) of the Act shall be in writing and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the following information—

- (a) the paragraph of section 150(1) or, as the case may be, section 151(1) of the Act, under which the application is made;
- (b) in the case of an application under section 150(1) of the Act, the date on which the use, operations or other matter began or, in the case of operations carried out without planning permission, the date on which the operations were substantially completed;
- (c) in the case of an application under section 150(1)(a) of the Act, the name of any use class specified in an order under section 26(2)(f) of the Act which the applicant considers applicable to the existing use;
- (d) in the case of an application under section 150(1)(c) of the Act, sufficient details of the relevant planning permission to enable it to be identified;
- (e) in the case of an application under section 151(1)(a) of the Act, the use of the land at the date of the application (or, when the land is not in use at that date, the purpose for which it was last used) and the name of any use class specified in an order under section 26(2)(f) of the Act which the applicant considers applicable to the proposed use;
- (f) the applicant’s reasons, if any, for regarding the use, operations or other matter described in the application as lawful; and
- (g) such other information as the applicant considers to be relevant to the application.

Documentation accompanying applications

40.—(1) An application to which regulation 39 applies must be accompanied by—

- (a) a plan identifying the land to which the application relates;

- (b) such evidence verifying the information included in the application as the applicant can provide; and
- (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.

(2) Where such an application specifies two or more uses, operations or other matters, the plan which accompanies the application is to indicate to which part of the land each such use, operation or matter relates.

Procedure on receipt of application

41.—(1) When a planning authority receive an application to which regulation 39 applies and any fee required to be paid in respect of the application, they must, as soon as reasonably practicable, send to the applicant an acknowledgement of the application.

(2) Where, after sending an acknowledgement as required by paragraph (1), the planning authority consider that the application is invalid by reason of the failure to comply with regulations 39 and 40 or any other statutory requirement, they must, as soon as practicable, notify the applicant that the application is invalid.

(3) The planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.

(4) The planning authority must give the applicant written notice of their decision within a period of 2 months beginning with the date of receipt by the authority of the application and any fee required to be paid in respect of the application.

(5) Where an application is refused in whole or in part (including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that description), the notice of decision must be in writing and shall—

- (a) state the authority's reasons for their decision; and
- (b) include a statement to the effect that the applicant may appeal to the Scottish Ministers under section 154 of the Act.

(6) A certificate under section 150 or 151 of the Act is to be in the form set out in Schedule 8.

(7) Regulation 31(1) applies to applications for a certificate to which regulation 39 applies as it applies to applications for planning permission.

Revocations of certificate of lawful use or development

42.—(1) Where a planning authority propose to revoke a certificate issued under section 150 or 151 of the Act in accordance with section 152(7) of the Act, they must, before they revoke the certificate, give notice of that proposal to—

- (a) the owner of the land affected;
- (b) the occupier of the land affected;
- (c) any other person who will in their opinion be affected by the revocation; and
- (d) in the case of a certificate issued by the Scottish Ministers under section 154 of the Act, the Scottish Ministers.

(2) A notice issued under paragraph (1) is to invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice and the authority must not revoke the certificate until all such periods allowed for making representations have expired.

(3) An authority must give written notice of any revocation under section 152(7) of the Act to every person on whom notice of the proposed revocation was served under paragraph (1).

PART 10

General

Electronic communications

43.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that document transmitted by the electronic communication is—
 - (i) capable of being accessed by the recipient;
 - (ii) legible in all material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication; and

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a);

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

Service of notices

44. Section 271 of the Act applies to notices or other documents required or authorised to be served or given under these Regulations on the owners or occupiers of land as it applies to notices or other documents required or authorised to be served or given under the Act.

(a) 2000 c.7, as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

PART 11

Transitional provisions, revocations and savings

Transitional provisions

45.—(1) The provisions specified in paragraph (2) apply with the modifications specified in paragraph (3) to—

- (a) applications for planning permission;
- (b) applications for approval, consent or agreement required by a condition imposed on a grant of planning permission in principle; and
- (c) applications for approval of reserved matters in connection with the grant of outline planning permission,

made before 3rd August 2009 but in respect of which no notice of the decision of the planning authority is given to the applicant before 3rd August 2009.

(2) The provisions are—

- (a) regulation 16;
- (b) regulations 26 to 28;
- (c) Schedule 2.

(3) In regulation 26(2)(a) and (b) for “validation date” substitute, “the date of receipt of the application”.

(4) In this Part “reserved matters” and “outline planning permission” have the same meaning as in section 59 of the Act as it applied immediately before section 21 of the Planning etc. (Scotland) Act 2006 comes into force.

Applications for approval of reserved matters made on or after 3rd August 2009

46. An application for approval of reserved matters made on or after 3rd August 2009 in respect of the grant of outline planning permission before that date is to be treated for the purposes of these Regulations as an application for approval required by a condition imposed on the grant of planning permission in principle.

Revocations and savings

47.—(1) The 1992 Order is, subject to paragraphs (2) to (4), revoked on 3rd August 2009.

(2) The 1992 Order (other than articles 23 to 25) shall continue to apply as it did immediately before 3rd August 2009 in respect of any application for planning permission, for approval of reserved matters, for an approval under a development order, or for a certificate of lawful use or development made before 3rd August 2009.

(3) The provisions of the 1992 Order specified in paragraph (4) do not apply to—

- (a) applications for planning permission;
- (b) applications for approval, consent or agreement required by a condition imposed on a grant of planning permission in principle; and
- (c) applications for approval of reserved matters in connection with the grant of outline planning permission,

made before 3rd August 2009 but in respect of which no notice of the decision of the planning authority is given to the applicant before 3rd August 2009.

(4) The provisions are—

- (a) article 10;
- (b) article 14;

(c) article 22; and

(d) Schedule 5.

(5) Any directions in force immediately before the coming into force of these Regulations by virtue of the Town and Country Planning (General Development) (Scotland) Orders 1950 to 1970^(a), the Town and Country Planning (General Development) (Scotland) Order 1975^(b), the Town and Country Planning (General Development) (Scotland) Order 1981^(c) and the 1992 Order shall continue in force and have effect as if given under the corresponding provisions of these Regulations.

STEWART STEVENSON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
22nd December 2008

(a) S.I. 1950/942, S.I. 1958/1653, S.I. 1959/1361, S.I. 1960/1722, S.I. 1963/1767, S.I. 1964/1791 and S.I. 1970/600.

(b) S.I. 1975/679.

(c) S.I. 1981/830 as amended by S.I. 1983/1620, S.I. 1984/237, S.I. 1985/2007, S.I. 1986/1356, S.I. 1988/977 and 1249, S.I. 1989/148, S.I. 1990/508 and S.I. 1991/147.

SCHEDULE 1

Regulation 15(1)

Notices under regulation 15

“TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2008

Notice under regulation 15(1) of application for planning permission for service on owners and tenants of agricultural land

Proposed development at [Note 1]

TAKE NOTICE

1. that application is being made to–

[Note 2] Council by

[Note 3]for planning permission to

[Note 4]

2. If you wish to obtain further information on the application or to make representations about the application, you should contact the Council at [Note 5].

(The grant of planning permission does not affect owners’ rights to retain or dispose of their property unless there is some provision to the contrary in an agreement or lease.

The grant of planning permission for non-agricultural development may affect agricultural tenants’ security of tenure.)

Signed

*On behalf of

Date

*Delete where inappropriate

Note 1- Insert address or location of proposed development.

Note 2 - Insert name of Council.

Note 3 - Insert name of applicant.

Note 4 - Insert description of proposed development.

Note 5 - Insert address of the Council.”

Registers under sections 36(1) to (4)

Register of applications for planning permission

1. The register of applications for planning permission which every planning authority are required to keep under section 36(1) of the Act is to be kept in 2 parts.

2. Part I of the register is, in respect of every application made under regulations 9 to 12 and not finally disposed of, to contain—

- (a) a description of the development to which the application relates;
- (b) the name of the applicant and the address at which the applicant or, where an agent is acting on behalf of the applicant, the name of that agent and the address at which such agent may be contacted;
- (c) the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of such land;
- (d) copies of—
 - (i) plans and drawings;
 - (ii) any design statement or design and access statement; and
 - (iii) any pre-application consultation report, submitted in respect of the application;
- (e) particulars of any direction given under the Act or these Regulations in respect of the application.

3. Part II of the register of applications for planning permission is to contain—

- (a) in respect of all applications made under regulations 9 to 12 determined by the planning authority (other than following a review of the case by virtue of section 43A(8)) of the Act—
 - (i) a copy of the decision notice; and
 - (ii) copies of any plans considered by the planning authority in determining the application;
- (b) a copy of any environmental statement submitted with respect to the application;
- (c) in respect of all applications made under regulations 9 to 11 determined by the planning authority (other than following a review of the case by virtue of section 43A(8)) of the Act, a Report containing the information mentioned in paragraph 4 of this Schedule;
- (d) a copy of the decision of the Scottish Ministers in respect of an application, on appeal or on a reference under section 46 of the Act; and
- (e) a copy of the decision notice of the planning authority as to the manner in which a review of the case under section 43A of the Act has been dealt with and copies of any plans considered by the planning authority in determining the review.

4. The information to be contained in the Report is—

- (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) where in respect of the proposed development—
 - (i) an environmental statement was submitted;

- (ii) an appropriate assessment under the Conservation (Natural Habitats &c.) Regulations 1994^(a) was carried out;
- (iii) a design statement or a design and access statement was submitted; or
- (iv) 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) which was submitted in connection with the application,
a summary of the main issues raised by such statement, assessment or report;
- (d) a summary of the terms of any planning obligation entered into under section 75 in relation to the grant of planning permission for the proposed development;
- (e) where a direction has been made by the Scottish Ministers under regulation 30, 31 or 32, details of such direction in respect of that decision; and
- (f) details of the provisions of the development plan and any other material considerations (in addition to any to be included in the Report under above paragraphs) to which the planning authority had regard in determining the application.

Certificates of lawful use or development

5. The register kept by the planning authority shall also contain the following information in respect of every application for a certificate under section 150 (certificate of lawfulness of existing use or development) or 151 (certificate of lawfulness of proposed use or development) of the Act submitted to the authority—

- (a) the name and address of the applicant;
- (b) the date of the application;
- (c) the address or location of the land to which the application relates;
- (d) the description of the use, operations or other matter included in the application;
- (e) the decision (if any) of the planning authority in respect of the application and the date of such decision; and
- (f) the reference number, date and effect of any decision of the Scottish Ministers on an appeal in respect of the application.

Provisions applicable to registers generally

6.—(1) Every register shall include an index, which shall be in the form of a map.

(2) The register for their district is to be kept at the office of the planning authority.

7. Where the register kept by a planning authority under this Schedule is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.

(a) S.I. 1994/2716.

SCHEDULE 3 Regulations 20(1)(c) and 38(1)(b)

Classes of development - regulations 20(1)(c) and 38(1)(b)

The following are the classes of development specified for the purposes of regulations 20(1)(c) and 38(1)(b)–

- (1) the construction or installation of buildings for use as a public convenience;
- (2) the construction of buildings or other operations, or use of land–
 - (a) for the disposal of refuse or waste materials, or for the storage or recovery of reusable metal;
 - (b) for the retention, treatment or disposal of sewage, trade-waste, or effluent other than–
 - (i) the construction of pumphouses in a line of sewers;
 - (ii) the construction of septic tanks and cesspools serving single dwelling-houses, or single caravans, or single buildings in which not more than 10 people will normally reside, work or congregate;
 - (iii) the laying of sewers; or
 - (iv) works ancillary to those described in sub-paragraphs (i) to (iii);
 - (c) as a scrap yard or coal yard; or
 - (d) for the winning or working of minerals;
- (3) the construction of buildings or use of land or buildings for the purpose of slaughtering animals (including fish and poultry) or the processing of animal carcasses for final disposal or as part of the production of other goods;
- (4) the construction or use of buildings for any of the following purposes–
 - building for indoor games
 - cinema
 - dancing
 - fun fair
 - gymnasium (not forming part of a school, college or university)
 - hot food shop
 - licensed premises
 - music hall
 - skating rink
 - swimming pool or
 - theatre;
- (5) the construction of buildings for or the use of buildings or land as–
 - (a) a crematorium or a cemetery;
 - (b) a zoo, or wildlife park, or for the business of boarding or breeding animals;
- (6) the construction of buildings and use of buildings or land for motor racing;
- (7) the construction of a building to a height exceeding 20 metres;

- (8) the construction of buildings, operations, and use of buildings or land which will—
- (a) affect residential property by reason of fumes, noise, vibration, smoke, artificial lighting, or discharge of any solid or liquid substance;
 - (b) alter the character of an area of established amenity;
 - (c) bring crowds into a generally quiet area;
 - (d) cause activity and noise between the hours of 8 pm and 8 am; or
 - (e) introduce significant change into a homogeneous area.

Notice for publication in newspaper

“TOWN AND COUNTRY PLANNING (DEVELOPMENT
MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2008

Notice of application to be published in a local newspaper under
regulation 20(1)

Applications for planning permission listed below together with the plans and other documents submitted with them may be

examined at [Note 1]

between the hours of [Note 2]

on [Note 3]

Written comments may be made to [Note 4] by [Note 5]

List of applications for planning permission

Address [Note 6]

Proposed development [Note 7]

Note 1 - Insert address of planning authority and any other address (including any website address).

Note 2 - Insert beginning and end of periods.

Note 3 - Insert days of week.

Note 4 - Insert Director of Planning or officer responsible for planning functions and the Director of Planning or that officer’s address (including an email address). Where the development to which the application belongs is a class of development prescribed for the purposes of section 35A(1), include a statement that notwithstanding that comments may have been made to the applicant prior to the application being made, persons wishing to make representations in respect of the application should do so to the planning authority in the manner indicated in the notice.

Note 5 - Insert date by which representations are to be made, being a date not less than 14 days from the date of publication of the notice.

Note 6 - For each application to be advertised insert postal address of proposed development or if there is no postal address insert a description of the location of the proposed development.

Note 7 - For each application to be advertised insert description of proposed development.”

Consultation by the planning authority

Subject to regulation 25, the planning authority must before determining an application for planning permission for development consult a person, authority or body mentioned in a paragraph below in the circumstances specified in that paragraph.

1. SEPA—

(1) where the development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding; or

(2) where the development consists of or includes—

- (a) fish farming;
- (b) mining operations;
- (c) the carrying out of building or other operations or use of land for the purposes of providing or storing mineral oils and their derivatives;
- (d) the carrying out of building or other operations (other than the laying of sewers, the construction of pump-houses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling-houses, single caravans or single buildings in which not more than 10 people will normally reside, work or congregate, and works ancillary thereto) or use of land for the retention, treatment or disposal of sewage, trade-waste, or effluent;
- (e) the carrying out of works or operations in the bed or on the banks of a river or stream;
- (f) the use of land as a cemetery; or
- (g) the use of land for the deposit of any kind of refuse or waste, including slurry or sludge.

2. Scottish Natural Heritage where—

(1) the development may affect an area of special interest notified to the planning authority by Scottish Natural Heritage in accordance with sections 3(1) or 5(1) of the Nature Conservation (Scotland) Act 2004(a); or

(2) the development consists of or includes the winning and working of peat other than for the domestic requirements of the applicant.

3. The Health and Safety Executive where the development is within an area which has been notified to the planning authority by the Health and Safety Executive for the purpose of this provision because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances and which involves the provision of—

- (1) residential accommodation;
- (2) more than 250 square metres of retail floor space;
- (3) more than 500 square metres of office floor space; or
- (4) more than 750 square metres of floor space to be used for an industrial process,

or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area.

4. Scottish Natural Heritage, the Health and Safety Executive and SEPA where the development—

- (1) involves the siting of new establishments;

(a) 2004 asp 6.

(2) consists of modifications to existing establishments which could have significant repercussions on major accident hazards; or

(3) includes transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequences of a major accident.

Expressions which are used in this paragraph and in Council Directive 96/82/EC of the European Council(a) on the control of major accident hazards involving dangerous substances shall, in this paragraph, have the same meaning as in that Directive.

5. The Scottish Ministers, in the case of–

(1) development of land within 67 metres of the middle of, or development comprising the formation, laying out or alteration of any means of access to–

- (a) a trunk road;
- (b) a proposed trunk road or a proposed special road, being a road the route of which is shown as such in the development plan, or in respect of which the Scottish Ministers have given notice in writing to the planning authority of their proposal, together with the maps or plans sufficient to identify the proposed route of the road;
- (c) any road which is comprised in the route of a special road to be provided by the Scottish Ministers in accordance with a scheme under section 7 of the Roads (Scotland) Act 1984 relating to special roads, and which has not for the time being been transferred to them; or
- (d) any road which has been or is to be provided by the Scottish Ministers in pursuance of an Order under the provisions of the said Act relating to trunk roads and special roads and has not for the time being been transferred to any roads authority;

(2) development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a trunk road;

(3) development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park;

(4) development which may affect–

- (a) a historic garden or designed landscape;
- (b) the site of a scheduled monument or its setting; or
- (c) a category A listed building or its setting;

(5) development which consists of or includes the winning and working of peat other than for the domestic requirements of the applicant; or

(6) marine fish farm development.

6. The community council, if any, within whose area the development is to take place where–

(1) the community council, within 7 days (excluding Saturday and Sunday, December 25th and 26th and January 1st and 2nd) of the date on which the planning authority sent to that community council in accordance with regulation 23(1) the list which includes information about the application for such development, informs the planning authority that it wishes to be consulted; or

(2) The development is likely to affect the amenity in the area of the community council.

7. The Coal Authority where the development consists of–

- (a) the erection of a building, other than an alteration, extension or re-erection of an existing building or the erection of a building of a temporary character; or
- (b) the provision of a pipeline,

in an area of coal working or former or proposed coal working notified by the Coal Authority to the planning authority.

(a) O.J. No. L 10, 14.1.1997, p.13. The Directive was amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29th September 2003 (O.J. No. L 284, 31.10.2003) and Directive 2003/105/EC of the European Parliament and of the Council of 16th December 2003 (O.J. No. L 345, 31.12.2003 p.97).

8. Any adjoining planning authority, where the development is likely to affect land in the district of that authority.

9. Network Rail Infrastructure Limited or any other railway undertakers likely to be affected where the development is likely to result in a material increase in the volume or a material change in the character of traffic using a level crossing over a railway.

10. The roads authority concerned, where the development involves–

- (a) the formation, laying out or alteration of any means of access to, or is likely to create or attract traffic which will result in a material increase in the volume of traffic entering or leaving, a road (other than a trunk road) for which the planning authority are not also the roads authority; or
- (b) the formation, laying out or alteration of any means of access to land affording access to a toll road.

11. The Theatres Trust where the development involves any land on which there is a theatre as defined in the Theatres Trust Act 1976(a).

12. Scottish Water where the development is likely to require a material addition to or a material change in the services provided by that authority.

13. A district salmon fishery board where the development consists of fish farming.

14. The Scottish Ministers and the Secretary of State where marine fish farm development may affect a site designated as a controlled site under section 1 of the Protection of Military Remains Act 1986(b).

Interpretation of Schedule 5

In this Schedule–

“district salmon fishery board” has the meaning assigned to it by section 40 of the Salmon Act 1986(c);

“roads authority” has the same meaning as in section 151 of the Roads (Scotland) Act 1984(d);

“SEPA” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995(e);

“slurry” means animal faeces and urine (whether or not water has been added);

“special road” means a road provided or to be provided in accordance with a scheme under section 7 of the Roads (Scotland) Act 1984;

“toll order” has the same meaning as in Part II of the New Roads and Street Works Act 1991(f);

“toll road” means a road which is the subject of a toll order;

“trunk road” means a road or proposed road which is a trunk road within the meaning of section 151 of the Roads (Scotland) Act 1984 that is to say, a road which is a trunk road by virtue of section 5 of that Act or of an Order or direction under that section or section 202 of the Act.

(a) 1976 c.27.

(b) 1986 c.35.

(c) 1986 c.62.

(d) 1984 c.54. Section 151 was relevantly amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 135(10) and S.I. 2001/1400.

(e) 1995 c.25.

(f) 1991 c.22.

Notice to accompany refusal etc.

Form 1

“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

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 appeal to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of appeal should be addressed to the [Note 1].

2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, 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 5 of the Town and Country Planning (Scotland) Act 1997.

Note 1 - Insert details of address to which the notice of appeal should be sent.”

Form 2

“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

1. If the applicant is aggrieved by the decision 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 require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the [Note 1]

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 5 of the Town and Country Planning (Scotland) Act 1997.

Note 1 - Insert details of address to which the notice of review should be sent.”

SCHEDULE 7

Regulation 38

Form of notice to be displayed while development in progress

“NOTICE

Development at [Note 1].

Notice is hereby given that planning permission has been granted subject to conditions [Note 2] to [Note 3] on [Note 4] by [Note 5].

The development comprises [Note 6].

Further information regarding the planning permission including the conditions, if any, on which it has been granted can be obtained at all reasonable hours at [Note 7]

Notes

Note 1 – Insert address or describe the location of development.

Note 2 – Delete “subject to conditions” if the planning permission is not subject to any conditions.

Note 3 – Insert name and address of developer.

Note 4 – Insert date on which planning permission granted.

Note 5 – Insert planning authority or Scottish Ministers and reference.

Note 6 – Insert description of development.

Note 7 – Insert address of planning authority or Scottish Ministers, as appropriate, contact details for enquiries and enforcement section and website link and reference.”

SCHEDULE 8

Regulation 41

Certificate of lawful use or development

“TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997:
SECTION 150 AND 151

TOWN AND COUNTRY PLANNING (DEVELOPMENT
MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2008: REGULATION 41(6)

Certificate of Lawful Use or Development

The [Note 1] Council hereby certify that on [Note 2]
..... the use*/operations*/matter* described in the First Schedule
hereto in respect of the land specified in the Second Schedule hereto and
edged*/hatched*/coloured* [Note 3] on the plan attached to this
certificate was*/would have been* lawful within the meaning of section 150 of the Town and
Country Planning (Scotland) Act 1997, for the following reason(s)

Signed (Council’s proper officer)

On behalf of Council

Date

First Schedule

[Note 4]

Second Schedule

[Note 5]

1. This certificate is issued solely for the purpose of section 150*/151* of the Town and Country Planning (Scotland) Act 1997.
2. It certifies that the use*/operations*/matter* described in the First Schedule taking place on the land specified in the Second Schedule was*/would have been* lawful, on the specified date and, thus, was not*/would not have been* liable to enforcement action under section 127 of the 1997 Act on that date.
3. This certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

*4. The effect of the certificate is also qualified by the proviso in section 151(4) of the 1997 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

*Delete where inappropriate.

Note 1 - Insert name of Council.

Note 2 - Insert date of application to the Council.

Note 3 - Insert colour used on the plan.

Note 4 - Insert full description of use, operations or other matter, if necessary, by reference to details in the application or submitted plans, including where appropriate a reference to the use class of any order made under section 26(2)(f) of the Town and Country Planning (Scotland) Act 1997 within which the certificated use falls.

Note 5 - Insert address or location of the site.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the manner in which applications for planning permission, for approvals required by a condition imposed on a grant of planning permission in principle and for certificates of lawful use and development under the Town and Country Planning (Scotland) Act 1997 (“the Act”) are to be made. These Regulations apply to all applications made on or after 3rd August 2009. They also apply to the limited extent provided for in Part 11 in respect of applications made before that date but not yet determined by that date.

Part 2 of the Regulations relates to the requirements for pre-application consultation introduced into the Act by section 11 of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”) and comes into force on 6th April 2009. Regulation 4 prescribes the classes of development for which pre-application consultation is required, these are the categories of national and major developments. National developments are developments designated as such in the National Planning Framework under section 3A(4) of the Act. Major developments are the class of development to be prescribed in Regulations made under section 26A of the Act. Regulations 5 and 6 make provision regarding the content of notices under sections 35A(3) and the proposal of application notice required under section 35B(2). Regulation 7 sets out the prescribed manner of consultation which an applicant will have as a minimum to undertake. This requires the holding of a public event and publication of the proposed development in a local newspaper.

Part 3 of the Regulations sets out how applications for planning permission and for approvals required by conditions are to be made. Regulation 9 specifies the information that an application must contain in respect of an application for full planning permission and also requires the application to be accompanied by certain documents or information. Regulation 10 makes equivalent provision in relation to applications for planning permission in principle and regulation 12 does so for applications for approvals required by a condition. Regulation 11 applies the requirements of regulations 9 and 10 in a modified form where the application is made either for the same development or an application under section 42 of the Act (applications to develop without compliance with previous conditions).

Regulation 13 makes provision as to when a design or a design and access statement must accompany an application and describes what such a statement is to comprise.

Regulation 14 defines what is known as the “validation date”. This is the date on which the last of the items required to be contained in or accompany an application is received by the planning authority. It is the date from which the time period set for determination of the application by the authority starts to run.

Regulation 15 provides for notification to owners and agricultural tenants under section 35 of the Act and also for related certificates that such notification has or can not be carried out.

Part 4 of the Regulations makes provision as to how a planning authority is to deal with an application and related matters. Regulation 16 and Schedule 2 set out how the planning authority are to keep a register of information relating to planning applications as required by section 36 of the Act. The planning authority are required to acknowledge an application in accordance with regulation 17. In terms of regulation 18 the planning authority are to give notice of the application to neighbours. Neighbouring land is defined in regulation 3. Regulation 19 provides for notification of minerals applications.

The planning authority are required by regulation 20 to publish a notice in the form set out in Schedule 4 in certain circumstances specified in regulation 20(1). These include the case where it is not possible for the authority to give notice to neighbours under regulation 18 because there are no premises on the neighbouring land.

Regulation 21 and 22 relate to the requirement to keep a list of applications introduced by section 13 of the 2006 Act. Regulation 21 requires the list to be kept in two sections and details the information to be contained in each section. Regulation 22 sets out how the planning authority are to publish the list. Regulation 23 requires the planning authority to send to community councils a weekly list of applications received.

Regulation 24 makes it clear that a planning authority are entitle to require further information to assist them to determine the application. Regulation 25 and Schedule 5 require the planning authority to undertake consultation with certain bodies or authorities in the circumstances described in that Schedule. Regulation 25(2) confers on the Scottish Ministers power to make directions requiring planning authorities to consult with specified bodies before determining an application.

Regulation 26 sets out the time periods within which a planning authority must give notice to the applicant of their decision on the application. The period is generally 2 months but for applications for major and national developments it is 4 months. Paragraph (4) conversely prescribes that a planning authority are not to determine an application before the expiry of a period allowed for the making of representations.

Regulation 27 prescribes the classes of development in respect of applications for which a planning authority must hold a hearing before reaching a decision and provides who is to be given an opportunity to appear before the committee conducting the hearing.

Regulation 28 makes provision regarding the content of the planning authorities notice setting out their decision on the application and also as how notice of the decision is to be given to the applicant and to other parties. Where the decision is to refuse an application or grant it subject to conditions the notice must be accompanied by a notification of the rights of the appeal or review set out in Schedule 6.

In terms of section 43A(1) of the Act a planning authority is to prepare a scheme of delegation under which certain applications are to be determined by a person appointed by the planning authority. Regulation 29 applies provisions of the Regulations which relate to the manner in which a decision is reached and notified to the appointed person.

Part 5 includes provisions relating to direction making powers available to the Scottish Ministers. The Scottish Ministers are empowered to make directions relating environmental impact assessment (regulation 30), requiring a planning authority to provide information and restricting the grant of planning permission (regulation 31), requiring the planning authority to consider the imposition of a condition (regulation 32). In addition regulation 34 requires a planning authority to give notice of directions made by the Scottish Ministers calling in applications for their determination under section 46 of the Act.

Part 6 of the Regulations apply the Regulations with certain modifications to applications for planning permission relation to marine fish farming. Part 7 makes special provision in relation to the Cairngorms National Park.

Part 8 of the Regulations set out what information must be included in a notice of intention to carry out development under section 27A(1) of the Act (regulation 37) and also prescribes the classes of development and form of notice for the purposes of section 27C of the Act (regulation 38). This section requires notices to be displayed while development is being carried out.

Part 9 makes provision in relation to applications for certificates of lawful use or development under section 150 or 151 of the Act. Regulation 39 prescribes the information which an application must contain. Regulation 40 sets out what items must accompany an application. Regulation 41 makes provision for procedure including the period within which an application is to be determined. Under regulation 42 a planning authority are required to give notice of a proposal to revoke a certificate.

Part 10 of the Regulations make provision for the use of electronic communications and the service of notices.

Part 11 makes transitional and saving provisions. Regulation 45 applies certain provision of the Regulations to applications made before 3rd August 2009 but which are yet to be determined by that date. In particular the requirements as to time periods for decision, pre-determination hearings and decision notices will apply to these cases. Regulation 46 provides that if an application for reserved matters is made after 3rd August 2009 in respect of outline planning permission then it is to be treated as an application for approval of a condition imposed on the grant of a planning permission in principle. Regulation 47 revokes the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 with effect from 3rd August but saves it, subject to limited exceptions, in respect of applications made before that date.

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