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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 432**

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

**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.

(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(1);

“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;

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(1) 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.

“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<sup>(2)</sup>;

“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<sup>(3)</sup>;

“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<sup>(4)</sup>;

“the Fees Regulations” means the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004<sup>(5)</sup>;

“the General Permitted Development Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992<sup>(6)</sup>;

“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<sup>(7)</sup> 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<sup>(8)</sup> or premises authorised by a premises licence under Part 8 of the Gambling Act 2005<sup>(9)</sup> 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;

(2) 1997 c. 9.

(3) 1973 c. 65.

(4) 2003 c. 21.

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

(6) 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. 2007135, S.S.I. 2008/74 and S.S.I. 2008/203.

(7) 1999/519/EC.

(8) 2005 asp 16.

(9) 2005 c. 19.

“marine planning zone” has the same meaning as in the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007(10);

“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(11);

“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(12);

“scheduled monument” has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979(13);

“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(14);

(2) In these Regulations “EIA development” and “environmental statement” have the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999(15).

(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.

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

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

(12) 1984 c. 54.

(13) 1979 c. 46.

(14) See command paper 9424.

(15) 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.

## 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.

(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(21) 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.

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(21) 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.

## 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(16) 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;
- (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(17);
  - “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.

## 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,

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

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<sup>(18)</sup>, the Town and Country Planning (General Development) (Scotland) Order 1975<sup>(19)</sup>, the Town and Country Planning (General Development) (Scotland) Order 1981<sup>(20)</sup> and the 1992 Order

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<sup>(18)</sup> 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.

<sup>(19)</sup> S.I. 1975/679.

<sup>(20)</sup> 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.

shall continue in force and have effect as if given under the corresponding provisions of these Regulations.

St Andrew's House,  
Edinburgh  
22nd December 2008

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers