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2011

THE TOWN AND COUNTRY PLANNING
(DEMOLITION WHICH IS NOT DEVELOPMENT)
(SCOTLAND) REVOCATION DIRECTION 2011

■ circular

Scottish Planning Series

PLANNING CIRCULAR 4 2011

The Town and Country Planning (Demolition which is not Development) (Scotland) Revocation Direction 2011

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This document is available from our website at www.scotland.gov.uk.

ISSN 0141-514X

ISBN: 978-1-78045-302-6 (web only)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS11860 (07/11)

Published by the Scottish Government, July 2011



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INTERPRETATION

“the 1992 Order”	the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended
“the 2001 Direction”	the Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001
“the 2011 Direction”	the Town and Country Planning (Demolition which is not Development) (Scotland) Revocation Direction 2011
“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
Circular 1/2001	the Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001
Circular 3/2011	guidance on The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011
“the EIA Directive”	Council Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC)
“the EIA Regulations”	The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011
“Permitted Development Rights (PDR)”	planning permission granted for certain classes of development by General Permitted Development Orders. Also known as Permitted Development (“PD”)

INTRODUCTION

1. The Town and Country Planning (Demolition which is not Development) (Scotland) Revocation Direction 2011 revokes the Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001.
2. The revocation of the 2001 Direction has the effect that the demolition of any building will be development for the purposes of the Town and Country Planning (Scotland) Act 1997.
3. This Circular revokes Circular 1/2001 and amends Annex B of Circular 2/1995 (in particular paragraphs 1-6 of Annex B no longer apply).

BACKGROUND

4. The revocation follows the ruling from the Court of Justice of the European Union in the case Commission v Ireland (C-50/09), that concluded that demolition of certain buildings is capable of constituting a project for the purpose of the EIA Directive.

THE 2001 DIRECTION

5. The 2001 Direction provided that the complete demolition of a wide range of buildings did not constitute 'development' under section 26 of the 1997 Act. Therefore the complete demolition of many buildings did not require planning permission. For the most part only the demolition of dwellings or buildings containing dwellings remained 'development'. The 2001 Direction also excluded the complete or partial demolition of gates, fences, walls or other means of enclosure from being 'development' except in a conservation area.
6. Class 70 of Schedule 1 to the 1992 Order granted, and continues to grant, planning permission for the complete demolition of buildings, subject to certain limitations and conditions (including requirements for prior approval). When the 2001 Direction was in place, permitted development rights (PDR) were needed primarily for the demolition of dwellings or buildings containing dwellings, other complete demolitions being excluded from 'development'. Other classes of PDR grant planning permission for partial demolition required to carry out development permitted by that class.

EFFECT OF REVOCATION OF THE 2001 DIRECTION

7. Revoking the 2001 Direction means that the demolition of any building will be development for the purpose of the 1997 Act and will be subject to the relevant planning and EIA requirements.

8. In particular, where a development is listed in Schedule 1 to the EIA Regulations, then PDR do not apply. Where a development is listed in Schedule 2 to the EIA Regulations and meets or exceeds the related threshold or is in a sensitive area (as defined in the EIA Regulations) then PDR do not apply unless a screening opinion or screening direction indicating EIA is not required has been obtained from, either the planning authority or the Scottish Ministers. Further information and guidance on Environmental Impact Assessment is contained in Circular 3/2011.

WHAT DOES THIS MEAN FOR A DEVELOPER?

9. Developers intending to demolish any building (which does not include demolishing part of a building) have PDR under class 70 of the 1992 Order provided they comply with the limitations and conditions attached to that class and the EIA mechanism described in paragraph 8. These conditions may require the developer to apply to the planning authority for a determination as to whether prior approval of the demolition is required, with related requirements for neighbour notification. In some cases such an application, and related neighbour notification, is not required. For example, where planning permission for the redevelopment of the site, including the demolition of existing buildings, has been granted by the planning authority.
10. Developers will also need to be aware of the requirements of the EIA Regulations and seek a screening opinion or direction where necessary. This will be in addition to any other consents required for demolition. EIA requirements apply even in cases where a determination on the need for prior approval is not required.
11. Where developers are seeking planning permission for redevelopment of a site, they should include the demolition aspect in the application, particularly if EIA is involved. That way the resulting EIA considerations and planning permission cover any demolition involved.

WHAT DOES THIS MEAN FOR A PLANNING AUTHORITY?

12. Planning authorities are likely to see an increase in applications for prior approval as demolition previously covered by the 2001 Direction, will now largely be relying on the PDR in class 70. They will also have to consider whether any demolition comprises or forms part of a Schedule 1 or Schedule 2 development under the EIA Regulations and issue an EIA screening opinion where required.
13. The Scottish Government will consider amending class 70 of the 1992 Order to reduce the regulatory burden resulting from the revocation of the 2001 direction.

FURTHER COPIES AND ENQUIRIES

14. Enquiries about the content of this Circular should be addressed to Directorate for the Built Environment, Area 2-J, Victoria Quay, Edinburgh EH6 6QQ (Telephone 0131 244 7080; e-mail: ann.niven@scotland.gsi.gov.uk). Further copies and a list of current planning circulars may be obtained online <http://www.scotland.gov.uk/Topics/Built-Environment/planning> .

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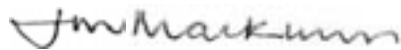
The Scottish Ministers give the following Direction in exercise of the powers conferred by section 26(2)(g) of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so.

Citation and commencement

1. This Direction may be cited as the Town and Country Planning (Demolition which is not Development) (Scotland) Revocation Direction 2011 and comes into force on the day after it is given.

Revocation of the Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001

2. The Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001 is revoked.



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25 July 2011



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ISBN: 978-1-78045-302-6 (web only)

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