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2009

DEVELOPMENT MANAGEMENT PROCEDURES

■ circular

Scottish Planning Series

CIRCULAR 4 2009

**Development Management
Procedures**

July 2009
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ISSN 0141-514X
ISBN 978 0 7559 7571 6



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

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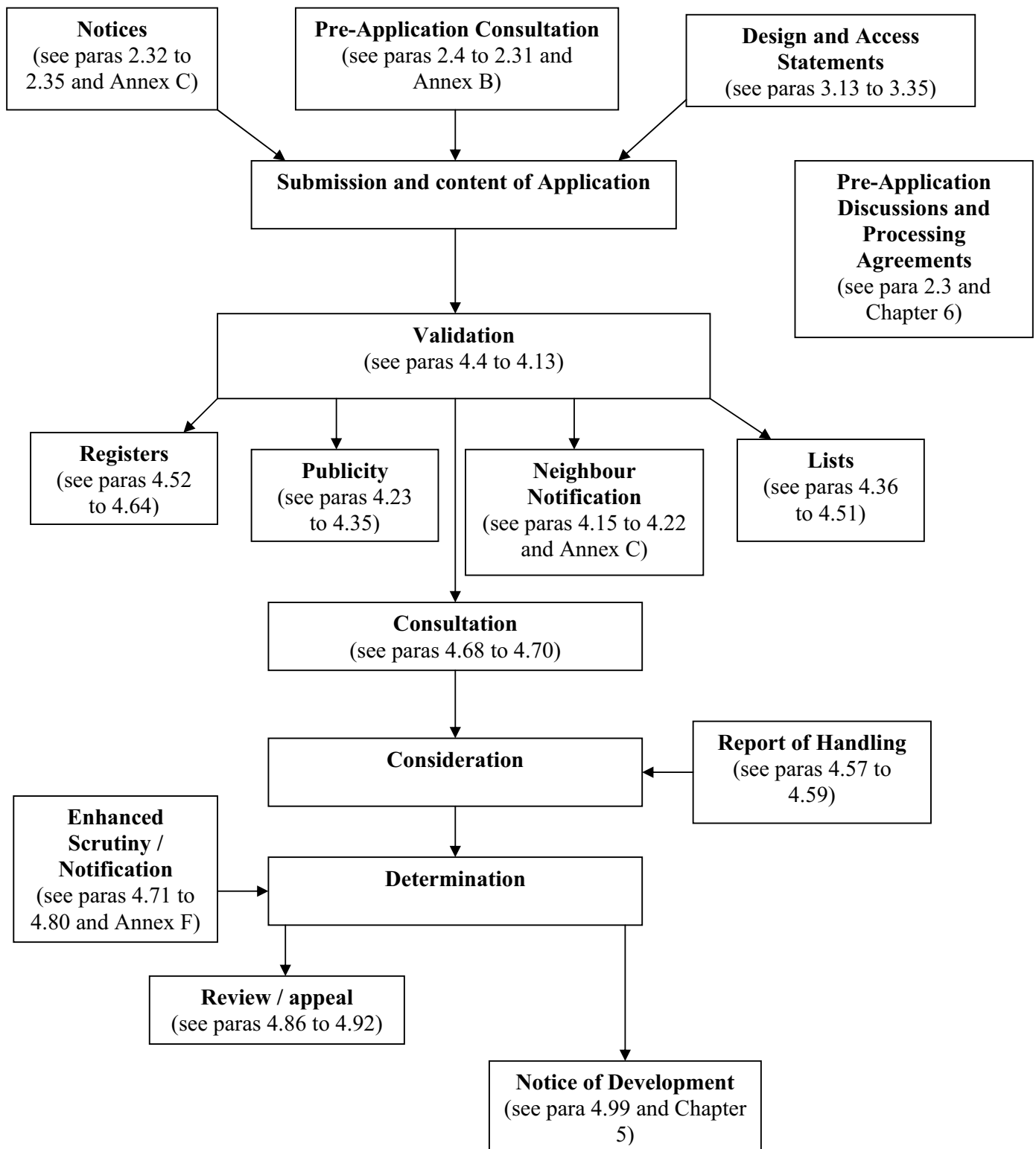
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INTERPRETATION

"the 1997 Act"	the Town and Country Planning (Scotland) Act 1997 as amended by the 2006 Act
"the 2006 Act"	the Planning etc. (Scotland) Act 2006
"the 1973 Act"	the Local Government (Scotland) Act 1973
"the DMR"	the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008
"EIA"	environmental impact assessment under the "EIA Regulations"
"EIA Regulations"	the Environmental Impact Assessment (Scotland) Regulations 1999 (as amended)
"Fees Regulations"	the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (as amended)
"the hierarchy"	the hierarchy of national, major and local developments. The NPF specifies national developments, the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 specify major developments and anything not specified in either of these is a local development
"the NPF"	The National Planning Framework 2
"PAC"	Pre-application consultation with communities under section 35A(1)
"regulation"	unless otherwise stated, means a regulation in the DMR
"regulation 9 to 12"	this phrase is used throughout the circular to denote an application for planning permission (regulation 9), planning permission in principle (regulation 10), further applications (regulation 11) or for approval of matters specified in conditions (regulation 12).
"section"	unless otherwise stated, means a section of the 1997 Act as amended by the 2006 Act
"schedule"	unless otherwise stated, means a schedule to the DMR



1. INTRODUCTION

- 1.1 This circular describes the new requirements for processing planning applications covered by the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2008 (SSI 2008/432) and the relevant provisions of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. As well as giving an overview of the new development management system, the circular will help planning authorities, applicants, communities and others to understand how the new legislation works.
- 1.2 This circular mainly deals with new application procedures in force from 3 August 2009. The procedures around pre-application consultation with communities have been in force since 6 April 2009 **insofar as they relate to applications to be made on or after 3 August**. It also provides guidance on the provisions of the Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 and on aspects of the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 and the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009. These 3 further instruments are, at the time of writing, before the Parliament for their consideration. Unless the Parliament rejects these particular instruments, they will come into force on 3 August.
- 1.3 Changes to development management are intended to ensure that procedures for applying for planning permission are fit for purpose and responsive to different types of development proposal; that they improve efficiency in developing and determining applications and enhance community involvement at the appropriate points in the planning process. Development Management must operate in support of the Government's central purpose – increased sustainable economic growth. This means providing greater certainty and speed of decision making as a means of creating good quality sustainable places.
- 1.4 The circular follows the various stages of processing: the pre-application phase; content of applications; validation and acknowledgement; processing by the authority; decision and post-application requirements. A schematic representation of the various stages of the planning process linked to the sections of the circular is also included.
- 1.5 The circular also links to the provisions governing the new planning hierarchy as well as legislation for appeals and local reviews. These mechanisms are all explained in more detail in separate circulars, available at <http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications>.



Pre-application Phase

- 1.6 The circular promotes early and open negotiations between prospective applicants and developers, planning authorities and other parties, such as consultees, in advance of the formal application for national and major developments. This section also sets out the new requirements for statutory pre-application consultation with communities for national and major developments.

Making a Planning Application

- 1.7 This section relates to applications for planning permission, planning permission in principle, approval of matters specified in conditions (related to planning permission in principle) and the streamlined requirements for applications relating to a development that had previously been granted planning permission ("further applications"). Commentary is included on the content of applications such as new requirements for pre-application consultation reports and design or design and access statements, which accompany applications for certain development.

Processing Applications

- 1.8 The circular explains requirements for: putting applications on the register, the list of extant applications (a new requirement) and weekly lists, carrying out neighbour notification (the responsibility of the planning authority from 3 August 2009) and any advertising which may be required.
- 1.9 The circular also discusses the new requirements for pre-determination hearings and decision by full council which apply to applications for either major developments which are significantly contrary to the development plan or to national developments.
- 1.10 There are new requirements for Reports of Handling for all applications for planning permission or planning permission in principle, except where the application is to be determined under local review as reviews have their own distinct informational requirements.
- 1.11 New requirements in relation to information on decision notices are also set out.

Post application Processes

1.12 The circular explains the requirements on notices of initiation of development, notices of completion of development and on-site notices and covers the information which is required to be submitted, or displayed, in the notice and, in the case of on-site notices, the classes of developments for which a notice has to be displayed.

Processing Agreements

1.13 Whilst not a statutory requirement, the circular provides guidance on the preparation, form and content of processing agreements.



2. PRE-APPLICATION PHASE

BACKGROUND

- 2.1 The Government is seeking to encourage improved trust and more open, positive working relationships from the earliest stages in the planning process and to provide, where possible, an early opportunity for community views to be reflected. New statutory requirements have been introduced to ensure that communities are made aware of, and have an opportunity to comment on, certain types of development proposals before a planning application has been made. The regulations, described below, require that the planning applications in such cases must include a report of that pre-application consultation between applicants and communities.
- 2.2 Both pre-application consultation with the community and pre-application discussions with the planning authority are intended to add value at the start of the development management process by improving the quality of the proposal and allowing applicants the opportunity to amend their emerging proposals to accommodate community opinion. This will ensure that all parties are clear on the process that leads to the decision.

PRE-APPLICATION DISCUSSIONS AND PROCESSING AGREEMENTS

- 2.3 The Government wants to encourage the use of processing agreements with planning applications for national and major developments as set out in the hierarchy (see interpretation section above) to provide greater clarity about the timescales and processes that will take place before a determination is made on these proposals. A processing agreement (see Chapter 6 for more information) is essentially a framework for project managing a complex planning application. The pre-application stage will be the most appropriate point to conclude the terms of a processing agreement. Supporting that should be constructive pre-application **discussions** between planning authorities, developers, agencies and other bodies who will have to be consulted on any subsequent planning application. Such discussions are a separate activity from statutory pre-application **consultation** with communities, although they can inform the planning and scope of the statutory consultation activity. Such consultation may also support the preparation of the statutory design and access statement.

PRE-APPLICATION CONSULTATION (PAC) BETWEEN PROSPECTIVE APPLICANTS AND COMMUNITIES

(Sections 35A, 35B, 35C and 39 and regulations 4 – 7)

- 2.4 The objective is for communities to be better informed about major and national development proposals and to have an opportunity to contribute their views before a formal planning application is submitted to the planning authority. The purposes of PAC are to improve the quality of planning applications, mitigate negative impacts where possible, address misunderstandings, and air and deal with any community issues that can be tackled. The proposals, if adjusted, should benefit from that engagement and assist the efficient consideration of applications once submitted.
- 2.5 PAC is an additional measure and does not take away the right of individuals and communities to express formal views during the planning application process itself. Nor does it remove the need for people who wish their views to be considered by the planning authority to make formal representations on applications. This should be emphasised by the prospective applicant during PAC. The prospective applicant is under no obligation to take onboard community views, or directly reflect them in any subsequent application. It is important for communities and others to follow their interest in a proposal through to the planning application stage, which provides the statutory opportunity for individuals to make representations on proposals before the planning authority.

Classes of development and screening

(Section 35A and regulations 4 and 5)

- 2.6 All applications for planning permission or for planning permission in principle under regulations 9 to 11 for national and for major developments require PAC between developers and communities. Applications for such developments will need to demonstrate compliance with the legislative requirements for PAC. The NPF and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/51) provide clarity about the range of development to be treated as national or major respectively.
- 2.7 A screening process is available whereby prospective applicants can seek the planning authority's view whether their proposal is a national development or a major development and therefore requires PAC. Further information on the screening process can be found in Annex B.



Proposal of Application Notice

(Section 35B and regulation 6)

- 2.8 Where PAC is required, the prospective applicant must provide to the planning authority a 'proposal of application notice' at least 12 weeks prior to the submission of an application for planning permission. That notice must include the following information:
- i) a description in general terms of the development to be carried out;
 - ii) if the site at which the development is to be carried out has a postal address, that address;
 - iii) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
 - iv) detail as to how the prospective applicant may be contacted and corresponded with; and
 - v) an account of what consultation the prospective applicant proposes to undertake (including steps in addition to the statutory minimum), when such consultation is to take place, with whom and what form it will take.
- 2.9 Element v) will assist the planning authority in responding to the proposal of application notice with any additional notification and consultation requirements (see paragraphs 2.12 to 2.18).
- 2.10 The 'description in general terms' should relate to the purpose of a proposal of application notice – an outline of the proposal's characteristics, and the identification of its category (e.g. major development). While there is scope for proposals to alter between PAC and an application being submitted, any subsequent application needs to be recognisably linked to what was described in the proposal of application notice; both prospective applicants and planning authorities need to be aware of potentially creating a situation where a very detailed or narrow descriptive content in the proposal of application notice mean that relatively minor changes could trigger the need to repeat PAC.
- 2.11 The submission of the proposal of application notice starts the PAC processing clock. After a minimum of 12 weeks, having carried out the statutory requirements, and any additional requirements specified by the planning authority, an applicant can submit the application along with the required written PAC report. Information in relation to the proposal of application notice must be placed on the list of applications (see paragraphs 4.36 – 4.51). There is no specified statutory maximum period between carrying out PAC and submitting the related planning application.

Additional consultation activity

(Section 35B and regulation 6)

- 2.12 The prospective applicant is required to indicate in the proposal of application notice what consultation, if any, they will undertake in addition to the statutory minimum. The planning authority must respond within 21 days specifying any additional notification and consultation they wish to see undertaken (including that indicated by the prospective applicant) beyond the statutory minimum, in order to make it binding on the prospective applicant. If there is no response to the proposal of application notice by the planning authority within 21 days, only the statutory minimum activities will be required.
- 2.13 The planning authority may, within 21 days of receiving the proposal of application notice, notify the prospective applicant of any other persons it considers must also receive a copy of the proposal of application notice and of any other consultation that must be undertaken, including the form of that consultation. In doing so, planning authorities are to have regard to the nature, extent and location of the proposed development and to the likely effects, both at and in the vicinity of that location, of its being carried out.
- 2.14 Additional consultation requirements should be proportionate, specific and reasonable in the circumstances. Further advice on planning community engagement activity can be found in the Planning Advice Note 81: *Community Engagement – Planning With People*.
- 2.15 Scottish Ministers expect planning authorities to develop and maintain up to date lists of bodies and interests with whom prospective applicants should consult in particular types of case. These lists should be available to prospective applicants, who can draft proposal of application notices in light of that information. They should draw from those resources as appropriate to the particular proposal and its potential impacts in setting additional requirements, and not simply send the same list of consultees in response to each and every proposal of application notice.
- 2.16 Prospective applicants should have a meaningful, proportionate engagement with those who can represent affected communities' views, guided by PAN 81 on community engagement, the National Standards for Community Engagement or other locally agreed or adapted framework or set of principles.
- 2.17 A number of tools (including those mentioned in paragraph 2.16 above) are available which provide a sound basis for prospective applicants and planning authorities to assess and respond to the need for any additional consultation requirements, as appropriate.



2.18 In responding to a proposal of application notice, and given their powers to require additional consultation, planning authorities should be as clear as they can as to their expectations of matters to be included in the PAC report. In this way, the prospective applicant will more readily be able to show that the required steps have been undertaken.

Minimum consultation activity

(Regulation 7)

Consultation with community councils

2.19 The prospective applicant must consult every community council any part of whose area is within or adjoins the land where the proposed development is situated. This includes community councils in a neighbouring planning authority. The prospective applicant must also serve on the relevant community councils the proposal of application notice.

2.20 Each local authority has at least one Community Council Liaison Officer who should be able to provide contact details for Chairs and Secretaries of community councils. Neighbouring authorities should be able to assist when adjoining community councils are beyond the boundary of the planning authority in whose area the proposal is located.

The public event

2.21 The prospective applicant is also required to hold at least one public event for members of the public where they can make comments to the prospective applicant on the proposals. This 'public event' must be advertised at least 7 days in advance in a newspaper circulating in the locality of the proposed development to enable members of community councils, representative groups and other members of the public to arrange to attend the event.

2.22 The notice for the public event must include:

- a description of, and the location of, the proposed development;
- details as to where further information may be obtained concerning the proposed development;
- the date and place of the public event;
- a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so; and

- a statement that comments made to the prospective applicant are not *representations* to the planning authority. If the prospective applicant submits an application there will be an opportunity to make *representations* on that application to the planning authority.
- 2.23 Prospective applicants will gain less from poorly attended or unrepresentative PAC events. For this reason, applicants should ensure that processes are put in place that will allow members of the community to participate meaningfully in any public event. It is not the intention that planning authorities will routinely have a direct role in PAC activities beyond their statutory roles in screening, responding to proposal of application notices and considering PAC reports when validating applications.
- 2.24 The public event should be reasonably accessible to the public at large, including disabled people. It may be appropriate for “the” public event to take place over a number of dates, times and places. Prospective applicants should ensure that individuals and community groups can submit written comments in response to the newspaper advertisement.
- 2.25 There is a need to emphasise to communities that the plans presented to them for a proposed planning application may alter in some way before the final proposal is submitted as a planning application to the planning authority. Even after PAC, and once a planning application has been submitted to the planning authority, communities should ensure that any representations they wish to make on the proposal are submitted to that authority as part of the process of considering the planning application.

Pre-application consultation (PAC) reports

(Sections 35C and 39 and regulation 3)

Content

- 2.26 The applicant must prepare a report as to what has been done during the pre-application phase to comply with the statutory requirements for PAC and any requirements set out in the planning authority's response to the proposal of application notice. The report is to be made in writing (which may include being in electronic format).
- 2.27 The legislation does not specify the content of the report beyond that it should set out what had been done to effect compliance with the aforementioned requirements. However, we would suggest as a minimum that the report should:



- specify who has been consulted;
- set out what steps were taken to comply with the statutory requirements and those of the planning authority;
- set out how the applicant has responded to the comments made, including whether and the extent to which the proposals have changed as a result of PAC;
- provide appropriate evidence that the various prescribed steps have been undertaken – e.g. copies of advertisements of the public events and reference to material made available at such events; and
- demonstrate that steps were taken to explain the nature of PAC i.e. that it does not replace the application process whereby representations can be made to the planning authority.

2.28 Planning authorities must decline to determine an application where PAC requirements apply and, in their view, compliance with these requirements has not been demonstrated. Before coming to such a view the planning authority may seek additional information from the applicant. Where in this case, planning authorities decline to determine the application they are to advise the applicant of their reasons. The requirement to decline to determine may not apply where a screening statement has been issued by the planning authority saying PAC is not required (see paragraph 2.7 and Annex B).

2.29 The report must accompany an application for planning permission, planning permission in principle or further application under regulations 9 to 11, and the authority will be required to include it on Part I of the planning register along with the application, plans and drawings.

Role of PAC Reports

2.30 The purpose of the PAC report is to confirm that PAC has taken place in line with statutory minimum requirements and any further requirements set by the authority in its response to the proposal of application notice.

2.31 In terms of considering any subsequent application, the report is not likely to have a significant role, unless it identifies issues or contains information which could be considered a material consideration in terms of the 1997 Act and to which the planning authority should give weight in determining the application. Further information on what may be a material consideration is set out in Annex A to this circular.

NOTICES TO OWNERS AND AGRICULTURAL TENANTS

(Section 35, regulation 15 and schedule 1)

- 2.32 Prior to applying for planning permission or planning permission in principle under regulations 9 to 11, applicants should notify all persons who (other than themselves), were the owners of any of the land to which the application relates, or were agricultural tenants at the beginning of the prescribed period (in effect 21 days ending with the date on which the application was submitted). See Annex C for applications involving the working and winning of underground minerals.
- 2.33 Notices to owners and agricultural tenants should be in the Form set out in schedule 1 and must include the name of the applicant, the address or location and a description of the proposed development and the name and address of the planning authority which will determine the application.
- 2.34 The applicant must also submit a certificate with the planning application certifying whether there are any other owners or agricultural tenants and if so which of these have been notified of the proposed development. The certificate must state:
- a) whether or not the land or part of the land to which the application relates constitutes or forms part of agricultural land;
- and either:
- b) 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;
 - c) 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
 - d) that the applicant is unable to give notice to every such person (i.e. where there are other owners and/ or agricultural tenants, he is unable to notify any or all of these people) .
- 2.35 A certificate issued under c) or d) above must set out the name of every person to whom notice was given and the address at and date on which the notice was given. Where d) applies the applicant must certify that he has taken reasonable specified steps to ascertain the names and addresses of those to whom he has been unable to give notice. In this situation, the planning authority will be required to publish the notification in a local newspaper once an application has been received.



3 MAKING A PLANNING APPLICATION

CONTENT OF PLANNING APPLICATIONS

General

(Regulations 9 – 12)

- 3.1 Until a standard national planning application form is introduced, planning authorities should continue to produce their own forms for applications or applicants can use an e-form (or its paper equivalent) produced by the Scottish Government. The regulations contain the minimum requirements for an application and accompanying documentation (in this section of the circular termed “the application”), the receipt of which starts the period for determination. Planning authorities should ensure that their forms contain the minimum requirements set out in regulations.
- 3.2 Planning authorities should consider producing guidance on the information required to meet the statutory minimum. Where information is provided in accordance with the minimum statutory requirements, the application should be registered as valid. Additional information might be required in order to determine an application for development in certain circumstances but requests for such additional information should not delay the process of validation and registration.
- 3.3 Applicants are encouraged to think beyond the statutory minimum requirements for an application, and try to anticipate, in discussion with the planning authority, what additional information might be needed to support efficient processing of the application (see paragraph 2.3).

Applications for planning permission

(Regulation 9)

- 3.4 The required content of an application for planning permission is as follows:
 - (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;
 - (c) the name and address of the applicant and, where there is an agent, the name and address of that agent.

- (d) 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;
- (e) such other plans and drawings as are necessary to describe the development;
- (f) one or other of the certificates required under regulation 15 in relation to owners and agricultural tenants;
- (g) where the application relates to a national development or a major development, a written pre application consultation report;
- (h) where the application relates to an installation of an antenna to be employed in an electronic communication network, an ICNIRP¹ declaration;
- (i) a design statement or a design and access statement where required by regulation 13; and
- (j) any fee payable under the Fees Regulations.

Plans and Drawings

3.5 The plans and drawings submitted must accurately describe the proposals and tie in with the written description of the development. Annex D describes the main types of plan that are commonly submitted. Not every plan described there will be required in every case.

Applications for planning permission in principle

(Regulation 10)

3.6 The differences between the requirements for the content of applications and accompanying documents for planning permission in principle and those for detailed planning permission relate to the following:

- no requirement for plans and drawings other than a location plan;
- no requirement for a design or design and access statement to be prepared;
- a requirement to describe the location of the access points to the development from a road where this is not otherwise detailed in the application and accompanying documents.

¹ International Commission on Non-Ionising Radiation Protection



- 3.7 It is for the applicant to decide what level of detail they wish to provide. However, it is open to planning authorities to require additional information using regulation 24 (Further Information) where necessary to determine the application. While planning permission in principle is to establish the acceptability of a proposal in principle without having to develop the detailed proposals, applicants should discuss with planning authorities any additional information that is likely to be required. This may relate to matters such as design or access, traffic assessment or the requirements of other legislation, such as the EIA Regulations.

Further applications

(Regulation 11)

- 3.8 Where an application is made before the duration of a planning permission expires for the same development or to change conditions associated with the existing permission, then only certain of the requirements on content of applications need apply.
- 3.9 A further application for planning permission or planning permission in principle must include:
- 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;
 - a certificate regarding the ownership of the proposal site and any agricultural tenants and the notification of these parties about the application;
 - where the application relates to national development or major development, a pre-application consultation report;
 - any fee payable under the Fees Regulations; and
 - where the application relates to the relaxation of conditions attached to a previous permission, under section 42², a statement to that effect.
- 3.10 The application must be in writing (which can include electronic format) and must give enough information to allow the planning authority to identify the previous grant of permission.

² Section 42 of the 1997 Act allows for applications for planning permission without complying with the conditions attached to a previous planning permission.

Applications for approval of matters specified in conditions

(Regulation 12)

3.11 These applications relate to conditions attached to planning permission in principle requiring the further approval, consent or agreement of the planning authority for any detailed aspect of the development. All such conditions will require to be the subject of such a formal application. However, there is no statutory limit on the number of such conditions which can be addressed in any one application. Neighbour notification and advertising where neighbour notification has not been carried out will continue to apply.

3.12 An application in this regard must:

- be in writing (which can include electronic application – planning authorities may have a form for such applications);
- identify the planning permission in principle to which it relates;
- contain a description of the matter(s) to which it relates;
- contain the name and address of the applicant and any agent acting on behalf of the applicant;
- be accompanied by plans and drawings sufficient to describe the matter of the application where it involves the alteration or construction of buildings, other structures, roads or landscaping;
- the appropriate fee payable under the Fees Regulations.

DESIGN AND ACCESS STATEMENTS

(Regulation 13)

3.13 All applicants, together with developers, architects, designers and agents, should consider design as an integral part of the development process. Ministers recognise the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. In addition to their duties as public bodies under disability discrimination legislation, the Scottish Ministers and planning authorities must perform their functions under the 1997 Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements. Planning's important role in the delivery of inclusive environments is emphasised in the policy statement *Designing Places* and related advice in the design series of Planning Advice Notes.



- 3.14 Certain applications for planning permission are required to be accompanied by a statement explaining: the design principles and concepts that have been applied; and how issues relating to access for disabled people to the development have been dealt with.
- 3.15 The main aim of the statement is to inform the planning decision-making process. Statements should ensure development proposals are based on a carefully considered design process and where required, a sustainable approach to access. They should allow the applicant to explain and justify their proposals and help all those assessing the application (including elected members and communities) to understand the design rationale that underpins them.

Applications requiring design or design and access statements

- 3.16 Applications for planning permission for national and for major developments require **design and access statements**.
- 3.17 Applications for planning permission for local development 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.

will require a **design statement** unless the development comprises the alteration or extension of an existing building.

- 3.18 A design and access statement or design statement is **not** required for the following categories:
- (a) an application for planning permission for development of land without complying with conditions subject to which a previous planning permission was granted (see the paragraphs on Further Applications above)
 - (b) an application for planning permission for–
 - (i) engineering or mining operations;

(ii) development of an existing dwelling-house, or development within the curtilage of such a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such; or

(iii) a material change in the use of land or buildings, or

(c) an application for planning permission in principle³.

3.19 Applications for marine fish farming development will only be required to be accompanied by a design statement where such applications involve development which is a local development in either a World Heritage Site, National Scenic Area or the site of a scheduled monument or which is a major development.

3.20 Applications for planning permission in principle do not need to be accompanied by a statement. In these circumstances, it will be for planning authorities to consider what, if any additional information is required to enable them to consider the application and to request further information.

Preparation of statements

3.21 In preparing any statement, applicants and their agents, developers, architects, designers and planning authorities should consider where appropriate the advice contained in Planning Advice Note 68: *Design Statements*.

3.22 A design statement is a written statement about the design principles and concepts that have been applied to the development and which–

(i) 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.

(ii) 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.

(iii) 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.

3.23 Advice on the preparation of design statements is contained in PAN 68 and can assist in the preparation of the statement.

³ Amendment introduced by regulation 7 of the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009



- 3.24 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.
- 3.25 The statement must: *Explain the policy or approach adopted as to access and 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.* This should explain how the applicant's policy / approach adopted in relation to access fits into the design process. The statement should also reflect on any development plan policies relating to access issues.
- 3.26 Developers should consider setting out in the statement how access arrangements make provision both to and through the site to ensure users have equal and convenient access. Where Scottish Government policy relates to access, such as, for example, the number of parking spaces for disabled people, this may be referenced in the statement.
- 3.27 It is not intended that the statement extends to the consideration of internal aspects of individual buildings. This is a matter better considered under building standards legislation. However, the location and design of doors and windows, etc. will depend on an understanding of the internal layout of a building and may therefore be reflected in the statement.
- 3.28 The statement must: *Describe how features which ensure access to the development for disabled people will be maintained.* The publication *Designing Places* notes that the arrangements for long-term management and maintenance are as important as the actual design. Therefore, issues regarding maintenance will help inform the planning authority in coming to a view on how best, possibly through agreements or conditions, such features are to be maintained in the long-term.
- 3.29 The statement must: *State 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* (see paragraphs 3.30 – 3.31 below).

Consultation

- 3.30 There is no statutory requirement to undertake formal consultation as a part of the preparation of the statement. Where consultation has been undertaken, this must be included in the statement with an indication of how this has influenced the final proposal. The statement should indicate with whom consultation was undertaken

– e.g. community groups, user groups or statutory consultees. PAN 78: *Inclusive Design* recognises that access panels are a useful source to consult on design, as they are able to give advice based on personal experience and local knowledge. A list of access panels is available from the website of the Scottish Disability Equality Forum (www.sdef.org.uk).

- 3.31 PAC on national and major developments may also provide an opportunity to inform the design and access statement with the views of the community.

Presentation of information

- 3.32 Whilst required to be in writing, a statement can be presented in various formats. It can be on one or two pages, in a small booklet, an A4 or A3 document, a fold-out sheet, a display board or a CD ROM. Within the parameters set by the 1997 Act and the DMR, it will be for the applicant to consider the most effective form of presentation. However, where both design and access are being considered then the statement should, where possible, be a single document. The precise form of a statement and the level of detail it contains will vary according to the size, nature and complexity of the proposed development. PAN 68 provides further advice.

Advice and guidance on access

- 3.33 The general principles set out in PAN 68 for the preparation of a design statement should be considered when a design and access statement is being prepared. Some guidance and advice is available within Scottish Government planning documents on how these issues should be addressed.
- 3.34 As the advice and guidance contained in these documents may be material considerations, developers, architects and designers should refer to these as appropriate.

Considering the content of the statement

- 3.35 The design of a proposed development and its relationship to its surroundings may be a material consideration. Where a design or design and access statement is required, the information within the statement may be material and in such cases must be taken into account by the planning authority when considering the proposed development.



4. PROCESSING PLANNING APPLICATIONS

SCHEMES OF DELEGATION

(Section 43A)

- 4.1 New requirements are introduced under section 43A of the 1997 Act to have schemes delegating to an “appointed officer” the determination of applications for planning permission for local developments or any application for consent, agreement or approval imposed on a grant of planning permission for a local development. Powers to delegate decision making to committees or officers under the 1973 Act remain, though delegation to an officer of decision making on applications relating to local developments can only be done in accordance with a scheme of delegations made under section 43A of the 1997 Act. New statutory requirements for pre-determination hearings and referral to full council will in future limit delegation to officials in certain cases (see para 4.72).
- 4.2 These new schemes of delegation under section 43A link the decision on an application to a review by the planning authority rather than an appeal to Scottish Ministers. In future, where a decision has been or is to be taken by an “appointed officer” instead of by the planning authority under a new section 43A scheme of delegation or in cases where the applicant wishes to challenge the failure to determine an application which falls within the scope of the planning authority’s adopted section 43A scheme of delegation, the route to challenge is to the local review body.
- 4.3 The procedures for adopting new schemes of delegation and for carrying out local reviews are set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (SSI 2008/433) and its accompanying circular (7/2009).

VALIDATION AND ACKNOWLEDGEMENT OF APPLICATIONS

(Regulations 9 - 12, 14 and 17)

- 4.4 It is for the planning authority to check whether the application meets the requirements of regulations 9, 10, 11 or 12 as appropriate. The administrative checking of applications in this regard should be carried out as soon as possible but certainly within 5 working days of receiving the application. Since neighbour notification will follow the validation process, it is important that there is the minimum possible delay to completion of the administrative processes supporting registration of planning applications.

- 4.5 With reference to the PAC report and the design statement or design and access statement which will be required to accompany some applications, the crux for the purposes of validation is whether they meet the statutory requirements on form and content.
- 4.6 With design statements and design and access statements, the quality of the information submitted in order to meet the statutory requirements is to be addressed when considering the application rather than as part of the validation process.
- 4.7 With PAC reports, the process of validation is not about whether the applicant might have done more to respond to any comments made. Similarly, qualitative judgements on how a public event was run are not issues for validation unless the planning authority concludes that events were so ineffectual that the applicant has failed to carry out the required step or steps (see Annex E on declining to determine applications).
- 4.8 The validation date from which the time period for determination runs is the date when the final piece of information required by Regulation 9,10, 11 or 12 as appropriate has been received.
- 4.9 The planning authority is required to acknowledge receipt of the application once the final piece of information is received. That acknowledgement must:
- include an explanation of the timescales within which the planning authority is to give notice to the applicant of its decision on the application; and
 - inform the applicant of their rights to appeal to the Scottish Ministers or to require a local review of the planning authority's decision or failure to make a decision.
- (see the section on Time Periods for Determination paragraphs 4.81 – 4.85 below)
- 4.10 This acknowledgement should also include the date of receipt of the last item of information specified. This is required so the applicant is clear about when decisions should be issued or when appeals can be made or local reviews sought on the grounds of non-determination.
- 4.11 Where an initial application does not contain sufficient information to meet validation requirements the planning authority is required to notify the applicant of the information that is necessary to validate the application. Once that information is received, then an acknowledgement must be sent.



4.12 In acknowledging receipt of applications or requesting missing information it is also open to authorities at the same time to request any information beyond the statutory minimum which is required to determine the application. However, it should be clearly stated what information is required to comply with validation requirements and what is additional information required to determine the application.

4.13 Planning authorities are not obliged to process applications where there is a failure on the part of the applicant to comply with the requirements on content in regulations 9 to 12 and in such circumstances the time period for determining the application will not start.

DECLINING TO DETERMINE APPLICATIONS

(Section 39)

4.14 Section 39 sets out the circumstances in which planning authorities may and, in some cases, must decline to determine an application, even where the information required by regulations 9 to 12 has been submitted. There is no specific time limit as to when these powers can be exercised. However, the expectation would be that their use would be considered upon receipt of an application. See Annex E for further details.

NEIGHBOUR NOTIFICATION AND PUBLICITY

(Regulation 18)

4.15 Planning authorities are required to notify those with an interest in "neighbouring land" of a planning application. Neighbour notification requirements only apply to applications for planning permission, planning permission in principle and applications for approval of matters specified in conditions attached to planning permission in principle. The term "neighbouring land" is defined in regulation 2⁴ as:

"an area or plot of land which, or part of which, is conterminous with or within 20 metres of the boundary of the land for which the development is proposed."

4.16 The boundary of the land for which development is proposed falls to be determined in the circumstances of the case, but need not be the property boundary. For example, in the case of farms or estates where a building is being erected in one part of the farm or estate it is not the whole farm or estate that is being developed so it would not make sense to use the boundary of said farm or estate as the boundary of the land for which development is proposed. In the case of a specific

⁴ Amendment to the definition of neighbouring land introduced by regulation 7 of the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009

site for the purposes of a supermarket, industrial or business premises, then the boundary of that specific site will normally be the boundary of the land for which development is proposed. With most private houses in urban areas for example it will probably be the property boundary. In practice this boundary will normally be the red line on the application location plans.

- 4.17 With regard to the actual neighbouring land, the premises on neighbouring land to which neighbour notification should be sent do not have to be within 20 metres of the boundary of the land for which development is proposed. Such premises can be elsewhere on the area or plot of land which, or part of which, is conterminous or within 20 metres of said boundary. In using the term "area or plot", the aim is to identify this as some discrete piece of land. Where such neighbouring land consists of open fields or open countryside or a forest with no obvious premises on it, then an advert would be necessary.
- 4.18 Planning authorities should carry out neighbour notification land as soon as possible after the application has been validated. This is to ensure that, given the minimum period of 21 days within which individuals can make representations, the planning authority can determine applications with the minimum of delay.
- 4.19 A single notice must be sent to the "Owner, Lessee or Occupier" at the address of the neighbouring land. Under regulation 18(2)(b), where there are no premises on the neighbouring land to which the notification can be sent, the planning authority must place a notice in a local newspaper (see paragraphs 4.23 – 4.29 below). Relevant planning authorities are also required to give notice of applications to the Cairngorm National Park Authority where the proposed development is in the area of the Park Authority.
- 4.20 The notices sent to neighbours must include the following information :
- the date of the notice [Notices should be dated and sent on the same date where possible];
 - the name of the applicant and the name and address of any agent;
 - the planning authority reference number for the application;
 - description of the development;
 - the postal address of the site or, in the absence of such an address, a description of the location of the land;
 - how the application, plans, drawings and other related documents can be inspected;



- where and by when (at least 21 days after the date the notice is sent) representations can be made;
- location plan showing position of the proposed development in relation to neighbouring land;
- statement of where more information can be obtained on planning application procedures;
- in relation to applications which require PAC a statement that despite the fact 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.

4.21 On the last point, the requirement in regulation 18(3)(j) is to make clear that comments made to developers in the pre-application stage are not representations to the planning authority.

Notification of minerals applications

4.22 See Annex C for issues relating to the notification of minerals applications.

Publication of an application by the planning authority

(Regulation 20 and schedule 4)

4.23 A notice must be published in a local newspaper in the form set out in schedule 4 where:

- it is not possible for the authority to carry out neighbour notification on an application under regulations 9 to 12 because there are no premises to which the notification can be sent;
- in relation to an application for planning permission or planning permission in principle (regulations 9 to 11), an applicant has certified under regulation 15 that it has not been possible to notify all owners and agricultural tenants of the proposed development;
- the application is made under regulations 9 to 11 and relates to a class of development specified in Schedule 3; or
- the application is made under regulations 9 to 11 and is for development which is contrary to the development plan.

- 4.24 Where a proposed development is found to relate to more than one of the categories listed above, the planning authority is not required to publish a further notice. Similarly where an application is advertised under 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 and listed buildings), there is no need to advertise under regulation 20 of the DMR.
- 4.25 As specified in Schedule 4, the published notice must provide a description of the location and nature of the proposed development and information on how representations may be made to the planning authority.
- 4.26 As with notices to neighbours, where applications have been subject to PAC requirements, advertisements must also explain clearly that, despite any comments made to prospective applicants during PAC, any formal representations on the application should be made directly to the planning authority within the prescribed time period.
- 4.27 Published notices must also include a date by which representations should be made to the planning authority. This date or period should be not less than 14 days from the date on which the notice was published.
- 4.28 In order to determine planning applications within the prescribed 2 or 4 months from the validation date, planning authorities should arrange for notices to be published as soon as possible, and certainly within 14 days of the validation date.
- 4.29 Published notices should be clear, concise and fit for purpose.

General issues regarding publicity

- 4.30 To avoid confusion, it may be helpful to align the dates for representations to be made in response to published notices and those sent to identified neighbours. However, the aligned date should not be before the prescribed minimum periods of 14 days (advertisements) and 21 days (neighbour notification) for making representations.
- 4.31 In acknowledging representations, planning authorities should make people aware of their policy in relation to the publication of comments.
- 4.32 Where possible, notices to identified neighbours should be hand delivered or sent by first class post, since the use of second class mail could result in recipients having a significantly reduced period within which to make representations.



4.33 Planning authorities should keep a record of details of the neighbour notification, advertising and posting of site notices carried out in relation to applications. This is for the purposes of transparency and to assist in any further notification, e.g. where an environmental statement is subsequently submitted under the EIA Regulations or to assist the Local Review Body in identifying whether it had to undertake any of these requirements.

Recovering costs of publicising applications

4.34 The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 provide for the recovery from the applicant of costs of publicising planning applications required by regulation 20. The regulations allow that the cost of publication of a notice can be divided among the applications to which the notice relates.

4.35 The planning authority must write (electronic communication is allowed where the applicant has agreed to such communication) to the applicant advising them of the costs and the regulations require the applicant to pay within 21 days. Under the 1997 Act, the planning authority cannot determine the application until these costs have been recovered from the applicant.

LISTS OF APPLICATIONS

(Section 36A and regulations 21 - 23)

4.36 The DMR retains the requirements for planning authorities to retain a Register and to prepare weekly lists. However, planning authorities will be additionally required to provide a list of extant applications which is to be accessible to the public.

List of extant applications

(Regulation 21 and 22)

4.37 Regulations set out that the list of applications to be kept by the planning authority is to be kept in two sections. The first section is for:

- applications for planning permission and planning permission in principle;
- applications for such permission made to the Scottish Ministers under section 242A (urgent Crown development) of the 1997 Act for development in the planning authority's area; and
- applications for approval of matters specified in conditions attached to a planning permission in principle.

4.38 The information to be kept on this section of the list 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 agent (if any);
- (d) a description of the proposed development ; and
- (e) the date of expiry of the period allowed for representations in any neighbour notification or publication of the application.

4.39 In addition to (a) to (e) above:

- in relation to applications for approval of matters specified in conditions, a description of the matter in respect of which the application is made.
- in relation to applications made to the Scottish Ministers for urgent Crown development, an identification of the application as one made to Scottish Ministers and a statement that representations may be made to the Scottish Ministers and where any such representations should be sent.

4.40 The second section relates to proposal of application notices received by the planning authority in relation to requirements for PAC. This section is to include the information specified in paragraphs (a), (b) and (d) above and–

- details as to how the prospective applicant may be contacted and corresponded with;
- the earliest date on which an application for planning permission in respect of the development may be submitted to the planning authority (minimum of 12 weeks from submission of the notice); and
- where the planning authority give notice to the prospective applicant about additional pre-application consultation, a specification of any additional persons to whom a proposal of application notice is to be given and any additional consultation to be undertaken.

4.41 The Regulations only require the list to set out the authority's requirements which go beyond the statutory minimum. However, the planning authority may wish also to consider providing information on the statutorily required public event, should such information be available.



- 4.42 Where the Scottish Ministers have notified an application for urgent Crown development under section 242A to the planning authority, the date referred to at (e) in paragraph 4.38 will be provided by Ministers.
- 4.43 The list shall also contain a statement as to how further information in relation to an application may be obtained from the planning authority. The list is required to be updated on a weekly basis to remove determined applications and proposal of application notices that are no longer current, i.e. an application is submitted, the prospective applicant indicates no application will be made or 12 months has elapsed since notice was given.
- 4.44 Planning authorities are to make the list of applications available on the internet. However, in order to ensure that the list is made more widely available to the general public, it should be accessible at its principal office and public libraries within its district. How the list is made available at these offices is a matter for the planning authority (e.g. hard copy or electronic version).
- 4.45 The requirement to maintain the list only relates to applications and notices received by the planning authority on or after 3 August 2009⁵.

Weekly lists

(Regulation 23)

- 4.46 The weekly list shall contain all applications made to the planning authority under regulations 9 to 12 and to Scottish Ministers within the previous week. In addition to the relevant information requirements, the weekly list shall contain a statement as to how further information relating to the application may be obtained from the authority.
- 4.47 The "weekly list" is to contain the same information as that on the list of extant applications.
- 4.48 It will be for planning authorities and individual community councils to consider the most appropriate way of disseminating this information, perhaps electronically.
- 4.49 Community councils may request formal consultation on particular applications. Further information on consultation arrangements is set out below.
- 4.50 The weekly list is to be made available for inspection at the principal office of the planning authority and at public libraries in their district. In addition, weekly lists of applications received are to be sent to public libraries and community councils.

⁵ Introduced by Article 5 of the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009

4.51 Planning authorities may also wish to consider if there are other persons who should be provided with the weekly list (such as elected representatives). For example, PAN 77: *Designing Safer Places* notes that it is good practice to ensure that the Architecture Liaison Officer has access to the authority's weekly list of planning applications.

PLANNING REGISTERS

(Section 36, regulation 16 and schedule 2)

4.52 Schedule 2 to the DMR sets out the requirements for registering entries on applications for planning permission and planning permission in principle (paragraphs 1 to 4 of Schedule 2) and for certificates of lawful use or development (paragraph 5 of Schedule 2). Paragraphs 6 and 7 of Schedule 2 contain provisions applicable to registers generally. Paragraph 1 of Schedule 2 requires the register of applications for planning permission to be kept in two parts.

Part I of the Register

4.53 Information on Part I of the register is to relate to those applications which have not been finally disposed of. Part I is to contain the following information:

- a description of the development to which the application relates;
- the name and contact address of the applicant or, where an agent is acting on behalf of the applicant, the agent;
- 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;
- copies of –
 - plans and drawings;
 - any design or design and access statement; and
 - any pre-application consultation report, submitted in respect of the application; and
- particulars of any direction given under the 1997 Act or the DMR in respect of the application.

4.54 Separate provisions arising from the EIA Regulations require that the register contains relevant additional information where the development is subject to EIA (see circular 8/2007 on EIA procedures for further information).



Part II of the Register

4.55 Part II of the register relates to applications which have been determined. This is to contain:

- (a) in respect of all applications for planning permission (including planning permission in principle) and approval of matters specified in conditions attached to planning permission in principle determined by the planning authority (other than following a review of the case by the Local Review Body)–
 - (i) a copy of the decision notice;
 - (ii) copies of any plans considered by the planning authority in determining the application; and
- (b) a copy of any environmental statement submitted with respect to the application; and
- (c) in respect of all applications for planning permission (including planning permission in principle) determined by the planning authority (other than following a review of the case by the Local Review Body), a Report containing the information mentioned in paragraph 4 of Schedule 2; and
- (d) a copy of the decision of the Scottish Ministers in respect of an application, on appeal or on called-in for Ministers' determination under section 46 of the 1997 Act;
- (e) a copy of the decision notice of the planning authority as to the manner in which a local review of the case by a Local Review Body has been dealt with and copies of any plans considered by the planning authority in determining the review; and
- (f) where an application is deemed to be refused under regulation 7(5) of the EIA Regulations, a statement to that effect including the date on which the application is deemed to be refused⁶.

4.56 The amount and quality of planning information available online is being increased on planning authority websites making the planning process more transparent and accessible. ePlanning allows the progress of applications and appeals to be tracked, comments to be made and decisions better understood. For developers and communities this means greater confidence and certainty.

⁶ Amendment introduced by regulation 7 of the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009

Reports of handling

(Schedule 2)

4.57 For those applications for planning permission or planning permission in principle determined by the planning authority other than on local review, the register should contain a copy of a report on the handling of the application. Planning authorities are to prepare such a report on each application which is to contain a range of information relevant to the processing of the application.

4.58 The requirements are:

- (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 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 of the 1997 Act 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; and
- (f) details of the provisions of the development plan and any other material considerations (beyond those already included in the report under the above entries) to which the planning authority had regard in determining the application.



4.59 The format and structure of the report is a matter for the planning authority. In many cases the contents of the report should be similar to reports currently prepared for planning committees. Reports of handling should be proportionate to the nature, scale and complexity of the proposal.

Certificates of lawful use or development

4.60 Schedule 2 lists the information that shall be kept by the planning authority 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 1997 Act. It also requires the planning authority to place information on the register where there has been an appeal to the Scottish Ministers in relation to such certificates.

Provisions applicable to registers generally

4.61 The register shall include an index which shall be in the form of a map. Planning authorities should keep the register at its principal office. However, the authority may also keep copies of elements of its register relating to land in a part of a district at a place in or convenient to that area of its district.

4.62 With regard to where the register is kept electronically, the authority may make it available for public inspection on a website maintained by the authority for that purpose.

4.63 Planning authorities are not obliged to keep the contents of the register on their website. When dealing with applications where there are potentially security sensitive issues raised by plans and drawings or other information, planning authorities should consider restricting web access to such material so that anyone wishing to view such material has to attend the planning office to view it and there is some opportunity to monitor access. Where information which raises issues of national security is involved, then in those circumstances information will be subject to more severe restrictions. A forthcoming circular on Crown Development will say more about procedures relating to such national security sensitive information.

Timeframe for placing material on the Register

4.64 Whilst no statutory timeframe is set out, the following timings are recommended:

- The information on applications made but undetermined should be placed on Part I of the register on or before the earliest date on which notice is given in respect of the application under the requirements of the DMR on neighbour notification and the advertising of applications;

- Any direction given under the 1997 Act or the DMR in relation to the application should be entered on Part I of the register within 7 days of receipt;
- The information should be placed on Part II of the register within 7 days of a decision being issued by the planning authority or received from the Scottish Ministers.

REQUESTING FURTHER INFORMATION ON APPLICATIONS

(Regulation 24)

4.65 Planning authorities can require applicants to provide any additional information, beyond that required by regulations on the content of applications, in order to deal with the application. The time period for determining the application under regulation 26 will continue to run. Ideally, such information requirements should be discussed prior to an application being submitted so that as far as possible the application as submitted contains the information necessary to determine the application. Processing agreements provide a vehicle for this in relation to major or national developments.

VARIATION OF APPLICATIONS

(Section 32A)

4.66 Applications for planning permission (including planning permission in principle) can be varied after submission with the agreement of the planning authority. However, if the planning authority consider the variation would result in a substantial change in the description of the development, they are not to agree to it. Another application would be required to take forward such a variation. It is for the planning authority to decide what notice they give to other parties regarding any such variation.

4.67 The terms of an application cannot be varied after it has become the subject of an appeal to Scottish Ministers.

CONSULTATION ON APPLICATIONS

(Regulation 25 and 36 and schedule 5)

4.68 The DMR contains the provisions for consultation by the planning authority on applications for planning permission and planning permission in principle. They also provide that the Scottish Ministers can direct that planning authorities must consult with other authorities, bodies or persons on a particular case or class of case before planning permission can be granted. Statutory consultees may (except regarding consultation in relation to major hazards) write to a planning authority to



indicate that consultation with them is not required on a particular case or class of case or on development in a particular area or areas and the planning authority will not be obliged to consult on such cases. Regulation 36 contains specific requirements for consulting the Cairngorms National Park Authority.

- 4.69 The planning authority must give consultees at least 14 days to respond before they determine the application. With national or major developments, suitable timescales should be agreed in a processing agreement although such timescales cannot be less than the statutory 14 days. Where a consultee fails to respond within the timescale the planning authority is not obliged to await a response. However, planning authorities will wish to consider the potential impact of proceeding without the views of a consultee.
- 4.70 As well as the provisions in the Regulations, requirements for consultation on planning applications are also set out in directions contained in Scottish Government circulars.

PRE-DETERMINATION HEARINGS

(Section 38A and regulation 27)

- 4.71 Pre-determination hearings are required in certain cases as part of the enhanced scrutiny measures. The changes are aimed at making the planning system more inclusive, allowing the views of applicants and those who have made representations to be heard before a planning decision is taken. The planning authority has discretion over how hearings will operate in its area.
- 4.72 The opportunity to attend pre-determination hearings must be provided in respect of applications for planning permission and planning permission in principle for major developments where they are significantly contrary to the development plan⁷, and in respect of national developments.
- 4.73 The planning authority must give the applicant and people who submitted representations to them in respect of the application an opportunity of appearing before and being heard by a committee of the authority. The 1997 Act allows the planning authority to specify the procedures around arranging and conducting hearings. This includes ensuring the matters discussed at a hearing are relevant, efficient and avoid repetition. Attendance, beyond those who have a right to appear before and be heard by the committee, is to be such as the authority consider appropriate. Further guidance on pre-determination hearing procedures is contained in Annex F.

⁷ Amendment removing the reference to "local" introduced by *regulation 7 of the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009*

Major developments which are significant departures from the development plan

- 4.74 Planning authorities are best placed to balance the range of policies and proposals and decide whether a development does or does not accord with the development plan, and are obliged to do so as part of their assessment of planning applications.
- 4.75 With regard to pre-determination hearings required under section 38A, authorities need to consider whether any departure from the plan is “significant”. While this judgement will lie with the planning authority, Scottish Ministers’ general expectation is that this applies where approval would be contrary to the vision or wider spatial strategy of the plan.

REFERRAL OF APPLICATIONS TO FULL COUNCIL FOR DECISION

- 4.76 In order to add further transparency and accountability to the decision-making framework, section 14(2) of the Planning etc (Scotland) Act 2006 amends the Local Government (Scotland) Act 1973 to the effect that cases in which an opportunity to attend a pre-determination hearing must be provided under section 38A of the 1997 Act will also have to be decided by the full council.
- 4.77 Authorities’ administrative arrangements will need to adapt to the requirement to convene full councils to make the decisions on these developments. This may include aligning full council meetings with relevant committee meetings. Members should receive the necessary training and advice to enable them to discharge their new functions.

NOTIFICATION TO MINISTERS

- 4.78 Directions contained in circulars mentioned in paragraph 4.70 and in Planning Circular 3/2009: *Notification of Planning Applications* set out the instances when planning authorities should notify Ministers of planning applications. Where an application is subject to requirements on pre-determination hearings and is of a category set out in one of the above Directions, then notification of applications that the planning authority are minded to grant, should be made following the decision of the full council.
- 4.79 Regulation 32 enables Scottish Ministers to direct planning authorities to consider attaching conditions when granting planning permission. We envisage this power being used where applications have been notified to Scottish Ministers and where call-in of an application would not be considered necessary by Ministers if a condition, which the planning authority had not previously proposed, were to be attached to the consent.



4.80 The effect would be that the planning authority could proceed to grant planning permission if, having considered the matter, the authority (i) informs Scottish Ministers that it has decided to impose such a condition, or (ii) convinces Ministers that the condition is not necessary. This could prevent unnecessary delays in the planning process, where any matter of concern to Ministers can be resolved without the need for an application to be called in.

TIME PERIODS FOR DETERMINATION

(Regulation 14 and 26)

4.81 The planning authority has 4 months to determine applications for planning permission for national developments or major developments and 2 months to determine applications for planning permission for local developments. Applications for approval of matters specified in conditions attached to planning permission in principle are subject to a 2 month time period. These time periods run from the date the last piece of information required by the regulations on content of applications is received, i.e. the validation date.

4.82 The 2 month time period for determining applications also applies where an applicant seeks the approval, consent or agreement of the planning authority as a result of a condition attached to a planning permission. While no formal application is required under the DMR, applicants still have a right to have a response within the specified time period and, as appropriate, a right to appeal or to seek a local review of the planning authority's decision or its failure to issue a decision.

4.83 There are also requirements on planning authorities not to determine applications before the end of periods allowed for representations to be made. These periods are those in relation to neighbour notification, site notices for underground minerals applications, advertisement in local newspapers and notices in relation to applications affecting conservation areas or listed buildings.

4.84 Where an application is subject to environmental impact assessment, the EIA Regulations amend the time periods to the effect that a 4 month period for determination applies. Also, that time period does not start until such time as an environmental statement, as defined in the EIA Regulations, has been submitted to the planning authority, assuming that is later than the validation date.

4.85 Where the provisions at regulation 26(3)(b) prevent the planning authority from granting permission, this does not alter the period for making an appeal or seeking a review on the grounds of non-determination of the application – see paragraphs below.

Local reviews

- 4.86 Once a decision is issued on an application for a local development where the application was delegated in accordance with a scheme of delegation the applicant can seek a local review of the decision. This must be done within 3 months from the date of the decision notice.
- 4.87 Where such an application is not determined within the 2 months (or 4 months on Schedule 2 EIA cases) for determining the application, the applicant has 3 months from the end of that period within which to seek a local review on the grounds of non-determination of the application. If the review body does not conduct a review within 2 months from the date on which the applicant seeks the review, there is a right of appeal to the Scottish Ministers.
- 4.88 In these local review cases, the right to seek a review on the grounds of non-determination will in effect lapse after 3 months running from the end of the 2 month period for determining the application. The applicant would, however, be able to seek a review of the decision on the application once it is issued.
- 4.89 These procedures for local reviews also apply to applications for approval of matters specified in conditions in relation to planning permission in principle (or other applications for approval, consent or agreement sought as a result of a condition on planning permission) which have been delegated under a section 43A scheme of delegation on the basis that they relate to local developments. Reference should also be made to the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (SSI 2008/433) and its accompanying circular (7/2009).

Appeals to Ministers

- 4.90 In any other case (e.g. a local development not delegated under section 43A, a national development or a major development), the applicant has a right of appeal to the Scottish Ministers against the decision of the planning authority on the application. Such an appeal must be made within 3 months of the date of the decision notice.
- 4.91 Where such an application is not determined within the appropriate 2 month or 4 month time period, the applicant may appeal to Ministers within 3 months from the end of the period or, alternatively, may await a decision by the planning authority – following which the applicant can still lodge an appeal against the terms of that decision.



4.92 The applicant and planning authority can agree in writing an extension to the 2 or 4 month period, during which the right of appeal on the grounds of non-determination would not apply. In the absence of a decision after the agreed extension, the applicant would have 3 months in which to appeal on the grounds of non-determination, or, again, could await the final decision.

DECISION NOTICES

(Regulation 28)

4.93 With regard to applications for planning permission or for approval of matters specified in conditions attached to planning permission in principle or any other consent, agreement or approval required by a condition attached to planning permission (i.e. including those that do not require a formal application under regulations 9 to 12, the planning authority, within the prescribed time periods for determining the application (see paragraph 4.81 – 4.85 above) must:

- (a) Provide a decision notice to the applicant or their agent; and
- (b) Notify every person who made written representations (and provided an address, including an e-mail address) on the application of their decision and where a copy of the decision notice is available for inspection.

4.94 Where 3 or more people have made representations in a single document, the planning authority is only obliged to notify the person who sent the document, where the planning authority can readily identify that person from the document. Where that is not possible, the planning authority would only be required to notify the first named person on the document for whom an address is provided. Again, reference to address can be read as including an e-mail address.

The contents of the decision notice

(Section 43(1A), regulation 28 and schedule 6)

4.95 Section 43(1A) of the 1997 Act requires the planning authority to include in each notice issued to an applicant:

- the terms of the planning authority's decision,
- any conditions to which that decision is subject, and
- the reasons on which the authority based that decision.

4.96 Additionally, the decision notice to the applicant or agent on applications for planning permission or planning permission in principle must include:

- General Information - a description of the proposed development (including a description of any variation to the original proposal agreed with the applicant under section 32A of the 1997 Act); a description of the location including a postal address (where applicable); and the reference number of the application. The notice must also include identification of the plans and drawings showing the proposed development irrespective of whether the application has been approved, approved subject to conditions or refused.
- Duration of planning permission – see paragraphs 4.100 – 4.106. Where a planning authority has directed that different time periods to those in sections 58 and 59 should apply, then reference to the effect of such a direction must be included in the decision notice.
- Section 75 agreement - where such an agreement is to be entered into, the decision notice must indicate where the terms or a summary of such terms can be inspected.

4.97 Decision notices on applications for approval of matters specified in conditions attached to planning permission in principle shall, in addition to the minimum set out in paragraph 4.95 above, include:

- a description of the matter in respect of which approval, consent or agreement has been granted, or as the case may be refused;
- the reference number of the application; and
- the reference number of the application for planning permission in respect of which the condition in question was imposed.

4.98 Where a decision on any application is made to refuse or approve subject to conditions, the decision notice must be accompanied by one of the following Forms contained in schedule 6:

- Form 1 – where any subsequent appeal would fall to be determined by the Scottish Ministers; or
- Form 2 – where the decision has been undertaken by a person appointed under a scheme of delegation prepared under section 43A(1) and could therefore be subject to review by the planning authority.



NOTICE OF REQUIREMENTS FOR NOTICES

(Sections 27A, B and C and regulations 37 and 38)

4.99 Paragraphs 5.1 to 5.12 below describe requirements for developers to submit notices of initiation of development and of completion of development to the planning authority and, in certain cases, have a notice on-site during development. Planning Authorities are required under the 1997 Act, when granting planning permission, to give applicants notice of the requirement for a notice of initiation of development (it also makes sense to advise them of the requirements for notice of completion of development and, where appropriate, for on-site notices). The decision notice would be an appropriate mechanism for giving the applicant such notice.

DURATION OF PLANNING PERMISSION

4.100 The following paragraphs set out the statutory default time periods on duration of planning permission and the powers for planning authorities to set alternative time periods. Planning authorities should consider carefully the nature of the development and issues such as the prevailing economic climate and reach a view whether the statutory default time limits are appropriate in the circumstances of the case or whether they should specify a more suitable period.

Planning Permission

(Section 58)

4.101 Section 58(1) specifies that planning permission will expire after 3 years from the date on which it is granted unless the development to which it relates has been started.

4.102 The planning authority may direct that a longer or shorter period than 3 years may apply. Although these time periods are not a condition to the planning permission, it is open to the applicant to appeal to the Scottish Ministers against, or seek a local review by the planning authority of, the 3 year time period, or any different period directed by the planning authority, as if it were such a condition.

4.103 Whilst there is no form for such a direction, planning authorities may wish to consider writing to the applicant citing the relevant powers and specifying the time periods for the duration of permission.

*Planning Permission In Principle**(Section 59)*

- 4.104 Unless development is started within 2 years from the grant of the last approval of matters specified in conditions attached to the planning permission in principle, the planning permission expires.
- 4.105 Application for such approval must be made within 3 years from the grant of planning permission in principle, or, if later, within 6 months from when an earlier approval for the same matters was refused or dismissed on appeal. Only one application for approval of matters specified in conditions can be made after 3 years from the grant of planning permission in principle.
- 4.106 The planning authority can direct that different time periods apply in relation to the 3 year period for making an application for approval or the 3 year period after which only one more application for approval can be made. The authority can also direct that a different time period applies for the 2 year period after the final approval is given and within which development must be started. An applicant can, as appropriate, appeal to the Scottish Ministers against, or seek a local review from the planning authority of, the statutory time periods or those substituted by direction by the planning authority.

MARINE FISH FARMING*(Regulation 35)*

- 4.107 This Regulation applies the DMR to applications for marine fish farming development subject to certain modifications.
- 4.108 Regulation 7 is modified so that advertising of public events for pre-application consultation is required in the district of the planning authority for the marine planning zone in which the marine fish farm development is proposed, rather than in the locality in which the proposed development is situated.
- 4.109 Regulation 9 on the content of planning applications is amended so that the requirement to give the postal address of the site or a description of the location of the land is modified to require a description of the location of the development. Similarly, the requirement to provide a plan sufficient to identify the land to which the application relates and neighbouring land is modified to a plan sufficient to identify the location of the development.



- 4.110 The requirements in regulation 9 for a design and access statement are also modified to the extent that a design statement only would be required for marine fish farming developments and then only those which are major developments or which are a local development in a World Heritage Site, National Scenic Area or within the site of a scheduled monument.
- 4.111 Regulations 10 (Applications for Planning Permission in Principle), 18 (Notification by the Planning Authority) and 38 (Display Notices) are omitted in relation to marine fish farming developments.
- 4.112 Regulation 20 (Publication of application by the planning authority) is modified to the effect that all marine fish farm development applications require to be advertised (given the lack of neighbour notification).
- 4.113 Schedule 5 on consultation is modified to refer to community councils whose area is adjacent to the marine planning zone in which the proposal is located, rather than community councils in whose area the proposal is located.
- 4.114 Regulation 35(7) makes clear that where an application relates in part to marine fish farm development and in part to other development, the modifications apply only for the purposes of that application to the extent to which it relates to marine fish farming.

CAIRNGORMS NATIONAL PARK

(Regulation 36)

- 4.115 Regulation 36(1) modifies the validation date under regulation 14 to the date on which an application is called in by the Cairngorms National Park Authority. Consequently the time periods for determination of the application under regulation 26 run from this later date.
- 4.116 The planning authority is to notify the National Park Authority within 5 days beginning with the validation date where an application for development in the area of the Park Authority is submitted.
- 4.117 The planning authority is required to consult the National Park Authority where it believes the development which is the subject of the application is likely to affect land in the area of the park.

5. POST APPLICATION PROVISIONS

NOTIFICATION OF INITIATION OF DEVELOPMENT

(Sections 27A, B and C and regulations 37 and 38)

- 5.1 A person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable. This ensures that the planning authority is aware that development is underway, and can follow up on any suspensive conditions attached to a planning permission. There is no minimum period of notice, so in theory the notice could be submitted at any point right up until work commences. However the notice must be submitted before starting work. This applies where permission is given on or after 3 August 2009.
- 5.2 When planning permission is granted for the development, the planning authority must notify the applicant of the requirement to submit the notice and of the fact that failure to do so would be a breach of planning control under section 123(1) of the 1997 Act.
- 5.3 In addition to providing the date on which development is expected to commence, the applicant is required to submit other information specified in the DMR which may be useful to the planning authority, including;
1. The full name and address of the person intending to carry out the development,
 2. The full name and address of the landowner if they are a different person,
 3. The full name and address of any site agent appointed in respect of the development,
 4. The date of issue and the reference number of the planning permission.
- 5.4 It is not the intention that a notice of initiation of development be taken as a declaration that suspensive conditions have been met. However it does, insofar as it sets out a date on which development is intended to commence, provide to a planning authority an *indication* of the date by which suspensive conditions should be met. It would be for the planning authority on receipt of such a notice to consider whether any suspensive conditions were attached to the development and whether compliance with such conditions should be confirmed.



Failure to submit a notice of initiation of development.

- 5.5 Failure to submit the notice before starting work is a breach of planning control. With regard to enforcement action, an informal approach is probably sufficient to result in a notice being submitted, albeit late. Planning authorities should also bear in mind, however, whether any suspensive conditions may apply to the development, any breach of which might necessitate further or more formal action.
- 5.6 It is not a breach of planning control where a developer does not commence work on the exact date specified in the notice but at some point afterwards. There may be a number of reasons (not necessarily under the control of the developer) why work does not commence on the specified date.

NOTIFICATION OF COMPLETION OF DEVELOPMENT

(Section 27B)

- 5.7 A person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. Failure to comply is not in itself a breach of planning control under section 123(1) of the 1997 Act. This applies where permission is given on or after 3 August 2009.
- 5.8 When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.
- 5.9 The planning authority may take enforcement action if such a notice is not given. When the last phase is completed, the requirement to give notice of the completion of development applies.

DISPLAY OF NOTICE WHILE DEVELOPMENT IS CARRIED OUT

(Section 27C and regulation 38)

- 5.10 For certain classes of development, the developer must, for the duration of the development, display a sign or signs containing certain information. This applies where permission is given on or after 3 August 2009. A notice would be required for any development that was either:
- major development; or
 - national development; or
 - a development of a class specified in schedule 3 to the DMR.

- 5.11 The notice must be in the form in schedule 7 to the DMR and must be displayed in a prominent place at or in the vicinity of the site of the development; readily visible to the public; and printed on durable material. It would constitute a breach of planning control not to display such a notice if required.
- 5.12 The requirements under sections 27A, B and C apply only to developments where planning permission was given on or after 3 August⁸.

CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

- 5.13 See Annex D of Circular 4/1999 on Planning Enforcement for guidance on certificates of lawful use or development.

⁸ Introduced by Article 2 of the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009



6. PROCESSING AGREEMENTS

THE USE OF AGREEMENTS

- 6.1 A processing agreement is an agreed framework for processing an application or related group of planning applications. The Scottish Government's expectation is that planning authorities and statutory consultees should respond positively to requests for processing agreements associated with major or national developments.
- 6.2 New regulations are not required to promote processing agreements which are essentially mechanisms to ensure that the planning process is project managed.
- 6.3 Processing agreements can offer:
- Greater transparency in decision making for all involved in the process;
 - Greater predictability and certainty over the timing of key stages;
 - Effective project management with a focus on delivery;
 - More transparency in decision making for all involved in the process;
 - Clarity about information requirements early in the process;
 - Clearer lines of communication; and
 - More effective and earlier engagement of key stakeholders.
- 6.4 A processing agreement does not guarantee the grant of planning consent. Associated planning applications will continue to be considered on their merits and against the terms of the development plan and other material considerations. The agreement should be based on a shared understanding about the key stages in the process and involve key statutory consultees as appropriate at the outset.
- 6.5 The prescribed period for determination of applications (described in paragraph 4.81 above) is not appropriate in every instance. Where the parties agree that the proposal will take longer than the statutory period to determine, they should agree in writing to extend the period within which the planning authority should give notice of their decision to the applicant. This extended period has implications for when the applicant can appeal to the Scottish Ministers on the grounds of non-determination, the potential for such agreed extensions is provided for in section 47(2). Where a processing agreement is in place there will be no right to appeal against non-determination until the expiry of the period in the agreement.

PREPARING AN AGREEMENT

- 6.6 Processing agreements should be discussed as early as possible, this will often be prior to pre-application consultation with the community. It is important that applicants are informed about the level of information required to support an application at the outset. The detail of the agreement may be concluded during the pre-application consultation stage which is likely to help front-load the planning system and see efficiency savings later in the process.
- 6.7 While an agreement should be put in place early in the process, it should be seen as a "live document", which is kept under review and which can be altered with the consent of the principal parties to accommodate change that may not have been anticipated at the outset. They should be promoted as a project management technique, not as lengthy complex legal contracts.

SCOPE

- 6.8 Processing agreements can cover applications for planning permission (including planning permission in principle) and any resulting agreement or approvals required by conditions imposed on national or major developments. Where appropriate, the parties may also incorporate the consideration of other consents such as Listed Building Consent with the processing agreement to enable a more comprehensive approach to be taken. The preferred approach will be for the agreement to cover all stages necessary to enable the development to take place including the signing of any related planning agreement.
- 6.9 The elements for inclusion in the processing agreement should be discussed at the outset. It will be for the parties involved to agree the bespoke approach to any processing agreement.

FORM AND CONTENT OF PROCESSING AGREEMENTS

- 6.10 The Scottish Government expects processing agreements to be as concise, clear and simple as possible. Processing agreement need not create an additional layer of bureaucracy or require lengthy discussions. The key objective is to establish a realistic timescale for processing which takes account of the amount of the information which needs to be considered and the process to determine the application. The processing agreement should therefore contain any written agreement to extend the period for the determination of the application. The parties may decide who drafts the agreement. In most cases this will be the planning authority.



6.11 Some likely components are set out below, however different approaches may be taken depending on the circumstances of each case.

- **Roles and responsibilities**

The agreement should set out the roles and responsibilities of all the parties, including the planning authority, applicant and statutory consultees, in delivering the determination to schedule.

- **Information requirements**

Parties should agree in advance, taking into account comments from statutory consultees, the additional information beyond the validation requirements needed to determine the application. Agencies are committed to ensuring that the level of information they require of the applicant is clear and proportionate. This information may be listed in the agreement to offer applicants certainty about what they need to provide and aid efficient processing by the planning authority.

- **Decision-making framework**

The agreement may set out the management process and forum for decision-making. This could involve a project team which can agree direction and sign off completed tasks, as well as related working groups or task groups, and whether and when the application will be determined under delegated powers or by elected members.

- **Project Plan / Key Milestones**

A project plan should be included setting out the realistic overall timetable for handing the application and the key stages or milestones. Timescales for individual stages could also be included. The views of statutory consultees should inform the setting of timescales. Milestones would provide the basis for monitoring progress. Review stages may also be built into the project plan. A Gantt chart may be a useful way to illustrate this.

- **Timescales**

Where the parties agree that the proposal will take longer than the statutory period to determine they should agree to extend the period after which an appeal may be made to Scottish Minister against non-determination of the application, in accordance with section 47(2) and record in the agreement. It will not be possible to appeal against non-determination in advance of that agreed timescale.

7. SUPERSEDED CIRCULARS

- 7.1 In light of the changes to development management procedures, a number of extant circulars are to be revoked. A finalised list of these revoked circulars is to be issued in advance of 3 August 2009.



ANNEX A

DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on City of Edinburgh Council v the Secretary of State for Scotland (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision,
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
 - Consider whether or not the proposal accords with the development plan,
 - Identify and consider relevant material considerations for and against the proposal, and
 - Assess whether these considerations warrant a departure from the development plan.
3. There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
 - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
- Scottish Government policy, and UK Government policy on reserved matters
 - The National Planning Framework
 - Scottish planning policy, advice and circulars
 - European policy
 - a proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance
 - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
 - a National Park Plan
 - the National Waste Management Plan
 - community plans
 - the environmental impact of the proposal
 - the design of the proposed development and its relationship to its surroundings
 - access, provision of infrastructure and planning history of the site
 - views of statutory and other consultees
 - legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.



ANNEX B

PRE-APPLICATION CONSULTATION – SCREENING PROCESS

(Section 35A and regulation 5)

1. This optional process is started by a prospective applicant submitting a notice to the planning authority (a 'pre-application screening notice') requiring the authority to make a statement as to whether the proposal would be of a class that requires statutory PAC. Under section 35A(5) and regulation 5, the 'pre-application screening notice' must contain:
 - a) a description in general terms of the development to be carried out;
 - b) if the site at which the development is to be carried out has a postal address, that address;
 - c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
 - d) detail as to how the prospective applicant may be contacted and corresponded with;
 - e) a statement as to whether a screening opinion or screening direction has previously been issued on the need for EIA in respect of the development.
2. In preparing the notice, a prospective applicant should include enough detail within the general description of the proposal to enable the planning authority to determine the class of development within the hierarchy. Any plan showing the site should be to a proper cartographic base e.g. Ordnance Survey, and use an appropriate scale.
3. Part (e) above has been inserted by regulation 5 to facilitate the identification of proposals previously screened as Schedule 1 development in the EIA Regulations, which are categorised as Major developments in the hierarchy.
4. Although this information should be sufficient to make a decision, the planning authority has powers under section 35A(6) to request further information where necessary to determine whether the proposal is in a class categorised as requiring PAC. The authority has 21 days to respond to a screening notice which does not include any time between requesting additional information and its receipt (sections 35A(7) and (8)). Any request by the planning authority for further information would need to be made before the 21 day period elapsed.

5. A benefit of obtaining the statement from the planning authority is that if the proposal is not considered to be in a category for which PAC is required, and the proposal does not then alter significantly prior to submission of a planning application within 12 months, the planning authority may not subsequently alter its initial view.
6. The screening process for EIA and for PAC are separate statutory procedures. Therefore a screening opinion under the EIA Regulations would not in itself function as a view on the need for PAC.
7. It is open to the prospective applicant to proceed with PAC without a screening notice. In most instances it should be clear whether PAC is required from the definition of Major and National developments. Where a pre-application screening notice and a proposal of application notice are submitted together, they can be processed concurrently rather than consecutively.



ANNEX C

NOTICES TO OWNERS AND AGRICULTURAL TENANTS AND SITE NOTICES - *Applications for the working and winning of underground minerals*

1. The notification of site owners and agricultural tenants regarding applications for the working and winning of underground minerals may be both onerous and complex. In addition to those owners and agricultural tenants with rights in relation to the relevant surface land, there may be other people with ownership rights to minerals, other than those vested in the Crown (oil, gas, coal, gold and silver), who may be difficult to identify and notify.
2. For the purposes of these applications, regulation 15(4) amends the requirement to notify owners to relate to those who "to the applicant's knowledge" are owners.
3. Such applications must be advertised locally by the planning authority under regulation 20(1)(c), and the authority is required, under regulation 19, to place up to 5 site notices in its district.
4. Regulation 19(2) specifies the content of the notice. The site notices should be in place for not less than 7 days and should state that an application has been made, briefly describing the development and its location, where further information can be obtained and where and by when (being at least 14 days from the date of the notice) representations may be made to the planning authority. Regulation 19(3) covers the issue of notices being removed, obscured or defaced, and limits the authority's responsibilities where it has taken reasonable steps.
5. Notices should be dated the same as the day they are placed on site.

ANNEX D

PLANS AND DRAWINGS

1. All applications should be accompanied by a location plan and almost all will require a site plan. Planning authorities can reasonably expect a minimum of information on these plans as follows:

Location plan – this must identify the land to which the proposal relates and its situation in relation to the locality - in particular in relation to neighbouring land (land which, or part of which, is conterminus or within 20 metres of the boundary of the land for which development is proposed - see paragraphs 4.16 - 4.17). Location plans should be a scale of 1:2500 or smaller.

Site Plan – this should be of a scale of 1:500 or smaller and should show:

- a) The direction of North;
 - b) General access arrangements, landscaping, car parking and open areas around buildings;
 - c) The proposed development in relation to the site boundaries and other existing buildings on the site, with written dimensions including those to the boundaries;
 - d) Where possible, all the buildings, roads and footpaths on land adjoining the site including access arrangements;
 - e) The extent and type of any hard surfacing;
 - f) Boundary treatment including walls or fencing where this is proposed.
2. The range of other plans and drawings will depend on the scale, nature and location of the proposal. Planning authorities should consider providing guidance on the levels of information expected in different types of case. The following plans and drawings will not be required in every case, but the list indicates the sort of minimum information which should be included where necessary:

Existing and proposed elevations (at a scale of 1:50 or 1:100) which should:

- a) show the proposed works in relation to what is already there;
- b) show all sides of the proposal;



- c) indicate, where possible, the proposed building materials and the style, materials and finish of windows and doors;
- d) include blank elevations (if only to show that this is in fact the case);
- e) where a proposed elevation adjoins another building or is in close proximity, the drawings should clearly show the relationship between the buildings, and detail the positions of the openings on each property.

Existing and proposed floor plans (at a scale of 1:50 or 1:100) which should:

- a) explain the proposal in detail;
- b) show where existing buildings or walls are to be demolished;
- c) show details of the existing building(s) as well as those for the proposed development;
- d) show new buildings in context with adjacent buildings (including property numbers where applicable).

Existing and proposed site sections and finished floor and site levels (at a scale of 1:50 or 1:100) which should:

- a) show a cross section(s) through the proposed building(s);
- b) where a proposal involves a change in ground levels, show both existing and finished levels to include details of foundations and eaves and how encroachment onto adjoining land is to be avoided;
- c) include full information to demonstrate how proposed buildings relate to existing site levels and neighbouring development;
- d) show existing site levels and finished floor levels (with levels related to a fixed datum point off site), and also show the proposals in relation to adjoining buildings (unless, in the case of development of an existing house, the levels are evident from floor plans and elevations).

Roof plans (at a scale of 1:50 or 1:100) to show the shape of the roof and specifying details such as the roofing material, vents and their location.

ANNEX E

DECLINING TO DETERMINE PLANNING APPLICATIONS

Repeat Applications

1. Section 39(1) contains discretionary powers for planning authorities to decline to determine repeat planning applications. As well as powers where the Scottish Ministers have, within the previous 2 years, refused permission on a similar application⁹ on call-in or appeal against either refusal or on grounds of non-determination (section 39(1)(a)), there are now powers where no such decision has been made by Ministers. This is to prevent applicants submitting repeated applications for the same development, where either no appeal has been made or has been made but not determined against a previous refusal.
2. The additional criterion in the scenarios set out in section 39(1) is that in the opinion of the planning authority there has not been a significant change in the development plan or in any other material consideration since the Scottish Ministers decision on any called-in application or appeal or since any appeal was made.

Applications without the necessary pre-application consultation (PAC)

3. Section 39(1A) requires that planning authorities must decline to determine a planning application to which the PAC requirements apply and where the applicant has not complied with those requirements.
4. The planning authority may, before declining to determine an application in these circumstances, ask the applicant to provide such additional information as they may specify. There is therefore some discretion for the planning authority to request additional information to demonstrate that the requirements had been complied with or that some previously missing aspect of required PAC had subsequently been undertaken.
5. When declining to determine an application in these circumstances, the planning authority must advise the applicant of the reasons for their opinion that the applicant has not complied with the PAC requirements. The requirement to decline to determine due to an absence of required PAC does not apply where the applicant has:

⁹ Applications are "similar" only if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.



- a statement of the planning authority's opinion under section 35A(3) to the effect that the proposal is not in a class of development which requires PAC:
and
- submitted the related application within 12 months after submitting the notice seeking the planning authority's opinion, and the proposal does not differ materially from the information provided in said notice.

ANNEX F

Pre-determination hearings procedures

1. The relevant committee, in whatever format adopted by a local authority, will hold the hearing. Planning authorities may wish to consider developing, consulting on and publishing standard procedures for pre-hearing arrangements (invitations, availability of information etc), hearing arrangements 'on the day' and any post-hearing recording and follow-up. Any hearing should take place after the expiry of the period for making representations on the application but before the planning authority decides the application. It will be for the committee to decide whether it wishes to have hearings on the same day as the related planning applications are determined by full Council, or to make alternative arrangements.
2. Among the issues that planning authorities will wish to consider in determining their procedure for pre-determination hearings are:
 - the order of proceedings – e.g. applicant and those who made representations to address Committee in turn;
 - the maximum number of individuals to speak on either side – it may be necessary to ask one objector to speak on behalf of a group of objectors rather than allowing all objectors a right to address the Committee individually.;
 - the maximum time available for applicants. Rules governing witnesses and those who made representations to present their cases and respond to each other's statements
 - the opportunity for Committee members to ask questions of applicants, consultees, objectors and supporters
 - the opportunity for Committee members to ask for additional advice and information from Planning officials

Other applications for which planning authorities may require Hearings

3. Under section 38A(4), the planning authority may decide to hold a hearing for any development not covered by the mandatory requirements noted above and to give the applicant and any other person an opportunity of appearing before and being heard by the committee. Examples of other categories of development which planning authorities might decide require hearings include applications in which the local authority has a financial interest, or applications that have attracted a given number and type of objections or applications relating to development in sensitive areas protected by statutory designations. There are no related legislative requirements to refer such cases to full council for decision.

ISBN 978-0-7559-7571-6



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