



SCOTTISH EXECUTIVE
Development Department

PLANNING



Removal of Legal Impediments to E-Planning

Consultation Paper

August 2003



SCOTTISH EXECUTIVE

Development Department
Planning Division

Victoria Quay
Edinburgh EH6 6QQ

«Name»
«Organisation»
«Address1»
«Address2»
«Address3»
«Address4»
«Address5»
«Address6»
«Address7»

Telephone: 0131-244 0771
Fax: 0131-244 7555
jim.mackinnon@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

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«Salutation»

CONSULTATION ON THE REMOVAL OF LEGAL IMPEDIMENTS TO E-PLANNING: THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (SCOTLAND) ORDER 2003

This letter invites comments on the attached consultation paper on the removal of legal impediments to the delivery of an electronic planning service.

The consultation paper can be viewed on our website at www.scotland.gov.uk/planning. The draft Order, contained in the Annex, is intended to enable certain planning procedures to be made available by electronic means. The draft Order does no more than create an opportunity for those that wish to use an electronic, rather than paper-based, planning system. The existing paper-based system will continue to operate for as long as those engaging in the system wish to use it.

The consultation period will run until 31 October 2003. Comments should be sent electronically to eplanning@scotland.gsi.gov.uk. Alternatively, comments may be posted to Nick Morrison, Scottish Executive Development Department, Planning Division, 2H, Victoria Quay, Edinburgh, EH6 6QQ. Additional copies of the consultation paper can be obtained by telephoning Nick Morrison on 0131 244 7066.

Yours sincerely

JAMES G MACKINNON
Chief Planner



REMOVAL OF LEGAL IMPEDIMENTS TO E-PLANNING: THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (SCOTLAND) ORDER 2003

A CONSULTATION PAPER

INTRODUCTION

1. The proposed Town and Country Planning (Electronic Communications) (Scotland) Order 2003 is intended to enable some aspects of the planning service to be provided electronically. The electronic elements of the system will supplement rather than replace the existing paper-based system. The draft Order (see Annex) contains general provisions about the definition of writing and notices and makes the changes that are needed to allow the electronic delivery of certain aspects of the planning system. Work continues on drafting the Order but at this stage we wanted to give practitioners of the planning system and those with a wider interest the opportunity to comment on the draft Order and to contribute towards its final shape.

OBJECTIVES

2. In the 21st Century citizens expect the delivery of public services to improve continuously and to provide choice, convenience of access and efficiency. Under the Scottish Executive's vision for 21st Century Government, all services that can feasibly be provided electronically should be available by 2005. The White Paper, *Your Place Your Plan* (published in March 2003), details our commitment to make the planning service more efficient and involve citizens more in the process. New technology presents important opportunities on both fronts. However, before we can progress, we must remove a number of legal impediments in the current legislation.

3. The overall objective of the draft Order is to make it possible for those that wish to do so to use an electronic, rather than a paper-based, planning system. The existing paper-based system will continue to operate for as long as those engaging in the system wish to use it.

4. The specific objectives of the draft Order are to enable electronic working in the following priority areas:

- planning applications
- listed building consent and conservation area consent applications
- appeals including enforcement notice appeals

5. The draft Order amends the primary and associated secondary legislation to authorise the use of electronic communications, subject to specific exemptions. Exemptions relate to areas where it would be inappropriate to remove the use of a paper-based system, for example, where criminal sanctions attach to failure to comply with certain notices, such as enforcement related notices.

6. The draft Order does not deal with the whole of the planning system. The implications for other areas such as advertising consent applications, applications for determination of prior approval, mineral consents and development plans are still being considered and it is intended that provisions will cover these areas in the final Order. We are also considering whether the scope of the Order might also be extended to apply its principles

to the Environmental Impact Assessment regime. A comparable Order relating to the planning system in England and Wales came into force on 31 March 2003.

CONSULTATION

7. This consultation paper seeks views on both general issues and the specific proposals contained in the proposed Town and Country Planning (Electronic Communications) (Scotland) Order 2003. The text in the draft Order builds on research carried out in March 2003 by Professor Mark Poustie of the University of Strathclyde Law School. The Scottish Executive is grateful to Professor Poustie for the thoroughness of his work, which identified the necessary steps to remove legal impediments to ePlanning. This consultation is intended to encourage informed discussion and does not signify that decisions have already been reached on any of the issues covered. A final decision on the content of the Order will be taken following full consideration of the responses to this consultation. Respondents are not obliged to restrict comments to the specific points on which views are sought. Any comments relevant to the overall aim of making the use of electronic communication in the planning service possible are equally welcome.

REGULATORY APPRAISAL

8. The Executive is committed to delivering a better regulatory framework to assist business, regulator and the wider community. In finalising proposals for presentation to Parliament, a Regulatory Impact Assessment will be undertaken with the aim of ensuring that the right balance is achieved between securing the benefits of regulation and minimising the regulatory burden. To assist in preparing such an appraisal, it would be helpful if respondents could give an indication of any potential benefits or cost implications of the proposals.

RESPONSES

9. Responses to this consultation paper should be sent no later than **Friday 31 October 2003** to:

Nick Morrison
Scottish Executive Development Department
Planning Division
Area 2-H
Victoria Quay
EDINBURGH, EH6 6QQ

Or to: eplanning@scotland.gsi.gov.uk

10. In order to inform debate on the issues raised in the consultation paper, the Executive may wish to make copies of the responses available to the public. The Executive will, therefore, assume that respondents are content for their responses to be made available in this way. If, however, respondents indicate that they wish all or part of their response excluded from this arrangement, confidentiality will of course be respected, although the anonymised response may be included in any numerical summary of the responses received. It would be particularly helpful if respondents could make clear whether they are responding as an individual or as a representative of an organisation (and if so, which organisation).

FURTHER COPIES

11. Further copies of this consultation paper are available from Nick Morrison, Scottish Executive Development Department, Planning Division, 2-H, Victoria Quay, Edinburgh, EH6 6QQ (tel. 0131 244 7066). This paper can also be accessed through the Executive's website at www.scotland.gov.uk/planning.

COMMENTARY ON THE DRAFT ORDER

12. By way of assistance, the following paragraphs offer a commentary on the important features of the changes proposed for inclusion in the Order. It is not intended to be an exhaustive guide.

General provisions

13. It is the intention of the Order that, except where specifically excluded, planning legislation should enable certain planning procedures to be made available by electronic means. At present, the main impediments to the use of electronic communication are the requirements in the legislation for something to be done in writing or by post. The draft Order proposes the insertion of general amending provisions to enable the term "writing" (and other equivalent expressions) as used in planning legislation to include electronic communication. It is proposed that the use of general amending provisions will avoid the need to amend individual references to "writing" throughout the legislation.

14. The draft Order does not include a requirement for applications or other documents communicated electronically to be signed, electronically or otherwise. This approach has been taken because there is no express legal requirement for verification of identity, by signature or otherwise, outside the requirements imposed by the various pieces of legislation under which applications are made or forms and certificates, etc. are submitted. Where there is reference to 'signature' on a form, under the terms of the general provisions described in paragraph 13 above, this can include electronic signature.

15. In circumstances where there is a requirement to submit by a certain day or date, it is intended that documents received electronically outside the recipient's business hours will be taken to have been received the following working day.

16. While the draft Order is intended to support the publication of notices in online versions of newspapers, this should be in addition to publishing in a paper version of the newspaper to ensure broad coverage.

17. In certain cases a number of paper copies of documents are needed, where one electronic copy will suffice. Therefore, in the electronic regime, the intention is that only one copy will be required.

Planning applications

18. The draft Order is intended to enable the electronic submission of planning applications where appropriate technology is in place. The provisions will allow representations on planning applications to be submitted electronically and subsequent correspondence between the planning authority and parties making comments also to be conducted electronically. It also gives the power to issue electronically any directions to

planning authorities governing the way in which planning applications are to be determined; for example, notification to Scottish Ministers of certain categories of development under the terms of Circular 4/97.

19. While the statutory version of the Register will remain the paper copy, the draft Order will allow an electronic version of the Planning Register to be maintained and, where appropriate, displayed online.

Listed building and conservation area consent applications

20. The draft Order is intended to enable the electronic submission of listed building consent and conservation area consent where appropriate technology is in place. The provisions will allow representations on applications to be submitted electronically and subsequent electronic correspondence between the planning authority and parties making comments.

Planning and related appeals

21. The draft Order is intended to facilitate the electronic submission of planning and related appeals, where appropriate technology is in place. Associated procedures including the submission of statements of case and notice of documents required or authorised should be available electronically. The draft Order is intended to allow for decisions on planning and related appeals to be notified by electronic communications.

Exemptions

22. A range of exemptions is intended to ensure that the service of certain notices may not be carried out electronically. In relation to applications, it is not intended to permit the notification of neighbours, owners and agricultural tenants by electronic means. This would be neither practical nor desirable, given that the electronic addresses of those parties being notified would not necessarily be known.

23. Similarly, the service of enforcement notices (including notice of their withdrawal) and other related notices including planning contravention notices, stop notices and breach of condition notices will be exempt from the electronic regime. However, it is proposed that the use of electronic communications for appealing against enforcement notices will be allowed by the draft Order. It is proposed that the service of Building Preservation Orders and notices on the making of Tree Preservation Orders will also be excluded.

Advertisement consent applications, determination of prior approval, development plans and mineral permissions

24. The draft Order does not at present include provisions covering these areas. The intention is that the final Order should do so but at this stage we want to give practitioners of the planning system and those with a wider interest the opportunity to comment on the principles involved. Your views are invited therefore on the factors that need to be considered to enable the opportunity of electronic communication to be extended successfully into these areas. In particular, if you are aware of any hurdles that could affect the ability of authorities to operate an electronic service, your observations would be valued. Your comments will assist greatly in the preparation of the final Order following completion of this consultation exercise.

QUESTIONS

25. Views are invited on:

- What are the implications of allowing electronic methods of communication for each of the particular processes set out in the draft Order and outlined above?
- Are the exemptions appropriate?
- Should legal barriers be removed in any additional processes at this time?
- Are any aspects of the suggested amendments likely to cause interpretation difficulties and how could these be resolved?
- Are the proposed powers in the draft Order adequate to enable authorities, applicants and other interested parties to operate by electronic means where they wish to do so?

While it would be helpful to have as much information as possible on the questions posed, consultees are invited to comment on any other issues relating to the proposed Order, whether or not they are referred to in the consultation paper itself.

ANNEX

Draft Order made by the Scottish Ministers, laid before the Scottish Parliament under Electronic Communications Act 2000 for approval by resolution of the Scottish Parliament

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2003 No.

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Electronic Communications) (Scotland) Order 2003

Made

2003

Coming into force in accordance with article [1]

The Scottish Ministers, considering that authorisation made by this Order for the use of electronic communications and or electronic storage for any purpose, is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made for electronic communication or electronic storage than in other cases, in exercise of the powers conferred by sections 8 and 9 of the Electronics Communications Act 2000 and with the consent of the Secretary of State in accordance with section 9(7)(c) of that Act hereby make the following Order, a draft of which has been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Town and Country Planning (Electronic Communications) (Scotland) Order 2003 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“the 1997 Act” means the Town and Country Planning (Scotland) 1997; and

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Use of electronic communications for appealing against enforcement notices.

3. In section 130 of the 1997 Act (appeal against enforcement notices), in subsection (3), omit “either” and at the end insert

“; or

(c) by sending such statement to them using electronic communications at such time that in the ordinary course of transmission, it would be delivered to them before that date.”

Use of electronic communications for service of notices

4.—(1) Section 271 of the 1997 Act (service of notices) is amended as follows.

(2) In subsection (1) after paragraph (c) insert—

“(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection 3(A), to that person at that address (subject to subsection (3B); or”.

(3) After subsection (3), insert—

“(3A) The condition mentioned in subsection (1) (cc) is that the notice or other document shall be-

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference;

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(3B) Subsection 1 (cc) shall not apply to—

- (a) service of a planning contravention notice;
- (b) service of a copy of an enforcement notice by a planning authority;
- (c) giving of notice under section 129 of the exercise of powers conferred by subsection (1) of that section;
- (d) service of an enforcement notice issued by the Scottish Ministers;
- (e) service of a stop notice, or of notice of withdrawal of a stop notice, by a planning authority;
- (f) service of a stop notice by the Scottish Ministers;
- (g) service of a breach of condition notice or of notice of withdrawal of a breach of condition notice;
- (h) giving of notice of the making of a tree preservation order, or service of a copy of such an order, in accordance with regulations under section 161;
- (i) service of a notice by a planning authority under section 179 requiring steps to be taken to abate the adverse effect on the amenity of any part of its district by reason of condition of any land within that district or an adjoining district;
- (j) service of a notice under section 272 requiring information as to interests in land; and
- (k) the notification of parties who must be notified of applications for planning permission and other matters in accordance with regulations made under sections 34 and 35.

Postal addresses to be provided in response to certain notices requiring information

5. — In the following provisions of the 1997 Act—

- (a) paragraphs (c) and (e) of section 125(3) (power to require information about activities on land), and
- (b) paragraphs (b) and (e) of section 272(2) (power to require information as to interests in land)

after “name and”, insert “postal”.

Insertion of definitions and interpretation provisions

6. — (1) Section 277 of the 1997 Act (interpretation) is amended as follows.

(2) In subsection (1), insert the following definitions at the appropriate alphabetical places—

“ “address”, in relation to electronic communications, means any number or address used for the purposes of such communications;”;

“ “electronic communication” has the same meaning as in the Electronic Communications Act 2000;”.

(3) After subsection (4), insert—

“(4A) Where—

(a) an electronic communication is used for the purpose of serving on a person or giving a notice to a person or other document for the purposes of this Act, and

(b) the communication is received by that person outside business hours on any day,

it shall be deemed to have been received on the next working day and in this subsection, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.”

Applications for review of old mineral planning permissions

7. — (1) In Schedule 9 to the 1997 Act (review of old mineral planning permissions) is amended as follows—

(a) In paragraph (1) (interpretation), at the end insert —

“(8) Where an electronic communication is used to make an application to a planning authority under paragraphs 6, 7 or 9 below, the applicant shall be deemed to have agreed—

(a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications, unless the applicant gives notice in writing to the planning authority in accordance with sub-paragraph (9) below; and

(b) that the applicant’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application (or other such address as the applicant may notify in writing to the planning authority).

(9) An applicant may give notice that the applicant is no longer deemed to have agreed to the use of electronic communications for the purposes mentioned in sub-sub-paragraph (a) of sub-paragraph (8).

(10) Any such notice shall take effect on the date specified in it “as the effective date”, being not less than seven days from the date on which it is given.”;

(b) in paragraph (9) (applications for approval of conditions, and appeals where conditions approved at not as proposed) in sub-paragraph (2)(d), for “an address” substitute “a postal address” .

Applications for periodic review of mineral planning permissions

8 — (1) In Schedule 10 to the 1997 Act (periodic review of mineral planning permissions) is amended as follows—

(a) In paragraph (2) (interpretation), at the end insert —

“(5) Where an electronic communication is used to make an application to a planning authority under paragraphs 5 or 6 below, the applicant shall be deemed to have agreed—

(a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications, unless the applicant gives notice in writing to the planning authority in accordance with sub-paragraph (6) below; and

(b) that the applicant’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application (or such other address as the applicant may notify in writing to the planning authority).

(6) An applicant may give notice that the applicant is no longer deemed to have agreed to the use of electronic communications for the purposes mentioned in sub-sub-paragraph (a) of sub-paragraph (5).

(7) Any such notice shall take effect on the date specified in it as “the effective date”, being not less than seven days from the date on which it is given.”;

(b) in paragraph 6 (application to determine conditions to which mineral permissions are to be subject) in subparagraph (2)(d), for “an address” substitute “a postal address” .

Use of electronic communications for appeals against listed building enforcement notice

9. In section 35 of the Listed Buildings Act (appeal against listed building enforcement notice), in subsection (2) omit “either” and at the end insert

“; or

(c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.”

Use of electronic communication for service of notices under the Listed Buildings Act

10. —(1) Section 79 of the Listed Buildings Act (application of certain provisions under the general provisions of principal Act) is amended as follows.

(2) In subsection (1), for “Subject to subsection (2),” substitute “Subject to subsections (1A) and (2),”.

(3) After subsection (1) insert—

“(1A) Subsection (1) (cc) of section 271 of that Act shall not apply to—

(a) service of building preservation notice;

(b) service of a copy of a listed building enforcement notice by a planning authority;

(c) giving of notice under section 34 of this Act of the exercise of powers conferred by subsection (7) of that section;

(d) service of a listed building enforcement notice issued by the Scottish Ministers;

(e) the notification of parties who must be notified of applications for listed building consent and other matters in accordance with regulations made under section 10 of that Act.”.

Insertion of definitions and interpretation into the Listed Buildings Act

11. —(1) Section 81 of the Listed Buildings Act (interpretation) is amended as follows.

(2) In subsection (1), insert the following definitions at the appropriate alphabetical places—

““address”, in relation to electronic communications, means any number or address used for the purposes of such communications;”

““electronic communication” has the same meaning as in the Electronic Communications Act 2000;”.

(3) After subsection (5), insert—

“(5A) Where—

(a) an electronic communication is used for the purpose of serving on a person, or giving a notice to a person or other document for the purposes of this Act, and

(b) the communication is received by that person outside business hours,

it shall be deemed to have been received on the next working day and in this subsection, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.”

Amendment of regulations relating to listed building and conservation areas

12. The Town and Country Planning (Listed Building and Buildings in Conservation Areas) (Scotland) Regulations 1987 are amended in accordance with Schedule 1 to this Order.

Amendment of regulations relating to planning appeals

13. The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 are amended in accordance with Schedule 2 to this Order.

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

14. The Town and Country Planning (General Development Procedure) Order 1992 is amended in accordance with Schedule 3 to this Order.

Amendment of regulations relating to enforcement appeals

15. The Town and Country Planning Enforcement of Control (No 2) (Scotland) Regulations 1992 are amended in accordance with Schedule 4 to this Order.

Amendment of certain rules relating to planning inquiries

16. —(1) The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) (Scotland) Rules 1997 are amended in accordance with Schedule 5 to this Order.

(2) The Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1997 are amended in accordance with Schedule 6 to this Order.

SCHEDULE 1

Article 12

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

1. In paragraph (1) of regulation (2) (interpretation) —

(a) after the definition of “Crown land and Crown interest”, insert the following definition—

““electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000 ;”

2. After regulation 2, insert—

“ 2A(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to forms, plans, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, plan, notice or other document to any other person ("the recipient").

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient,

(b) legible in all material respects, and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), "legible in all material respects" means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside business hours, it shall be deemed to have been received on the next working day; and for this purpose, "working day" means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.

(6) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and "written" and cognate expressions are to be construed accordingly.

3. After regulation 8 (appeals), insert—

“Use of electronic communications

8A. —(1) Paragraphs (2) and (3) apply where an electronic communication is used for the purpose of making an application—

(a) under regulation 3, for listed building consent or conservation area consent, or

(b) under regulation 4, for the variation or discharge of conditions attached to a listed building consent or conservation area consent.

(2) Paragraph (1) of regulation 3 or (as the case may be) of regulation 4 shall apply as if for the words “two further copies of the form,” there were substituted the words “any related”.

(3) The reference to paragraph (3) of regulation 3 to the date when the form and certificate were lodged with the planning authority shall be construed as a reference to the date when the form and certificate are transmitted to the authority by means of electronic communication; but where the communication is received outside the authority’s business hours, it shall be deemed to have been received on the authority’s next working day.

(4) Where the planning authority maintain a website for the purpose of advertisement of applications, regulations 5 applies with the modifications in paragraph (5) of this regulation.

(5) In regulation 5—

(a) for sub-paragraph (a) of paragraph (1), substitute—

“ (a) publish in the Edinburgh Gazette and in a local newspaper circulating in the locality in which the building is situated a notice indicating the nature of the works which are subject of the application and—

(i) naming a place within the locality where a copy of the application, and all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice;

(ii) stating the address of a website where a copy of the application, and of all plans and documents submitted with it, will be open to inspection by the public during the period of 21 days beginning with the date of publication of the notice, and the place on the website where such documents may be accessed, and how they may be accessed; and”;

(b) in paragraph (2) in sub-paragraph (a) after “sub-paragraph (a)” insert “(i) or (ii).”

(6) Paragraph (5) of this regulation applies where a person uses electronic communication for any of the following purposes—

(a) making an application under regulation 3 for listed building consent or conservation area consent;

(b) making an application under regulation 4, for the variation or discharge of conditions attached to a listed building consent or conservation area consent;

(c) giving notice of appeal to the Scottish Ministers under regulation 8;

(d) making a claim under regulation 9 for compensation, or serving a listed building notice under that regulation.

(7) In a case to which this paragraph applies, and except where a contrary intention appears, the person making an application, appeal or claim or giving or serving the notice using electronic communications shall be deemed to have agreed—

(a) to the use of such communications for all purposes relating to the application, appeal, claim or notice (as the case may be) which are capable of being carried out electronically,

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, appeal, claim or notice;

(c) that the applicant or appellant's (as the case may be) deemed agreement under this paragraph shall subsist until the applicant or appellant gives notice in writing that the applicant or appellant wishes to revoke the agreement (and such revocation shall take effect on a date specified by the applicant or appellant but not less than seven days after the date on which the notice is given).”.

SCHEDULE 2

Article 13

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

1. In article (2) (interpretation) —

(a) In the definition of "appeals questionnaire" after the word "Regulations" insert—

“, and for this purpose a form is deemed to be supplied where the Scottish Ministers have published it on a website and have notified the planning authority of—

(i) publication of the form on the website,

(ii) the address of the website, and

(iii) the place on the website where the form may be accessed, and how it may be accessed;”.

(b) after the definition of “application”, insert the following definition—

““electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000;”

2. After regulation 2, insert—

“ 2A(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to notices or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any notice or other document to any other person ("the recipient").

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient,

(b) legible in all material respects, and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), "legible in all material respects" means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside business hours, it shall be deemed to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.

(6) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and "written" and cognate expressions are to be construed accordingly.

3. In regulation 3 (application), after paragraph 2 insert—

“(2A) Where an appellant (or, as the case may be, the appellant and the planning authority) so informs the Scottish Ministers using electronic communications, the appellant shall be deemed to have agreed-

(a) to the use of such communications for all purposes relating to that appeal which are capable of being carried out electronically,

(b) that the address for the purpose of such communications with the appellant is the address incorporated into, or otherwise logically associated with, the appellant’s notice of appeal, and

(c) that the appellant’s deemed agreement under this paragraph shall subsist until the appellant gives notice with article 7A that the appellant wishes to revoke the agreement;

and the references in paragraphs (3) and (4) of this regulation to an appeal being disposed of on the basis of written submissions shall not be deemed to preclude the use of electronic communications in accordance with this paragraph and regulation (2A).

4. In regulation 4 (notice to interested parties) subsection (1) is amended as follows—

(a) in paragraph (a), after “by post” insert “or by means of electronic communication”; and

(b) in paragraph (b), after “by post” insert “or by means of electronic communication”.

5. After regulation 7 insert—

“Withdrawal of consent to use of electronic communications

7A. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing—

(a) withdrawing any address notified to the Scottish Ministers or (as the case may be) to a planning authority for that purpose, or

(b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or (as the case may be) with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

SCHEDULE 3

Article 14

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

1. In paragraph (2) of article (2) (interpretation) —

(a) after the definition of “district fishery board”, insert the following definition—

““electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000 ;”

(b) for the definition of “local advertisement”, substitute—

“ “local advertisement means—

(a) the publication of a notice in a local newspaper circulating in the locality in which the land to which the application relates is situated; and

(b) where the planning authority maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;”.

2. At the end of article 2, insert—

“(4) In this Order and in relation to the use of electronic communications or electronic storage for any purpose of this Order which is capable of being carried out electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications or storage, except that where this Order imposes any obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to documents, forms, maps, plans, drawings, certificates or other documents or to copies of such things, include references to such documents or copies of them in electronic form.

(5) Paragraphs (6) to (9) apply where an electronic communication is used by a person for the following purposes—

(a) fulfilling any requirement in this Order to give or send any application, notice or other document to any other person; or

(b) lodging an application, certificate or other document under article 14 (3) with an authority mentioned in that article;

and in those paragraphs, “the recipient” means the person mentioned in sub-paragraph (a) of this paragraph, or the authority mentioned in sub-paragraph (b), as the case may be.

(6) The requirement shall not be deemed to be fulfilled, or (as the case may be) the application or other document shall not be deemed to have been lodged, unless the document transmitted by the electronic communication is-

(a) capable of being accessed by the person mentioned in that provision;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference.

(7) In paragraph (5) “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(8) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be deemed to have been received on the next working day; and for this purpose “working day” means a day which is not Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.

(9) A requirement in this Order that any application, notice, form or other document should be in writing is fulfilled where the document meets the criteria in paragraph (5) and “written” and cognate expressions are to be construed accordingly.”.

(10) Where an application is made using electronic communications under articles 3 and 4 to the Order, the applicant shall be deemed to have agreed—

(a) to the use of such communications by the planning authority for the purpose of giving directions under article 13,

(b) that the address for that purpose is the address incorporated into, or otherwise logically associated with, the application, and

(c) that the applicant’s deemed agreement under this paragraph shall subsist until the applicant gives notice in writing that the applicant wishes to revoke the agreement (and such revocation shall be final and shall take effect on a date specified by the applicant but not less than seven days after the date on which the notice is given).

3. In article 8 (notice of applications for planning permission) —

(a) after paragraph (4) insert—

“(4A) Where a planning authority maintain a website for the purpose of advertisement of applications for planning permission, the notice required by paragraph 3 (c) shall (in addition to any other matters required to be contained in it) state the address of the website where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during such period as may be specified in the notice, and the place on the website where such documents may be accessed, and how they may be accessed.”;

4. In article 23 (appeals), at the end insert—

“(7) The Scottish Ministers may provide, or arrange provision of, a website for use for such purposes as they think fit which-

(a) relate to appeals under section 47 of the Act, and this article, and

(b) are capable of being carried out electronically.

(8) Where a person gives notice of the appeal to the Scottish Ministers using electronic communications, the person shall be deemed to have agreed—

(a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically,

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant's notice of appeal, and

(c) that the appellant's deemed agreement under this paragraph shall subsist until the appellant gives notice with article 32A that the appellant wishes to revoke the agreement.”.

5. After article 32 (directions) insert—

“Withdrawal of consent to use electronic communications

32A. Where a person is no longer willing to accept the use of electronic communications for any purpose of this Order which is capable of being carried out electronically, that person shall give notice in writing—

(a) withdrawing any address notified to the Scottish Ministers or to a planning authority for that purpose, or

(b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

6. In Part 2 of Schedule 3 to the Order—

(a) in the second form of notice under article 8 of application for planning permission, and

(b) in the words following the heading, after “newspaper” in place insert —

“and, where relevant, on a website.”

7. In Schedule 5 to the Order (register of applications) insert—

“(7) Where the register kept by a planning authority under this article is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.”.

8. In Schedule 8 to the Order, in the form of notice article 12(5), in the words following the heading, after “newspaper” insert—

“ and, where relevant, on a website.”

SCHEDULE 4

Article 15

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

1. In paragraph (1) of regulation (2) (interpretation) —

(a) after the definition of “conservation area enforcement notice”, insert the following definition—

““electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000);”

2. After regulation 2, insert—

“ 2A(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person ("the recipient").

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient,
- (b) legible in all material respects, and
- (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), "legible in all material respects" means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside business hours, it shall be deemed to have been received on the next working day; and for this purpose, "working day" means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.

(6) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and "written" and cognate expressions are to be construed accordingly.

(2B) Where an appellant (or, as the case may be, the appellant and the planning authority) so informs the Scottish Ministers using electronic communications, the appellant shall be deemed to have agreed—

(a) to the use of such communications for all purposes of these Regulations relating to the appeal which are capable of being carried out electronically,

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant's notice of appeal, and

(c) that the appellant's deemed agreement under this paragraph shall subsist until the appellant gives notice with article (2C) that the appellant wishes to revoke the agreement;

and the references in paragraphs (1) and (2) of this regulation to an appeal being disposed of on the basis of written submissions shall not be deemed to preclude the use of electronic communications in accordance with this paragraph and regulation (2A).

(2C) "Withdrawal of consent to use of electronic communications"

Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing—

(a) withdrawing any address notified to the Scottish Ministers or (as the case may be) to a planning authority for that purpose, or

(b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or (as the case may be) with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given."

SCHEDULE 5

Article 16(1)

Amendment of The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure)(Scotland) Rules 1997

1. In paragraph (1) of article (3) (interpretation) —

(a) after the definition of "document", insert the following definition—

““electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000;”

(b) In the definition of "appeals questionnaire" after the word "Rules" insert—

“, and for this purpose a form is deemed to be supplied where the Scottish Ministers have published it on a website and have notified the planning authority of—

(i) publication of the form on the website,

(ii) the address of the website, and

(iii) the place on the website where the form may be accessed, and how it may be accessed;”.

2. After rule 3, insert—

“ 3A(1) In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being effected electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications, except that where these Rules impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement, notice or other document to any other person ("the recipient").

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient,

(b) legible in all material respects, and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), "legible in all material respects" means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside business hours, it shall be deemed to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.

(6) A requirement in these Rules that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and "written" and cognate expressions are to be construed accordingly.

(7) Where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement or document, any such requirement may be complied with by sending one copy only of the statement or other document in question.

3. In rule 12 (service of statements of case etc.)—

(a) at the end of paragraph (2) insert—

“ (including, in any case in which the planning authority rely on paragraph (2A), the details mentioned in that paragraph)”

(b) after paragraph (2) insert—

“(2A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where the person is notified of —

(a) publication on a website of the documents mentioned in that paragraph;

(b) the address of the website;

(c) the place on the website where the documents may be accessed, and how they may be accessed.”

4. In rule 22 (notification of a decision) —

(a) after paragraph (1) insert—

“(1A) Notification in writing of a decision and reasons shall be deemed to have been given to a person for the purposes of this rule where—

- (a) the Scottish Ministers and the person have agreed that decisions and reasons required under this rule to be given in writing may instead be accessed by that person via a website;
- (b) the decision and reasons are a decision and reasons to which that agreement applies;
- (c) the Scottish Ministers have published the decision and reasons on a website;

(d) the person is notified, in a manner for the time being agreed between that person and the Scottish Ministers, of —

- (i) the publication of the decision and reasons on a website;
- (ii) the address of the website;
- (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.

(b) after paragraph (2), insert—

“(2A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where that person is notified of —

- (a) publication of the relevant documents on a website;
- (b) the address of the website;
- (c) the place on the website where the documents may be accessed, and how they may be accessed.”.

5. For rule 24 (service of notices by post), substitute—

“Service of notices etc.

24. Notices or documents required or authorised to be sent or supplied under these Rules may be sent or supplied—

- (a) by post; or
- (b) by using electronic communications to send or supply the notice or documents (as the case may be) to a person at such address as may for the time being be specified by that person for that purpose.”

6. After rule 24 insert—

“Withdrawal of consent to use of electronic communications

24A. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Rules, is capable of being carried out using such communications, that person shall give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers or (as the case may be) to a planning authority for that purpose, or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or (as the case may be) with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

SCHEDULE 6

Article 16(2)

Amendment of The Town and Country Planning Appeals (Inquiries Procedure) Scotland) Rules 1997

1. In paragraph (1) of article (3) (interpretation) —

- (a) after the definition of “document”, insert the following definition—

““electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000 ;”

(b) in the definition of "appeals questionnaire" after the word "Rules" insert—

“, and for this purpose a form is deemed to be supplied where the Scottish Ministers have published it on a website and have notified the planning authority of—

(i) publication of the form on the website,

(ii) the address of the website, and

(iii) the place on the website where the form may be accessed, and how it may be accessed;”

2. After rule 3, insert—

“ (3A)(1) In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being effected electronically—

(a) the expression "address" includes any number or address used for the purposes of such communications, except that where these Rules impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement, notice or other document to any other person ("the recipient").

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient,

(b) legible in all material respects, and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), "legible in all material respects" means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside business hours, it shall be deemed to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning.

(6) A requirement in these Rules that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and "written" and cognate expressions are to be construed accordingly.

(7) Where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement or document, any such requirement may be complied with by sending one copy only of the statement or other document in question.

3. In rule 13 (service of statements of case etc.)—

(a) at the end of paragraph (2) insert—

“ (including, in any case in which the planning authority rely on paragraph (13A), the details mentioned in that paragraph)”

(b) after paragraph (2) insert—

“(2A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where the person is notified of —

(a) publication on a website of the documents mentioned in that paragraph;

(b) the address of the website;

(c) the place on the website where the documents may be accessed, and how they may be accessed.”

4. In rule 15 (date and notification of inquiry), after paragraph 3 insert —

(a) “(3A) A written notice shall be deemed to have been given by the Scottish Ministers for the purposes of paragraph (3) where they and any person entitled to appear at the inquiry have agreed that notice of the matters mentioned in that paragraph may instead be accessed by that person via a website, and —

(a) the notice is a notice to which that agreement applies;

(b) the Scottish Ministers have published that notice on the website;

(c) not less than 4 weeks before the date fixed by the Scottish Ministers for the holding of the inquiry, the person is notified of —

(i) the publication of the notice on a website,

(ii) the address of the website, and

(iii) the place on the website where the notice may be accessed, and how it may be accessed.”,

(b) in paragraph (4), for the words “paragraph (3)” substitute “paragraphs (3) and (3A)”.

5. In rule 22 (notification of a decision) —

(a) after paragraph (1) insert—

“(1A) Notification in writing of a decision and reasons shall be deemed to have been given to a person for the purposes of this rule where—

(a) the Scottish Ministers and the person have agreed that decisions and reasons required under this rule to be given in writing may instead be accessed by that person via a website;

(b) the decision and reasons are a decision and reasons to which that agreement applies;

(c) the Scottish Ministers have published the decision and reasons on a website;

(d) the person is notified, in a manner for the time being agreed between that person and the Scottish Ministers, of —

(i) the publication of the decision and reasons on a website;

(ii) the address of the website;

(iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.

(b) after paragraph (3), insert—

“(3A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where that person is notified of —

(a) publication of the relevant documents on a website;

(b) the address of the website;

(c) the place on the website where the documents may be accessed, and how they may be accessed.”.

6. In rule 24 (notices by post), substitute—

“**Service of notices etc.**

24. Notices of documents required or authorised to be sent or supplied under these Rules may be sent or supplied—

(a) by post; or

(b) by using electronic communications to send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by that person for that purpose.”

7. After rule 24 insert—

“**Withdrawal of consent to use of electronic communications**

24A. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Rules, is capable of being carried out using such communications, that person shall give notice in writing—

(a) withdrawing any address notified to the Scottish Ministers or (as the case may be) to a planning authority for that purpose, or

(b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or (as the case may be) with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

A member of the Scottish Executive

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