
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the manner in which applications for planning permission, for approvals required by a condition imposed on a grant of planning permission in principle and for certificates of lawful use and development under the Town and Country Planning (Scotland) Act 1997 (“the Act”) are to be made. These Regulations apply to all applications made on or after 3rd August 2009. They also apply to the limited extent provided for in Part 10 in respect of applications made before that date but not determined by that date.

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

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

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

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

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

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

The planning authority are required by regulation 20 to publish a notice in the form set out in Schedule 4 in certain circumstances specified in regulation 20(2). These include the case where it is not possible for the authority to give notice to neighbours under regulation 18 because there are no premises on the neighbouring land.

Regulation 21 and 22 relate to the requirement to keep a list of applications under section 36A of the Act introduced by section 13 of the 2006 Act. Regulation 21 requires the list to be kept in two sections and details the information to be contained in each section. Regulation 22 sets out how the planning authority are to publish the list. Regulation 23 requires the planning authority to send to community councils a weekly list of applications received.

Regulation 24 makes it clear that a planning authority are entitled to require further information to assist them to determine the application. Regulation 25 and Schedule 5 require the planning authority to undertake consultation with certain bodies or authorities in the circumstances described in that Schedule.

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

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

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

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

Part 5 includes provisions relating to direction making powers available to the Scottish Ministers. Regulation 30 confers on the Scottish Ministers power to make directions requiring planning authorities to consult with specified bodies before determining an application. The Scottish Ministers are also empowered to make directions requiring a planning authority to provide information and restricting the grant of planning permission (regulations 31 and 32), requiring the planning authority to consider the imposition of a condition (regulation 33). In addition regulation 35 requires a planning authority to give notice to applicants of directions made by the Scottish Ministers calling in applications for their determination under section 46 of the Act.

Part 6 of the Regulations apply the Regulations with certain modifications to applications for planning permission relation to marine fish farming and makes special provision in relation to the Cairngorms National Park (regulation 37), national security (regulation 38) and development which does not accord with the development plan (regulation 39).

Part 7 of the Regulations set out what information must be included in a notice of intention to carry out development under section 27A(1) of the Act (regulation 40) and also prescribes the classes of development and form of notice for the purposes of section 27C of the Act (regulation 41). This section requires notices to be displayed while development is being carried out.

Part 8 makes provision in relation to applications for certificates of lawful use or development under section 150 or 151 of the Act. Regulation 42 prescribes the information which an application must contain. Regulation 43 sets out what items must accompany an application. Regulation 44 makes

provision for procedure including the period within which an application is to be determined and regulation 45 make provision regarding information relating to national security. Under regulation 46 a planning authority are required to give notice of a proposal to revoke a certificate.

Part 9 of the Regulations make provision for the use of electronic communications and the service of notices.

Part 10 revokes the Town and Country Planning (Development Management Procedure (Development Management Procedure) (Scotland) Regulations 2008 (“the 2008 Regulations”) and makes transitional and saving provisions. Regulation 49 applies certain provision of the Regulations to applications made before 3rd August 2009 (the date on which the 2008 Regulations came into force) but which were not determined by that date. In particular the requirements as to time periods for decision, pre-determination hearings and decision notices apply to these cases. Regulation 50 provides that if an application for reserved matters is made after 3rd August 2009 in respect of outline planning permission then it is to be treated as an application for approval of a condition imposed on the grant of a planning permission in principle. Regulation 51 revokes the 2008 Regulations and various other instruments subject to certain saving provisions.