

2006 No. 270

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Application of Subordinate
Legislation to the Crown) (Scotland) Order 2006**

<i>Made</i> - - - -	<i>17th May 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>19th May 2006</i>
<i>Coming into force</i> - -	<i>12th June 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 26(2)(f), 30 and 31(1) of the Town and Country Planning (Scotland) Act 1997(a) and sections 98 and 122(3) of the Planning and Compulsory Purchase Act 2004(b) hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006 and shall come into force on 12th June 2006.

(2) This Order extends to Scotland only.

The Town and Country Planning (Churches, Buildings for Religious Worship and Burial Grounds) (Scotland) Regulations 1948

2. The Town and Country Planning (Churches, Buildings for Religious Worship and Burial Grounds) (Scotland) Regulations 1948(c) apply to the Crown.

The Caravan Sites (Licence Applications) (Scotland) Order 1960

3. The Caravan Sites (Licence Applications) (Scotland) Order 1960(d) applies to the Crown.

The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975

4.—(1) The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975(e) apply to the Crown with the following modifications.

(a) 1997 c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2004 c.5.

(c) S.I. 1948/1780.

(d) S.I. 1960/1554.

(e) S.I. 1975/1204, as amended by S.I. 1984/329 and 1981/1385.

(2) In regulation 11 (trees in conservation areas) after (iv) insert–

“(v) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, the Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967(a) or otherwise under their management or supervision.”.

(3) In the Schedule (form of tree preservation orders), in paragraph 7, after “Part III” insert “or section 242A(b)”.

(4) In the Second Schedule–

(a) in paragraph (4), after sub-paragraph (c) insert–

“(d) where immediately required for the purpose of carrying out development authorised by consent granted on an application made under section 242A of the Act or deemed to have been granted for any of the purposes of that section.”;

(b) after paragraph (4) insert–

“(5) The cutting down, topping, lopping, uprooting of a tree where–

(a) the work is required to enable the implementation of an order made or confirmed by the Scottish Ministers under paragraph 7 or paragraph 13 in Schedule 1 to the Roads (Scotland) Act 1984(c) (procedures for making or confirming certain orders and schemes);

(b) the work is urgently necessary for national security purposes.”.

The Town and Country Planning (General) (Scotland) Regulations 1976

5. Regulation 3 of and Schedule 1 to the Town and Country Planning (General) (Scotland) Regulations 1976(d) (notices and counter-notices relating to planning blight) apply to the Crown.

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984

6.—(1) The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984(e), with the exception of regulation 7(1)(liability for contravention of the regulations), apply to the Crown with the following modifications.

(2) In Schedule 4 (specified classes of advertisement displayed with deemed consent)–

(a) in the paragraph under the heading “Class I”, after “statutory undertakers” insert, “the Crown”;

(b) in Class I, paragraph (1), after “statutory undertaker” insert “, the Crown”.

The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987

7.—(1) The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987(f) apply to the Crown with the following modifications.

(2) After regulation 4 (applications to vary or discharge conditions) insert–

“Applications - national security

4A. The validity of an application shall not be affected by failure to disclose information as to–

(a) national security; and

(a) 1967 c.10. Relevant amendments were made by S.I. 1999/1747.

(b) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

(c) 1984 c.54.

(d) S.I. 1976/2022.

(e) S.I. 1984/467, as amended by S.I. 1992/1763 and S.S.I 2004/332.

(f) S.I. 1987/1529, as amended by S.S.I. 2004/332.

- (b) the measures taken or to be taken to ensure the security of any premises or property,

where the application is accompanied by a written statement from the applicant that, in the opinion of the applicant, the information relates to the matters mentioned in (a) or (b) above, and that public disclosure of that information would be contrary to the national interest.”.

- (3) In regulation 5 (advertisement of applications) after paragraph (2) insert–

“(3) Where an application under section 73B(2)(a) (urgent works relating to Crown development) of the Act is made to the Scottish Ministers, regulation 5(2) applies with the modification that for references to “planning authority” substitute “the Scottish Ministers”.”.

- (4) In regulation 6 (certificate to accompany applications and appeals) after paragraph (4) insert–

“(4A) The provisions of this regulation shall apply where an application for listed building consent is made to the Scottish Ministers under section 73B(2) of the Act, as they apply in relation to an application which falls to be determined by the planning authority with the following modifications–

- (a) in paragraph (1) for “A planning authority shall not entertain any application under regulation 3 or 4” substitute “The Scottish Ministers shall not entertain any application under section 73B(2) of the Act”;
- (b) in paragraph (3), for “planning authority” substitute “planning authority or the Scottish Ministers, as the case may be” in each place where the words occur.”.

- (5) For regulation 7 (application for listed building or conservation area consent in anticipation of disposal of Crown land) substitute–

“Application for listed building or conservation area consent in respect of Crown land

7. The following provisions of these Regulations shall, in their application to the making and determination of applications for listed building consent and conservation area consent in respect of Crown land, have effect subject to the following modifications–

- (a) in regulation 3(2), for “a certificate under regulation 6” substitute “the certificate or other document required by regulation 6 below”;
- (b) in regulation 6–
 - (i) in paragraph (1) after “accompanied either by” insert “the documents described in paragraph (1A) below or,” and
 - (ii) after paragraph (1) insert–

“(1A) An application for listed building or conservation area consent in respect of Crown land shall be accompanied by–

- (a) a statement that the application is made in respect of Crown land; and
- (b) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation.”.

- (6) In Schedule 2 (certificates under regulation 6)–

- (a) in Part II–
 - (i) for “Council” substitute “planning authority or the Scottish Ministers as appropriate” in each place where the word occurs; and
 - (ii) in notes 2 and 5 after “planning authority” insert “or the Scottish Ministers as appropriate”.

(a) Section 73B was inserted into the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 (c.9) by section 93(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987

8. The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987(a) apply to the Crown.

The Town and Country Planning (Simplified Planning Zones) (Scotland) Regulations 1987

9. The Town and Country Planning (Simplified Planning Zones) (Scotland) Regulations 1987(b) apply to the Crown.

The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990

10. The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990(c) apply to the Crown.

Town and Country Planning (General Permitted Development) (Scotland) Order 1992

11.—(1) The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(d) applies to the Crown with the following modifications.

(2) In article 2(1) (interpretation)–

(a) after the definition of “contravention of previous planning control” insert–

““Crown land” has the meaning given by section 242(1)(e) of the Act;”;

(b) after the definition of “Notification Regulations” insert–

““operational Crown building” means a building which is operational Crown land;

“operational Crown land” means–

(a) Crown land which is used for operational purposes; and

(b) Crown land which is held for those purposes,

but does not include–

(i) land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or held, for operational purposes;

(ii) Crown land–

(aa) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate; or

(bb) in which there is an interest belonging to Her Majesty in right of Her private estates;

“operational purposes” means the purposes of carrying on the functions of the Crown or of The Scottish Parliamentary Corporate Body;”;

(c) for the definition of “original” substitute–

““original” means–

(a) in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date and, in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built;

(a) S.I. 1987/1531.

(b) S.I. 1987/1532 as amended by S.I. 1994/2567.

(c) S.I. 1990/507.

(d) S.I. 1992 as amended by S.I. 1991/1, S.I. 1992/1078, S.I. 1992/2084, S.I. 1993/1036, S.I. 1994/2586, S.I. 1994/3294, S.I. 1996/252, S.I. 1996/1266, S.I. 1997/1871, S.I. 1997/3060, S.I. 1998/1226, S.S.I. 1999/1, S.S.I. 2000/2040, S.S.I. 2001/266, S.S.I. 2003/341, S.S.I. 2003/2155, S.S.I. 2004/332.

(e) Section 242 was amended by the Planning and Compulsory Purchase Act 2004 (c.5), Schedule 5, para 6.

- (b) in relation to a building which is Crown land on 12th June 2006, as existing on that date and, in relation to a building built on or after 12th June 2006 which is Crown land on the date of its completion, as so built;”.
- (3) In article 3(10) (permitted development) after sub-paragraph (f) insert–
 - “(g) development for which permission is granted by Class 73 of Part 26.”.
- (4) In article 4(6) (directions restricting permitted development)–
 - (a) after sub-paragraph (a) insert–
 - “(aa) the carrying out of development specified in Parts 26, 30 or 31;”;
 - (b) In Schedule 1 (permitted development) after Part 25 (closed circuit television cameras) insert Parts 26 to 32 as set out in the Schedule to this Order.

The Town and Country Planning (General Development Procedure) (Scotland) Order 1992

12.—(1) The Town and Country Planning (General Development Procedure) (Scotland) Order 1992(a) applies to the Crown with the following modifications.

- (2) After article 3 insert–

“Applications in respect of Crown land

3A.—(1) An application for planning permission in respect of Crown land shall be accompanied by–

- (a) a statement that the application is made in respect of Crown land; and
- (b) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation.”.
- (3) After article 13 (direction by planning authorities requiring further information) insert–

“Applications - national security

13A. The validity of an application shall not be affected by failure to disclose information as to–

- (a) national security; and
- (b) the measures taken or to be taken to ensure the security of any premises or property,

where the application is accompanied by a written statement from the applicant that, in the opinion of the applicant, the information relates to the matters mentioned in (a) or (b) above, and that public disclosure of that information would be contrary to the national interest.”.

- (4) After article 28 (procedure on receipt of application) insert–

“Applications for certificate of lawful use or development - national security

28A. The validity of an application shall not be affected by failure to disclose information as to–

- (a) national security; and
- (b) the measures taken or to be taken to ensure the security of any premises or property,

where the application is accompanied by a written statement from the applicant that, in the opinion of the applicant, the information relates to the matters mentioned in (a) or (b)

(a) S.I. 1992/224. Relevant amendments were made by S.I. 1994/2585, S.I. 1994/3293, S.I. 1996/467, S.I. 1997/749, S.S.I. 2000/179, S.S.I. 2001/245, S.S.I. 2003/1, and S.S.I. 2003/2155.

above, and that public disclosure of that information would be contrary to the national interest.”.

(5) After Part 3 insert–

“PART 3A

APPLICATIONS FOR PERMISSION UNDER SECTION 242A

22A.—(1) This Order applies to an application made to the Scottish Ministers under section 242A(a) of the Act (urgent Crown development) subject to the following modifications.

(2) Reference to “planning authority” in this Order shall be treated as references to “the planning authority or the Scottish Ministers, as appropriate.”

(3) The Scottish Ministers shall, in determining an application under section 242A, take into account any representations made where any notice of the application has been–

- (a) given in accordance with article 9 within 21 days beginning with the date when the notice was given;
- (b) published in accordance with section 242A(3) of the Act within 21 days beginning on the date on which the notices was published.

(4) In article 15 (consultation before grant of planning permission), omit paragraph (1)(n)(i).

(5) Articles 12(5) and (9), 13, 14, 22 and Part 4 shall not apply.”.

The Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992

13. The Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992(b) apply to the Crown.

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993

14.—(1) The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993(c) apply to the Crown with the following modifications.

(2) In regulation 4 (exemptions), after paragraph (1) insert–

“(1A) Hazardous substances consent is not required for the presence of a hazardous substance in, on, over or under land at military establishments, installations or storage facilities.”.

(3) In regulation 15 (claim for deemed consent) in paragraph (1), after “section 10A” insert “or section 30D(d)”;

(4) In regulation 16 (conditions on deemed consent), after “section 10A(6)(b)” insert “and section 30D(8)(b)”.

(5) In Schedule 2 (prescribed forms, notices and certificates) in Form 12–

- (a) in the heading, after “section 10A” add “and 30D”;
- (b) in the notes to Part 2, in paragraph (c) after “6th July 2000” insert “or, in the case of applications for deemed consent under section 30D, 12th June 2006”.

(a) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

(b) S.I. 1992/2086.

(c) S.I. 1993/323 as amended by S.I. 1996/252, S.S.I. 2000/179 and S.S.I. 2003/1.

(d) Section 30D was inserted into the Planning (Hazardous Substances) (Scotland) Act 1997 by S.I. 2006/269.

The Conservation (Natural Habitats, &c.) Regulations 1994

15. Part 4 of the Conservation (Natural Habitats, &c.) Regulations 1994(a) (adaptation of planning and other controls) applies to the Crown as if, in regulation 54(2) (grant of planning permission), after sub-paragraph (a) there were inserted—

“(aa) granting planning permission on an application under section 242A(b) of that Act (urgent Crown development);”.

The Town and Country Planning (Use Classes) (Scotland) Order 1997

16.—(1) The Town and Country Planning (Use Classes) (Scotland) Order 1997(c) applies to the Crown with the following modifications.

(2) In the Schedule—

(a) after class 8 (residential institutions) insert—

“*Class 8A. Secure residential institutions*

Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.”.

(b) in class 10 (non-residential institutions) after sub-paragraph (g) insert—

“(h) as a law court.”.

The Town and Country Planning (Minerals) (Scotland) Regulations 1998

17. The Town and Country Planning (Minerals) (Scotland) Regulations 1998(d) apply to the Crown.

The Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) (Scotland) Regulations 1998

18. The Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) (Scotland) Regulations 1998(e) apply to the Crown.

The Visiting Forces and International Headquarters (Application of Law) Order 1999

19. In the Visiting Forces and International Headquarters (Application of Law) Order 1999(f) article 11 paragraph (3)(b), for “section 74(6)” substitute “section 73C”(g).

20. The Environmental Impact Assessment (Scotland) Regulations 1999—(1) The Environmental Impact Assessment (Scotland) Regulations 1999(h) apply to the Crown with the following modifications.

(a) S.I. 1994/2716. Relevant amendments were made by S.I. 1997/3055 and 2000/1973.

(b) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

(c) S.I. 1997/3061 as amended by S.I. 1998/1196 and S.S.I. 1999/1.

(d) S.I. 1998/2913.

(e) S.I. 1998/2914.

(f) S.I. 1999/1736.

(g) Section 73C was inserted by the Planning and Compulsory Purchase Act 2004, Schedule 5, paragraph 7.

(h) S.S.I. 1999/1, as amended by S.S.I. 2002/324, S.S.I. 2003/331, S.S.I. 2003/341 and S.S.I. 2004/332.

(2) After regulation 28A, insert–

“Applications for permission under section 242A

28B.—(1) These Regulations shall apply to an application made to the Scottish Ministers under section 242A(a) of the Act (urgent Crown development) subject to the following modifications.

(2) References to “planning authority” in the Regulations shall be treated as references to “the planning authority or the Scottish Ministers, as appropriate”.

(3) References to “authority” in the Regulations shall be treated as references to “the authority or the Scottish Ministers, as appropriate”.

(4) References to “relevant planning authority” shall be treated as references to “the Scottish Ministers”.

(5) Regulation 5(6) and (7), regulation 7(4)(b), regulation 10(7) and (8) and regulation 14(1)(a) shall not apply.

(6) In regulation 4 for paragraph (9) substitute–

“(9) The Scottish Ministers shall send a copy of any screening direction to the planning authority for the area to which the application relates.”.

(7) In regulation 14 (consultation where environmental statement received by planning authority)–

(a) in paragraph (1) (b) for “the Scottish Ministers” substitute “the planning authority for the area to which the application relates”;

(b) after paragraph (1) insert–

“(1A) Where a planning authority receive a copy of the application and other documents referred to in paragraph (b), they shall place a copy of the relevant statement together with a copy of the related application for public inspection at all reasonable hours in the place where the register is kept.”.

(8) For regulation 20 (availability of opinions, directions, etc. for inspection) substitute–

“Availability of opinions, directions, etc. for inspection

20.—(1) Where the Scottish Ministers–

(a) adopt a screening opinion or scoping opinion in relation to an application which may be made under section 242A;

(b) receive a request under regulation 10(1); or

(c) make a screening direction, scoping direction or direction under regulation 4(4);

before the application is made for the development in question, the Scottish Ministers shall send a copy of the opinion, request, direction, environmental statement including any further information and any accompanying statement of reasons to the planning authority for the area to which the application relates.

(2) Where the planning authority receive copies of an opinion, request direction and any accompanying statement of reasons under paragraph (1) they shall take steps to secure that the documents are made available for public inspection at all reasonable hours in at the place where the appropriate register (or relevant section of that register is kept).

(3) Documents made available under paragraph (2) shall remain so available for a period of two years.”.

(a) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

(9) In regulation 21 (duties to inform the public and the Scottish Ministers of final decisions)–

(a) for paragraph (1) substitute–

“(1) Where an EIA application is determined by the Scottish Ministers they shall–

(a) notify the planning authority for the area to which the application relates and the consultation bodies of the decision;

(b) provide the authority with a statement containing–

(i) the content of the decision and any conditions attached thereto;

(ii) the main reasons and considerations on which the decision is based; and

(iii) a description, where necessary, of the main measures to avoid, reduce and if possible, offset the major adverse effects of the development.”;

(b) for paragraph (2) substitute–

“(2) The planning authority shall, as soon as reasonably practicable after receipt of a notification under paragraph (1)(a)–

(a) make available for public inspection at the place where the appropriate register is kept (or relevant section of that register) is kept a copy of the statement referred to in paragraph (1)(b); and

(b) inform the public of the decision (and of where the statement referred to in paragraph (1)(b) may be inspected), by publishing in a newspaper circulating in the locality in which the land is situated or by other such means as are reasonable in the circumstances.”; and

(c) paragraph (3) is omitted.”.

The Town and Country Planning (Fees for Applications and Deemed Applications)(Scotland) Regulations 2004

21. The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004(a) apply to the Crown.

MALCOLM CHISHOLM

A member of the Scottish Executive

St Andrew's House,
Edinburgh
17th May 2006

(a) S.S.I. 2004/219.

PART 26

**DEVELOPMENT BY THE SCOTTISH MINISTERS AS ROADS
AUTHORITY**

Class 73—(1) The carrying out by the Scottish Ministers of development in connection with a project for:

- (a) the construction of a new road for which the Scottish Ministers are roads authority;**
- (b) the improvement of a road authorised by an order such as is mentioned in paragraph 1 of Schedule 1 to the Roads (Scotland) Act 1984(a);**
- (c) the improvement of a road without such an order.**

(2) For the purposes of this class “roads authority” has the same meaning as in section 151 of the Roads (Scotland) Act 1984.

Class 74. The carrying out by the Scottish Ministers of development (other than development falling within Class 73) in exercise of their functions under the Roads (Scotland) Act 1984, or development in connection with, or incidental to, the exercise of those functions.

PART 27

DEVELOPMENT BY THE CROWN

Class 75—(1) The erection or construction and the maintenance, improvement or other alteration by or on behalf of the Crown of—

- (a) any small ancillary building, works or equipment on Crown land required for operational purposes;**
- (b) lamp standards, information kiosks, passenger shelters, shelters and seats, telephone boxes, fire alarms, drinking fountains, refuse bins or baskets, barriers for the control of people and vehicles and similar structures or works required in connection with operational purposes.**

(2) The reference in Class 75(1)(a) to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity.

Class 76.—(1) The extension or alteration by or on behalf of the Crown of an operational Crown building.

(2) Development is not permitted by this class if—

- (a) the building as extended or altered is to be used for purposes other than those of—**
 - (i) the Crown; or**
 - (ii) the provision of employee facilities;**
- (b) the height of the building as extended or altered would exceed the height of the original building;**
- (c) the floor space of the original building would be exceeded by more than 1,000 square metres in any other case;**

(a) 1984 c.54.

- (d) the external appearance of the original building would be materially affected;
- (e) any part of the building as extended or altered would be within 5 metres of any boundary of the curtilage of the original building; or
- (f) the development would lead to a reduction in the space available for the parking or turning of vehicles.

(3) For the purposes of this class—

- (a) the erection of any additional building within the curtilage of another building (whether by virtue of Class 76 or otherwise) and used in connection with it is to be treated as the extension of that building, and the additional building is not to be treated as an original building;
- (b) where two or more original buildings are within the same curtilage and are used for the same operational purposes, they are to be treated as a single original building in making any measurement;
- (c) “employee facilities” means social, care or recreational facilities provided for employees or servants of the Crown, including crèche facilities provided for the children of such employees or servants.

Class 77—(1) Development carried out by or on behalf of the Crown on operational Crown land for operational purposes consisting of—

- (a) the installation of additional or replacement plant or machinery;**
- (b) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus; or**
- (c) the provision, rearrangement or replacement of a private way, private railway, siding or conveyor.**

(2) Development described in Class 77(1)(a) is not permitted if—

- (a) it would materially affect the external appearance of the premises; or
- (b) any plant or machinery would exceed a height of 15 metres above ground level or the height of anything replaced, whichever is the greater.

(3) In this class, “Crown land” does not include land in or adjacent to and occupied together with a mine.

Class 78. The provision by or on behalf of the Crown of a hard surface within the curtilage of an operational Crown building.

PART 28

AVIATION DEVELOPMENT BY THE CROWN

Class 79—(1) The carrying out on operational Crown land, by or on behalf of the Crown, of development (including the erection or alteration of an operational building) in connection with the provision of services and facilities at an airbase.

(2) Development is not permitted by this class if it would consist of or include—

- (a) the construction or extension of a runway;
- (b) the erection of a building other than an operational building;
- (c) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.

(3) Development is permitted by this class subject to the condition that the relevant airbase operator consults the planning authority before carrying out any development, unless that development falls within the description in paragraph (5).

(4) Development falls within this paragraph if—

- (a) it is urgently required for the efficient running of the airbase; and
- (b) it consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building, or equipment do not exceed 4 metres in height or 200 cubic metres in capacity.

(5) For the purposes of this class, “operational building” means an operational Crown building, other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, military or civilian personnel, goods, military equipment, munitions and other items.

Class 80. The carrying out on operational land within the perimeter of an airbase, by or on behalf of the Crown, of development in connection with the provision of air traffic services.

Class 81—(1) The carrying out on operational land outside but within 8 kilometres of the perimeter of an airbase, by or on behalf of the Crown, of development in connection with the provision of air traffic services.

(2) Development is not permitted by this class if—

- (a) any building erected would be used for a purpose other than housing equipment used in connection with the provision of air traffic services;
- (b) any building erected would exceed a height of 4 metres; or
- (c) it would consist of the installation or erection of any radar or radio mast, antenna or other apparatus which would exceed 15 metres in height, or, where an existing mast, antenna or apparatus is replaced, the height of that mast, antenna or apparatus, if greater.

Class 82—(1) The carrying out on operational land, by or on behalf of the Crown, of development in connection with the provision of air traffic services.

(2) Development is not permitted by this class if—

- (a) any building erected would be used for a purpose other than housing equipment used in connection with the provision of air traffic services;
- (b) any building erected would exceed a height of 4 metres; or
- (c) it would consist of the installation or erection of any radar or radio mast, antenna or other apparatus which would exceed 15 metres in height, or, where an existing mast, antenna or apparatus is replaced, the height of that mast, antenna or apparatus, if greater.

Class 83—(1) The use of land by or on behalf of the Crown in an emergency to station moveable apparatus replacing unserviceable apparatus in connection with the provision of air traffic services.

(2) Development is permitted by this class subject to the condition that on or before the expiry of a period of six months beginning with the date on which the use began, the use shall cease, and any apparatus shall be removed, and the land shall be restored to its condition before the development took place, or to such other state as may be agreed in writing between the planning authority and the developer.

Class 84—(1) The use of land by or on behalf of the Crown to provide services and facilities in connection with the provision of air traffic services and the erection or placing of moveable structures on the land for the purposes of that use.

(2) Development is permitted by this class subject to the condition that, on or before the expiry of the period of six months beginning with the date on which the use began, the use shall cease, any structure shall be removed, and the land shall be restored to its condition before the development took place, or to such other state as may be agreed in writing between the planning authority and the developer.

Class 85—(1) The use of land by or on behalf of the Crown for the stationing and operation of apparatus in connection with the carrying out of surveys or investigations.

(2) Development is permitted by this class subject to the condition that on or before the expiry of the period of six months beginning with the date on which the use began, the use shall cease, any apparatus shall be removed, and the land shall be restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer.

Class 86. The use of buildings by or on behalf of the Crown within the perimeter of an airbase for purposes connected with air transport services or other flying activities at that airbase.

Interpretation of Part 28

For the purposes of Part 28—

“airbase” means the aggregate of the land, buildings and works comprised in a Government aerodrome within the meaning of article 155 of the Air Navigation Order 2005(a); and

“air traffic services” has the same meaning as in section 98 of the Transport Act 2000(b) (air traffic services).

PART 29

CROWN RAILWAYS, DOCKYARDS ETC. AND LIGHTHOUSES

Class 87—(1) Development by or on behalf of the Crown on operational Crown land, required in connection with the movement of traffic by rail.

(2) Development is not permitted by this class if it consists of or includes—

- (a) the construction of a railway;
- (b) the construction or erection of a hotel, railway station or bridge; or
- (c) the construction or erection otherwise than wholly within a railway station of—
 - (i) an office, residential or educational building or a building used for an industrial process; or
 - (ii) a car park, shop, restaurant, garage or petrol filling station.

(3) For the purposes of this class—

- (a) references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected; and
- (b) the reference to an industrial process does not include the washing, maintenance and cleaning of rolling stock.

Class 88—(1) Development by or on behalf of the Crown or its lessees on operational Crown land where the development is required—

- (a) for the purposes of shipping; or
- (b) at a dock, pier, pontoon or harbour in connection with the embarking, disembarking, loading, discharging or transport of military or civilian personnel, military equipment, munitions or other items.

(2) Development is not permitted by this class if it consists of or includes the construction or erection of a bridge or other building not required in connection with the handling of traffic.

(a) S.I. 2005/1970.
(b) 2000 c.38.

(3) For the purposes of this class, references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected.

Class 89. The use of any land by or on behalf of the Crown for the spreading of any dredged material resulting from a dock, pier, harbour, water transport, canal or inland navigation undertaking.

Class 90—(1) Development by or on behalf of the Crown on operational Crown land, or for operational purposes, consisting of—

- (a) the use of the land as a lighthouse, with all requisite works, roads and appurtenances;**
- (b) the extension of, alteration, or removal of a lighthouse; or**
- (c) the erection, placing, alteration or removal of a buoy or beacon.**

(2) Development is not permitted by this class if it consists of or includes the erection of offices, or the reconstruction or alteration of offices where their design or external appearance would be materially affected.

(3) For the purposes of this class—

“buoys and beacons” includes all other marks and signs of the sea; and

“lighthouse” includes any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals.

PART 30

EMERGENCY DEVELOPMENT BY THE CROWN

Class 91—(1) Development by or on behalf of the Crown on Crown land for the purposes of—

- (a) preventing an emergency;**
- (b) reducing, controlling or mitigating the effects of an emergency; or**
- (c) taking other action in connection with an emergency.**

(2) Development is permitted by this class subject to the following conditions—

- (a) the developer shall, as soon as practicable after commencing development, notify the planning authority of that development; and
- (b) on or before the expiry of the period of six months beginning with the date on which the development began—
 - (i) any use of that land for a purpose of this class shall cease and any buildings, plant, machinery, structures and erections permitted by this class shall be removed; and
 - (ii) the land shall be restored to its condition before the development took place, or to such other state as may be agreed in writing between the planning authority and the developer.

(3) For the purposes of this class, “emergency” means an event or situation which threatens serious damage to—

- (a) human welfare in a place in the United Kingdom;
- (b) the environment of a place in the United Kingdom; or
- (c) the security of the United Kingdom.

(4) For the purposes of paragraph (3)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause—

- (a) loss of human life;

- (b) human illness or injury;
- (c) homelessness;
- (d) damage to property;
- (e) disruption of a supply of money, food, water, energy or fuel;
- (f) disruption of a system of communication;
- (g) disruption of facilities for transport; or
- (h) disruption of services relating to health.

(5) For the purposes of paragraph (3)(b) an event or situation threatens damage to the environment only if it involves, causes or may cause—

- (a) contamination of land, water or air with biological, chemical or radio-active matter; or
- (b) disruption or destruction of plant life or animal life.

PART 31

DEVELOPMENT FOR NATIONAL SECURITY PURPOSES

Class 92—(1) The erection, construction, maintenance, improvement or alteration of a gate, fence, wall of other means of enclosure by or on behalf of the Crown on Crown land for national security purposes.

(2) Development is not permitted by this class if the height of any gate, fence, wall or other means of enclosure erected or constructed would exceed 4.5 metres above ground level.

Class 93—(1) The installation, alteration or replacement by or on behalf of the Crown on Crown land of a closed circuit television camera and associated lighting for national security purposes.

(2) Development is not permitted by this class if—

- (a) the dimensions of the camera including its housing exceed 75 centimetres by 25 centimetres by 25 centimetres;
- (b) the uniform level of lighting provided exceeds 10 lux measured at ground level.

(3) Development is permitted by this class subject to the following conditions—

- (a) the camera shall, so far as practicable, be sited so as to minimise its effect on the external appearance of any building to which it is fixed;
- (b) the camera shall be removed as soon as reasonably practicable after it is no longer required for national security purposes.

(4) For the purposes of this class—

“camera” except in paragraph (2)(a) includes its housing, pan and tilt mechanism, infra red illuminator, receiver, mountings and brackets; and

“ground level” means the level of the surface of the ground immediately adjacent to the building to which the camera is attached or, where the level of the surface of the ground is not uniform, the level of the lowest part of the surface of the ground adjacent to it.

Class 94—(1) Development by or on behalf of the Crown for national security purposes in, on, over or under Crown land, consisting of—

- (a) **the installation, alteration or replacement of any electronic communications apparatus;**
- (b) **the use of land in an emergency for a period not exceeding six months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use; or**

(c) development ancillary to radio equipment housing.

- (2) Development is not permitted by Class 94(1)(a) if–
- (a) in the case of the installation of apparatus (other than on a building) the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;
 - (b) in the case of the alteration or replacement of apparatus already installed (other than on a building), the apparatus, excluding any antenna, would, when altered or replaced, exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;
 - (c) in the case of the installation, alteration or replacement of apparatus on a building, the height of the apparatus (taken by itself) would exceed the height of the existing apparatus or–
 - (i) 15 metres, where it is installed, or is to be installed, on a building which is 30 metres or more in height; or
 - (ii) 10 metres in any other case, whichever is the greater;
 - (d) in the case of the installation, alteration or replacement of apparatus on a building, the highest part of the apparatus when installed, altered or replaced would exceed the height of the highest part of the building by more than the height of the existing apparatus or–
 - (i) 10 metres, where it is installed, or is to be installed, on a building which is 30 metres or more in height;
 - (ii) 8 metres, in the case of a building which is more than 15 metres but less than 30 metres in height; or
 - (iii) 6 metres in any other case. whichever is the greater;
 - (e) in the case of the installation, alteration or replacement of apparatus (other than an antenna) on a mast, the height of the mast and the apparatus supported by it would, when the apparatus was installed, altered or replaced, exceed any relevant height limit specified in respect of apparatus in sub-paragraphs (a), (b), (c) and (d) above, and for the purposes of applying the limit specified in sub-paragraph (c), the words “(taken by itself)” shall be disregarded;
 - (f) in the case of the installation, alteration or replacement of any apparatus other than–
 - (i) a mast;
 - (ii) an antenna;
 - (iii) any apparatus which does not project above the level of the surface of the ground; or
 - (iv) radio equipment housing, the ground or base area of the structure would exceed the ground or base area of the existing structure or 1.5 square metres, whichever is the greater;
 - (g) in the case of the installation, alteration or replacement of an antenna on a building (other than a mast) which is less than 15 metres in height; on a mast located on such a building; or, where the antenna is to be located below a height of 15 metres above ground level, on a building (other than a mast) which is 15 metres or more in height–
 - (i) the antenna is to be located on a wall or roof slope facing a highway which is within 20 metres of the building on which the antenna is to be located, unless it is essential for operational purposes that the antenna is located in that position; or
 - (ii) in the case of dish antennas, the size of any dish would exceed the size of the existing dish when measured in any dimension or 1.3 metres when measured in any dimension, whichever is the greater;
 - (h) in the case of the installation, alteration or replacement of a dish antenna on a building (other than a mast) which is 15 metres or more in height, or on a mast located on such a

building, where the antenna is located at a height of 15 metres or above, measured from ground level the size of any dish would exceed the size of the existing dish when measured in any dimension or 1.3 metres when measured in any dimension, whichever is the greater;

- (i) in the case of the installation of a mast, on a building which is less than 15 metres in height, such a mast would be within 20 metres of a highway, unless it is essential for operational purposes that the mast is installed in that position;
- (j) in the case of the installation, alteration or replacement of radio equipment housing—
 - (i) the development is not ancillary to the use of any other electronic communications apparatus; or
 - (ii) the development would exceed 90 cubic metres or, if located on the roof of a building, the development would exceed 30 cubic metres.

(3) Development consisting of the installation of apparatus is not permitted by Class 94(1)(a) on land in a designated area unless—

- (a) the land on which the apparatus is to be installed is, or forms part of, a site on which there is existing electronic communication apparatus;
- (b) the existing apparatus was installed on the site on or before the relevant day; and
- (c) the site was Crown land on the relevant day.

(4)—(a) Subject to paragraph (b), development is not permitted by Class 94(1)(a) if it will result in the installation of more than one item of apparatus (“the original apparatus”) on a site in addition to any item of apparatus already on that site on the relevant day.

(b) In addition to the original apparatus which may be installed on a site by virtue of Class 94(1)(a), for every four items of apparatus which existed on that site on the relevant day, one additional item of small apparatus may be installed.

(c) in paragraph (b), “small apparatus” means—

- (i) a dish antenna, other than on a building, not exceeding 5 metres in diameter and 7 metres in height;
- (ii) an antenna, other than a dish antenna and other than on a building, not exceeding 7 metres in height;
- (iii) a hard standing or other base for any apparatus described in sub-paragraphs (a) and (b), not exceeding 7 metres in diameter;
- (iv) a dish antenna on a building, not exceeding 1.3 metres in diameter and 3 metres in height;
- (v) an antenna, other than a dish antenna, on a building, not exceeding 3 metres in height;
- (vi) a mast on a building, not exceeding 3 metres in height;
- (vii) equipment housing not exceeding 3 metres in height and of which the area, when measured at ground level, does not exceed 9 square metres.

(5) Class 94(1)(a) and (c) development is permitted subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, installed, altered or replaced on a building in accordance with that permission shall, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building.

(6) Class 94(1)(a) development consisting of the installation of any additional apparatus on land in a designated area is permitted subject to the condition that the apparatus shall be installed as close as reasonably practicable to any existing apparatus.

(7) Class 94(1)(b) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission shall, at the expiry of the relevant period be removed from the land and the land restored to its condition before the development took place.

(8) Class 94 development—

- (a) on land in a designated area; or
- (b) on any other land and consisting of the construction, installation, alteration or replacement of a mast; or of an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by 4 metres or more; or of radio equipment housing with a volume in excess of 2.5 cubic metres; or of development ancillary to radio equipment housing—

is permitted subject, except in case of emergency, to the conditions set out in paragraph (9).

(9)—(a) The developer shall, before commencing development, give notice of the proposed development to any person (other than the developer) who is an owner or tenant of the land to which the development relates—

- (i) by serving the appropriate notice on every such person whose name and address is known to him; and
- (ii) where he has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by local advertisement.

(b) Where the proposed development consists of the installation of a mast within 3 kilometres of the perimeter of an aerodrome, the developer shall, before commencing development, notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate.

(10) For the purposes of this class—

“aerodrome operator” means the person who is for the time being responsible for the management of the aerodrome;

“development ancillary to radio equipment housing” means the construction, installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the purposes of the radio equipment housing;

“appropriate notice” means a notice signed and dated by or on behalf of the developer and containing—

- (a) the name of the developer;
- (b) the address or location of the proposed development;
- (c) a description of the proposed development (including its siting and appearance and the height of any mast);

“land in a designated area” means land or buildings in a National Park, National Scenic Area, Natural Heritage Area, conservation area, historic gardens or designed landscapes, or site of special scientific interest;

“local advertisement” means by publication of the notice in a newspaper circulating in the locality in which the land to which the proposed development relates is situated;

“mast” means a radio mast or a radio tower;

“relevant day” means—

- (a) 12th June 2006; or
- (b) where existing apparatus is installed pursuant to planning permission granted on or after 12th June 2006, the date when that apparatus is finally installed pursuant to that permission,
whichever is later;

“relevant period” means a period which expires—

(a) six months from the commencement of the construction, installation, alteration or replacement of any apparatus or structure permitted by Class 94(1)(a) or Class 94(1)(c) or from the commencement of the use permitted by Class 94(1)(b), as the case may be; or

(b) when the need for such apparatus, structure or use ceases, whichever occurs first; and

“tenant” means the tenant of an agricultural holding any part of which is comprised in the land to which the proposed development relates.

PART 32

ANCIENT MONUMENTS

Class 95—(1) The carrying out by or on behalf of the Scottish Ministers of development—

(a) consisting of the maintenance, repair or reinstatement of any ancient monument: or

(b) in exercise of their functions under the Ancient Monuments and Archaeological Areas Act 1979.

(2) Development is not permitted by Class 95(1)(b) if the works involve the provision of facilities or services under section 20 (provision of facilities for the public in connection with ancient monument) of the Ancient Monuments and Archaeological Areas Act 1979.

(3) For the purposes of this class, “ancient monument” has the same meaning as in section 61 of the Ancient Monuments and Archaeological Areas Act 1979(a).

(a) 1979 c.46.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 7 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) applies the Town and Country Planning Act (Scotland) 1997 (“the 1997 Act”), the Planning (Listed Buildings and Conservations Areas) (Scotland) Act 1997 (“the listed buildings Act”) and the Planning (Hazardous Substances) Act (Scotland) 1997 (“the hazardous substances Act”) to the Crown. As well as applying the planning Acts to the Crown, Part 7 makes provision for national security, urgent Crown development, enforcement, preservation of trees and old mining permissions.

Section 98 of the 2004 Act gives the Scottish Ministers power, by order, to apply subordinate legislation to the Crown, and to modify subordinate legislation made under or for the purposes of the planning Acts for the purposes of application to the Crown.

This Order applies the Town and Country Planning (Churches, Buildings for Religious Worship and Burial Grounds) (Scotland) Regulations 1948 (article 2), the Caravan Sites (Licence Applications) (Scotland) Order 1960 (article 3), the Town and Country Planning (General) (Scotland) Regulations 1976 (article 5), the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987 (article 8), the Town and Country Planning (Simplified Planning Zones) (Scotland) Regulations 1987 (article 9), the Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 (article 10), the Town and Country Planning (Enforcement of Control) (No. 2) (Scotland) Regulations 1992 (article 13), the Town and Country Planning (Minerals) (Scotland) Regulations 1998 (article 17), the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) (Scotland) Regulations 1998 (article 8) and the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (article 21) to the Crown, without modification.

Article 4 applies the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975 to the Crown with modifications to the Schedule, adding a new provision to create an exemption for works to a tree to enable the implementation of a highway order or scheme made or confirmed by the Scottish Ministers, or where works to a tree are urgently necessary for national security purposes.

Article 6 applies the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 with modifications to include functional advertisements displayed by the Crown in the descriptions of advertisements which benefit from deemed consent under regulation 10.

Article 7 applies the Planning (Listed Buildings and Conservation Areas) (Scotland) Regulations 1987 to the Crown with modifications in respect of provisions on national security in new section 265A, as inserted into the 1997 Act by section 91 of the 2004 Act. Article 7(2) disapplies any requirement for an applicant to disclose information in those cases where the Scottish Ministers have issued a direction under new section 265A(3) that certain evidence shall only be heard or inspected at inquiry by persons specified in the direction. Modifications are made in articles 7(3) to (6) to take into account procedures where an application is made for urgent works on Crown land (section 73B of the listed buildings Act as inserted by section 93 of the 2004 Act).

Article 11 applies the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to the Crown and modifies the Schedule to give the Crown planning permission for certain activities in relation to works carried out by the Crown, including works carried out under the Roads (Scotland) Act 1984 (c.54), aviation development, Crown railways, dockyards and lighthouses, development for emergency purposes and development for national security or national defence purposes.

Article 12 makes modifications to the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 apply to the Crown while taking account of the provisions on

national security in new section 265A and urgent Crown development in new section 242A, as inserted into the 1997 Act by section 92 of the 2004 Act.

Article 14 applies the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 to the Crown with modifications. Article 14(2) inserts an exemption from the requirement for hazardous substances consent into regulation 4 for military establishments, installations or storage facilities. Article 14(3) inserts a new reference into regulation 15 to make provision to apply the transitional provisions in new section 30D of the Hazardous Substances Act to claims for deemed consent. Article 14(4) makes similar amendments to the provisions on conditions for deemed consent in regulation 16. Article 14(5) modifies the prescribed form in Form 12, Schedule 2 to apply the transitional provisions under new 30D.

Article 15 applies the Conservation (Natural Habitats, &c.) Regulations 1994 to the Crown and makes modifications in order to take account of provisions for urgent Crown development in new section 242A, as inserted into the 1997 Act by section 92 of the 2004 Act.

Article 16 applies the Town and Country Planning (Use Classes) (Scotland) Order 1997 to the Crown, with modifications adding a new class of development, secure residential institutions. Change of use within that class to another use within that class does not constitute development. Article 16(2)(b) also adds use as a law court to class 10 which covers non-residential institutions.

Article 19 amends the Visiting Forces and International Headquarters (Application of Law) Order 1999 to substitute reference to new section 73C of the listed buildings Act. New section 73C makes provision for construing expressions relating to the Crown within legislation.

Article 20 applies the Environmental Impact Assessment (Scotland) Regulations 1999 to the Crown with modifications in order to take account of provisions for urgent Crown development in new section 242A, as inserted into the 1997 Act by section 92 of the 2004 Act.

2006 No. 270

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Application of Subordinate
Legislation to the Crown) (Scotland) Order 2006

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