

# 3

2013

## DEVELOPMENT MANAGEMENT PROCEDURES

# ■ circular



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# **Scottish Planning Series**

## **PLANNING CIRCULAR 3/2013**

# **DEVELOPMENT MANAGEMENT PROCEDURES**

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### Revision 1 Changes 10/09/2015

Change 1.1	Glossary – definition of ‘section 42 application’ - addition of text
Change 1.2	Paragraph 2.5 - Revisions to final sentences.
Change 1.3	Paragraph 2.9 – Deletion of final sentences and insertion of new text.
Change 1.4	Paragraph 3.14 – Addition of text in brackets in first sentence
Change 1.5	Paragraph 4.104 – Addition of text in final sentence.
Change 1.6	Paragraph 4.109 – revision to second sentence and addition to third sentence.
Change 1.7	Paragraph 4.110 – addition of new penultimate sentence and revision of final sentence
Change 1.8	Insertion of Annex H
Change 1.9	Insertion of Annex I

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# DEVELOPMENT MANAGEMENT PROCEDURES

<b>CONTENTS</b>		<b>Page</b>
<b>INTERPRETATION</b>		3
<b>SCHEMATIC CONTENTS PAGE – DEVELOPMENT MANAGEMENT</b>		5
<b>1. INTRODUCTION</b>		6
<b>2. PRE-APPLICATION PHASE</b>		7
Background		7
Pre-application discussions and processing agreements		8
Pre-application consultation (PAC) between prospective applicants and communities		8
<i>Classes of development and screening</i>		9
<i>Proposal of Application Notice</i>		9
<i>Minimum consultation activity</i>		11
<i>Additional consultation activity</i>		11
<i>Pre-application consultation (PAC) - general</i>		12
<i>Pre-application consultation (PAC) reports</i>		14
Notices to owners and agricultural tenants		15
<b>3. MAKING A PLANNING APPLICATION</b>		16
Content of planning applications		
<i>General</i>		16
<i>Applications for planning permission</i>		16
<i>Applications for planning permission in principle</i>		17
<i>Further applications</i>		18
<i>Applications for approval of matters specified in conditions</i>		18
Design Statements and Design and Access Statements		19
<i>Applications requiring design or design and access statements</i>		20
<i>Preparation of statements</i>		21
<i>Advice and guidance on access</i>		22
<i>Considering the content of the statement</i>		23
<b>4. PROCESSING PLANNING APPLICATIONS</b>		23
Schemes of delegation		23
Validation and acknowledgement of applications		23
Declining to determine applications		25
Neighbour notification and publicity		25
Lists of applications		29
<i>List of extant applications</i>		29
<i>Weekly lists</i>		30
Planning registers		31
<i>Reports on handling</i>		31

## Circular 3/2013 Development Management Procedures

Requesting further information on applications	33
Variation of applications	33
Consultation on applications	33
Pre-determination hearings	34
Referral of applications to full council for decision	35
Notification to Scottish Ministers	35
Time periods for determination	36
<i>Local reviews</i>	37
<i>Appeals to Scottish Ministers</i>	38
Decision Notices	39
Notice of requirements for notices	40
Duration of planning permission	41
Marine Fish Farming	42
Cairngorms National Park	43
Applications – National Security	44
<b>5. POST APPLICATION PROVISIONS</b>	<b>44</b>
Notice of initiation of development	44
Notice of completion of development	45
Display of notice while development carried out	45
Certificates of lawful use or development	46
<b>6. PROCESSING AGREEMENTS</b>	<b>46</b>
Use of Agreements	46
Preparing an Agreement	47
Scope	47
Form and Content of Processing Agreements	47
<b>7. SUPERSEDED CIRCULARS</b>	<b>49</b>
<b>8. FURTHER COPIES AND ENQUIRIES</b>	<b>49</b>
<b>ANNEX A</b>	
Defining a Material Consideration	50
<b>ANNEX B</b>	
Pre-Application Consultation – Screening Process	52
<b>ANNEX C</b>	
Notices to Owners and Agricultural Tenants and Site Notices – Applications for the underground working and winning of minerals	54
<b>ANNEX D</b>	
Plans and Drawings	55
<b>ANNEX E</b>	
Declining to Determine Planning Applications	57
<b>ANNEX F</b>	
Pre-determination Hearing Procedures	59
<b>ANNEX G</b>	
Changes to the Regulations and Circular	60
<b>ANNEX H</b>	
Duration of Planning Permission in Principle	63
<b>ANNEX I</b>	
Applications for Planning Permission Under Section 42 of the Act	68

## INTERPRETATION

This section sets out the meaning of various terms for the purposes of the Circular.

“the 1997 Act”	the Town and Country Planning (Scotland) Act 1997 <sup>1</sup> (as amended)
“the 1973 Act”	the Local Government (Scotland) Act 1973 <sup>2</sup>
“the DMR”	the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 <sup>3</sup>
“EIA”	environmental impact assessment under the “EIA Regulations”
“EIA Regulations”	the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 <sup>4</sup>
“Fees Regulations”	the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (as amended)
“the hierarchy”	the hierarchy of national, major and local developments. The NPF specifies national developments, the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 <sup>5</sup> specify major developments. Anything not specified in either of these is a local development
“householder development”	the carrying out of building, engineering or other operations – (a) to improve, add to or alter an existing dwellinghouse; (b) within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of that dwellinghouse; or (c) to erect or construct a gate, fence or wall or other means of enclosure along the boundary of the curtilage of a dwellinghouse
“the NPF”	the National Planning Framework
“neighbouring land”	a plot or area of land (other than land forming part of a road) which, or part of which, is conterminous or within 20 metres of the boundary of the land for which the development is proposed.

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1997/8/contents>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1973/65/contents>

<sup>3</sup> <http://www.legislation.gov.uk/ssi/2013/155/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/ssi/2011/139/contents/made>

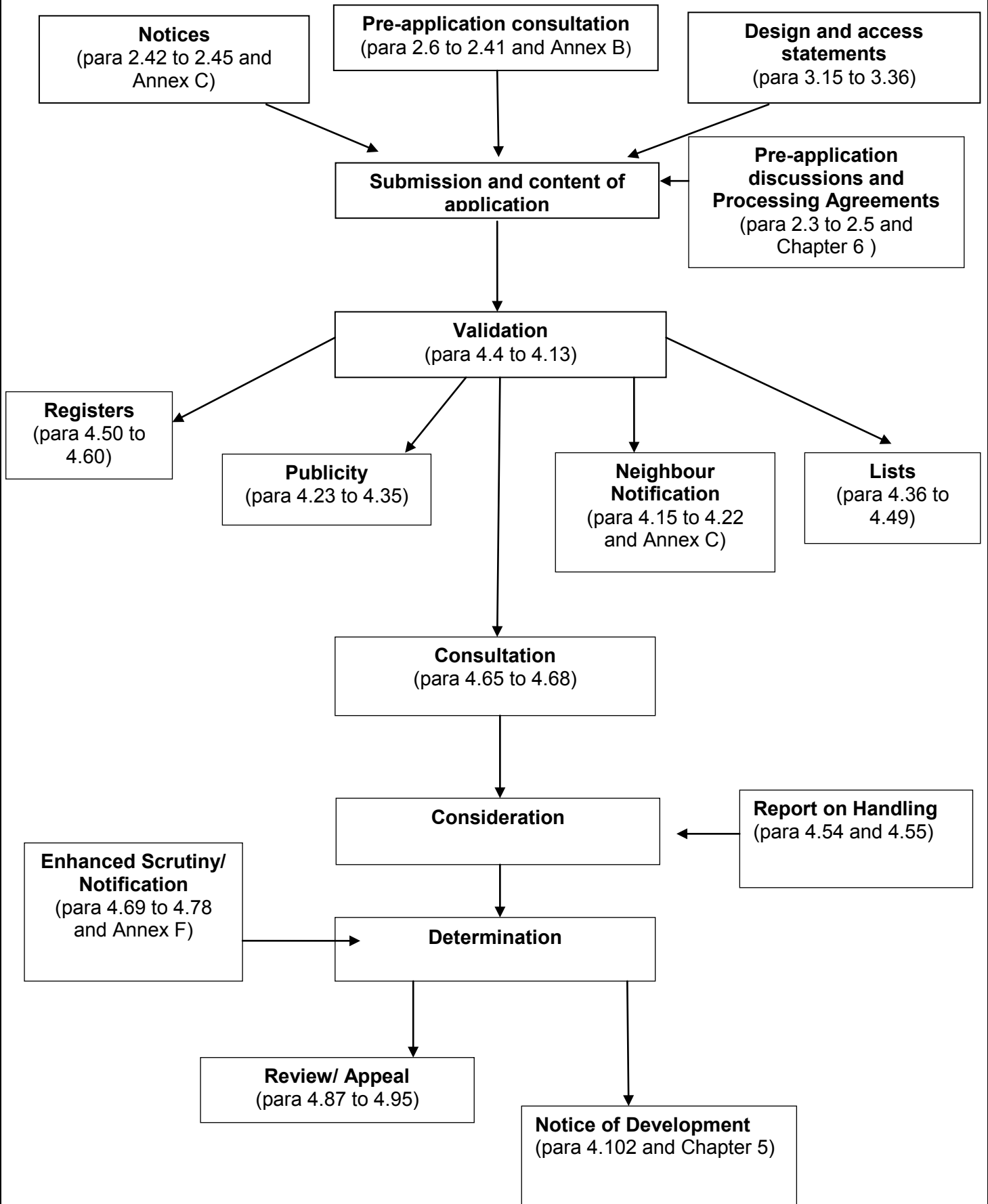
<sup>5</sup> <http://www.legislation.gov.uk/ssi/2009/51/contents/made>

### Circular 3/2013 Development Management Procedures

“PAC”	Pre-application consultation with communities under section 35A(1) of the 1997 Act
“regulation”	unless otherwise stated, means a regulation in the DMR
“section”	unless otherwise stated, means a section of the 1997 Act
“Section 42 Application”	means an application for a new planning permission or new planning permission in principle for a development but with different conditions from those attached to a previous permission for that development. In determining such an application, the planning authority can only consider changes to the conditions on the previous permission. However, in some cases this does not preclude the consideration of the overall effect of granting a new planning permission, primarily where the previous permission has lapsed or is incapable of being implemented. See Annex I.
“schedule”	unless otherwise stated, means a schedule to the DMR
“statutory consultee”	bodies who must be consulted on an application by virtue of the DMR, other legislation or a direction from Scottish Ministers



**SCHEMATIC CONTENTS PAGE – DEVELOPMENT MANAGEMENT**



## 1. INTRODUCTION

- 1.1 This circular describes the requirements for processing planning applications contained in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (SSI 2013/ 155) and the relevant provisions of the Town and Country Planning (Scotland) Act 1997 as amended (primarily amendments by the Planning etc. (Scotland) Act 2006<sup>6</sup>). As well as giving an overview of the development management system, the circular will help planning authorities, applicants, communities and others to understand how the legislation works.
- 1.2 This circular also includes guidance on the provisions of the Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009.
- 1.3 The development management system should operate in support of the Scottish Government's central purpose – increased sustainable economic growth. This means providing greater certainty and speed of decision making as a means of creating economically, environmentally and socially sustainable places. Scottish Planning Policy elaborates upon this role for development management.
- 1.4 The circular follows the various stages of processing: the pre-application phase; content of applications; validation and acknowledgement; processing by the authority; decision and post-application requirements. The circular also describes the differing requirements for applications in each of the categories of development in the planning hierarchy, namely national, major and local developments.
- 1.5 The circular makes reference to the provisions governing the planning hierarchy as well as to legislation for appeals and local reviews. These mechanisms are all explained in more detail in separate circulars, available at:  
<http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications> .
- 1.6 Further information on making planning applications online can be found at:  
<http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/online>

### Pre-application Phase

- 1.7 The circular promotes early and open negotiations between prospective applicants, planning authorities and other parties, such as statutory consultees, in advance of the formal application for national and major developments, and local developments where warranted. It also sets out the requirements for statutory pre-application consultation (PAC) with communities for national and

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<sup>6</sup> <http://www.legislation.gov.uk/asp/2006/17/contents>

major developments. This part of the circular also sets out good practice in relation to PAC.

### **Making a Planning Application**

- 1.8 Section 3 of the circular relates to applications for planning permission, planning permission in principle, approval of matters specified in conditions (related to planning permission in principle) and the streamlined requirements for applications for permission for development previously granted planning permission (“further applications”). Guidance is included on the content of applications.

### **Processing Applications**

- 1.9 The circular explains requirements for: putting applications on the register; the list of extant applications and weekly lists; carrying out neighbour notification (the responsibility of the planning authority); and any newspaper notices which may be required.
- 1.10 The circular sets out the requirements for pre-determination hearings and decisions by full council which apply to applications for major developments which are significantly contrary to the development plan and national developments.
- 1.11 The requirements for reports on handling and decision notices are also included in this part of the circular.

### **Post Decision Processes**

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

### **Processing Agreements**

- 1.13 Whilst not a statutory requirement, a processing agreement is a very effective project management tool, particularly for the handling of applications proposing substantial development. The circular provides guidance on the preparation, form and content of processing agreements.

## **2. PRE-APPLICATION PHASE**

### **BACKGROUND**

- 2.1 The Scottish Government wants to encourage improved trust and open, positive working relationships from the earliest stages in the planning process and to provide, where possible, an early opportunity for community views to be reflected in proposals. Statutory requirements include publicity and

consultation to make communities aware of, and have an opportunity to comment on, certain types of development proposals (namely major and national developments – see paragraph 2.8) before they are finalised and a planning application has been made. The planning applications in such cases must include a report of the pre-application consultation between applicants and communities.

- 2.2 Both pre-application consultations with the community and pre-application discussions with the planning authority and statutory consultees are intended to add value at the start of the development management process. They should improve the quality of the proposal and allow prospective applicants the opportunity to amend their emerging proposals in light of community, statutory consultee and planning authority opinion.

### **PRE-APPLICATION DISCUSSIONS AND PROCESSING AGREEMENTS**

- 2.3 The Scottish Government strongly encourages the use of processing agreements with planning applications for national and major developments and for substantial or complex local developments. These provide greater clarity about the timescales, information requirements and processes that will take place before a determination is made on such proposals. A processing agreement (see Chapter 6 for more information) is essentially a framework for project managing a complex planning application. The pre-application stage is the most appropriate and effective point to conclude the terms of a processing agreement.
- 2.4 Processing agreements need constructive pre-application **discussions** between planning authorities, developers, agencies and other bodies who will have to be consulted on any subsequent planning application. Such discussions are a separate activity from statutory pre-application **consultation** with communities, although they can inform the planning and scope of the statutory consultation activity. Such discussions and consultation may also support the preparation of any statutory design statement or design and access statement, where required.
- 2.5 Pre-application discussions and processing agreements should identify upfront the information to be required in support of an application and when it will be submitted and considered. Those involved should ensure any requirements for additional information are necessary to inform the decision, relevant to the development proposal, proportionate to the scale and complexity of likely impacts arising, and are clearly scoped to avoid unnecessary costs. Likewise, submissions should be focussed and fit for purpose and findings clearly reported.

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

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

- 2.6 The objective of PAC is for communities to be better informed about major and national development proposals and to have an opportunity to contribute their views before a formal planning application is submitted to the planning authority. This helps to: improve the quality of planning applications; mitigate negative impacts where possible; address misunderstandings; and to air and to address where practicable any community issues. Any adjustments made as a result of PAC should improve the proposals and assist the efficient consideration of applications once submitted.
- 2.7 PAC does not take away the need for, and right of, individuals and communities to express formal views to the planning authority during the planning application process itself. This should be emphasised by the prospective applicant during PAC. While engagement should be meaningful, the prospective applicant is not obliged to take on board community views, or directly reflect them in any subsequent application. It is important, therefore, for communities and others to follow their interest in a proposal through to the planning application stage, when views can be made to the planning authority before it determines the application.

### **Classes of development and screening**

(Section 35A and regulations 4 and 5)

- 2.8 With one exception, all applications for planning permission or for planning permission in principle under regulations 9, 10 or 11 for national and for major developments require PAC between developers and communities. Applications for such developments will need to demonstrate compliance with the legislative requirements for PAC. The National Planning Framework (NPF) and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/51) specify the range of development to be treated as national or major respectively.
- 2.9 The exception mentioned in the previous paragraph is where an application for planning permission is made under Section 42 of the 1997 Act (a Section 42 Application – see Glossary).
- 2.10 A screening process is available whereby prospective applicants can seek the planning authority's view on whether their proposal is a national development or a major development and therefore requires PAC. Further information on the screening process can be found in Annex B.

### **Proposal of Application Notice**

(Section 35B and regulation 6)

- 2.11 Where PAC is required, the prospective applicant must provide to the planning authority a 'proposal of application notice' at least 12 weeks prior to the submission of an application for planning permission. That notice must include the following information:

### Circular 3/2013 Development Management Procedures

- i) a description in general terms of the development to be carried out;
- ii) the postal address of the development site, if it has one;
- iii) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
- iv) detail as to how the prospective applicant may be contacted and corresponded with; and
- v) an account of what consultation the prospective applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take. This should include steps in addition to the statutory minimum for consultation.

- 2.12 Element v) will assist the planning authority in responding to the proposal of application notice with any additional notification and consultation requirements (see paragraphs 2.21-2.23 and 2.35).
- 2.13 The 'description in general terms' should outline the proposal's characteristics, and the identification of its category (for example, major development). While there is scope for proposals to alter between PAC and an application being submitted, any subsequent application needs to be recognisably linked to what was described in the proposal of application notice. A very detailed or narrow descriptive content in the proposal of application notice means that relatively minor changes could trigger the need to repeat PAC.
- 2.14 Descriptions should accurately and adequately convey to the layman what the development involves. Describing a proposal for superstore with car park and petrol station as a "retail development" or a wind farm as "renewables development" with "ancillary development" is unlikely to do that.
- 2.15 It is for the planning authority (and ultimately the courts) to satisfy themselves that an application is sufficiently linked to the proposals consulted upon at the pre-application stage. An application involving land not included in the outline of the site in the proposal of application notice may cast doubt over such a link. Prospective applicants should try to ensure the site identified in PAC covers the likely options for the final proposal.
- 2.16 The submission of the proposal of application notice starts the PAC processing clock. After a minimum of 12 weeks, having carried out the statutory requirements, and any additional requirements specified by the planning authority, an applicant can submit the application along with the required written PAC report. Information in relation to the proposal of application notice must be placed on the list of applications (see paragraphs 4.36 – 4.49). There is no statutory maximum length of time between carrying out PAC and submitting the related planning application.

### Minimum consultation activity

(Regulation 7)

#### Consultation with community councils

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

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

#### The public event

2.19 The prospective applicant is required to hold at least one event for members of the public where they can make comments to the prospective applicant on the proposals. Notice of this 'public event' must be published at least 7 days in advance in a newspaper circulating in the locality of the proposed development.

2.20 The notice for the public event must include:

- a description of the proposed development and its location;
- details as to where further information may be obtained concerning the proposed development;
- the date and place of the public event;
- a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so; and
- a statement that comments made to the prospective applicant are not representations to the planning authority and that there will be an opportunity to make representations on any resultant application to the planning authority.

### Additional consultation activity

(Section 35B and regulation 6)

2.21 The prospective applicant should indicate in the proposal of application notice what consultation, if any, they will undertake in addition to the statutory minimum. The planning authority must respond within 21 days of receipt of the notice specifying any additional notification and consultation they wish to see undertaken (including that indicated by the prospective applicant) beyond the statutory minimum, in order to make it binding on the prospective applicant. If

there is no response to the proposal of application notice by the planning authority within 21 days, it would be for the applicant to consider any subsequent request for additional consultation.

- 2.22 In requiring additional pre-application consultation, planning authorities must have regard to the nature, extent and location of the proposed development and to its likely effects, both at that location and in its vicinity. Additional consultation requirements should be proportionate, specific and reasonable in the circumstances. Further advice on planning community engagement activity can be found in Planning Advice Note 3/2010: 'Community Engagement'<sup>7</sup>.
- 2.23 In responding to a proposal of application notice, and given their powers to require additional consultation, planning authorities should be as clear as they can as to their expectations of matters to be included in the PAC report. In this way, the prospective applicant will be more readily able to show that the required steps have been undertaken.

### **Pre-application consultation (PAC) – general**

- 2.24 Prospective applicants should consider the timing of their PAC with regard to pre-application discussions with the planning authority and statutory consultees. Either discussion may identify constraints on proposals or the ability to amend them.
- 2.25 Scottish Ministers expect planning authorities to develop and maintain up to date lists of bodies and interests with whom prospective applicants should consult in particular types of case (similar lists could be prepared for the purposes of pre-application discussions – see paragraph 2.4). They should draw from those resources as appropriate to the particular proposal and its potential impacts and not simply send the same list of consultees in response to each and every proposal of application notice. These lists should be available to prospective applicants, who can draft proposal of application notices in light of their content.
- 2.26 Prospective applicants may want to consider approaching communities to help frame their PAC. Planning authorities, in considering any additional consultation, may want to seek the views of others, for example, the relevant community councils, particularly where they have not drawn up the lists referred to in paragraph 2.25.
- 2.27 Prospective applicants should have meaningful and proportionate engagement with those who represent the views of potentially affected communities, guided by PAN 3/2010: 'Community Engagement', the National Standards for Community Engagement or other locally agreed or adapted framework or set of principles.
- 2.28 A number of tools (including those mentioned in paragraph 2.27 above) are available which provide a sound basis for prospective applicants and planning

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<sup>7</sup> <http://www.scotland.gov.uk/Publications/2010/08/30094454/0>



### Circular 3/2013 Development Management Procedures

authorities to assess and respond to the need for any additional consultation requirements, as appropriate.

- 2.29 Prospective applicants should consider additional measures for publicising PAC activities, such as use of their own web sites to host information. Information issued as part of PAC should be factually accurate, easy to understand, jargon free, accessible and relevant. It should be made available in appropriate formats and provided in good time to enable people to take part and discuss their views with others.
- 2.30 Prospective applicants will gain less from poorly attended or unrepresentative PAC events. For this reason, they should ensure that processes are put in place that will allow members of the community to participate meaningfully in any public event. It is not the intention that planning authorities will routinely have a direct role in PAC activities beyond their statutory roles in screening, responding to proposal of application notices and considering PAC reports when validating applications.
- 2.31 The public event should, as far as possible, be accessible to all members of the public. Consideration should be given to any additional needs of specific members of the public, such as people with disabilities. It may be appropriate for the public event to take place over a number of dates, times and places. Prospective applicants must ensure that individuals and community groups can submit written comments in response to the newspaper advertisement. There should be scope for people to take information away from public events and to respond in writing later, having considered what they have seen and heard.
- 2.32 Presentations at events should follow the guidance at paragraph 2.29 about information. Staffing of events should include people who are knowledgeable about the proposals and about the planning issues likely to be of concern or interest to the public. PAC should not be treated by prospective applicants as merely a marketing exercise to promote the development.
- 2.33 There is a need to emphasise to communities that the plans presented to them may alter in some way before the final proposal is submitted as a planning application. Ideally, those consulted or who expressed views could be given a chance to comment on any significant changes to proposals being considered as a result of PAC, before the application is finalised.
- 2.34 After PAC, and once a planning application has been submitted to the planning authority, communities should ensure that any representations they wish to make on the proposal are submitted to that authority as part of the process of considering the planning application.

## Pre-application consultation (PAC) reports

(Sections 35C and 39 and regulation 3)

### Content

- 2.35 The applicant must prepare a report of what has been done during the pre-application phase to comply with the statutory requirements for PAC and any requirements set out in the planning authority's response to the proposal of application notice. The report is to be made in writing (which may include being in electronic format).
- 2.36 The legislation does not specify the content of the report beyond that it should set out what was done to effect compliance with the aforementioned requirements. However, a useful minimum would be to:
- specify who has been consulted;
  - set out what steps were taken to comply with the statutory requirements and those of the planning authority;
  - set out how the applicant has responded to the comments made, including whether and the extent to which the proposals have changed as a result of PAC;
  - provide appropriate evidence that the various prescribed steps have been undertaken – for example, copies of advertisements of the public events and reference to material made available at such events; and
  - demonstrate that steps were taken to explain the nature of PAC, in particular that it does not replace the application process whereby representations can be made to the planning authority.
- 2.37 Planning authorities must decline to determine an application where PAC requirements apply and, in their opinion, have not been complied with. Before coming to such a view the planning authority may seek additional information from the applicant. Where a planning authority declines to determine an application on these grounds, they are to advise the applicant of their reasons. The requirement to decline to determine would not apply where a screening statement has been issued by the planning authority saying PAC is not required (see paragraph 2.10 and Annex B).
- 2.38 The report must accompany the subsequent application for planning permission or planning permission in principle under regulations 9 to 11 (other than a Section 42 application) for major or national development. The authority is required to include it on Part I of the planning register along with the application details, plans and drawings.

### Role of PAC Reports

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

- 2.40 The report is not likely to have a significant role in the determination of any subsequent application, unless it identifies issues or contains information which could be considered a material consideration in terms of the 1997 Act and to which the planning authority should give weight. Further information on what may be a material consideration is set out in Annex A to this circular.
- 2.41 If parties are concerned that their views have not been taken on board as a result of the PAC, it is important that they make their concerns about the proposal known by making representations to the planning authority at the planning application stage, so that due consideration can be given to them before a decision is reached.

## **NOTICES TO OWNERS AND AGRICULTURAL TENANTS**

(Section 35, regulation 15 and schedule 1)

- 2.42 Prior to applying for planning permission or planning permission in principle under regulations 9, 10 or 11, applicants should notify all persons who (other than themselves) were the owners of any of the land to which the application relates, or were agricultural tenants at the beginning of the prescribed period (i.e. 21 days ending with the date on which the application was submitted). See Annex C for requirements regarding applications involving the underground working and winning of minerals.
- 2.43 Notices to owners and agricultural tenants should be in the form set out in schedule 1 and must include the name of the applicant, a description of the proposed development, its address or location and the name and address of the planning authority to whom the application has been submitted.
- 2.44 The applicant must submit a certificate with the planning application certifying whether there are any other owners or agricultural tenants of any of the land to which the application relates and, if so, which of these have been notified of the proposed development. The certificate must state:
- a) whether or not the land or part of the land to which the application relates constitutes or forms part of agricultural land;
- and, depending on the circumstances:
- b) that at the beginning of the prescribed period no person (other than the applicant) was the owner of any of the land to which the application relates or an agricultural tenant; or
  - c) that the applicant has given notice to every person (other than the applicant) who at the beginning of the prescribed period was the owner of any land to which the application relates or an agricultural tenant; or
  - d) that the applicant is unable to give notice to every such person (i.e. where there are other owners and/ or agricultural tenants, he is unable to notify any or all of these people).

2.45 A certificate issued under c) or d) above must set out the name of every person to whom notice was given and the address to and date on which the notice was given. Where d) applies the applicant must certify that he has taken reasonable steps (setting out what they were) to try and ascertain the names and addresses of those to whom he has been unable to give notice. In this situation, the planning authority must publish notification in a local newspaper once an application has been received (regulation 20).

### **3. MAKING A PLANNING APPLICATION**

#### **CONTENT OF PLANNING APPLICATIONS**

##### **General**

(Regulations 9 – 12)

- 3.1 Applicants should use the e-form for online applications or its paper equivalent produced by the Scottish Government. The DMR contain the minimum requirements for an application and accompanying documentation (termed “the application” in this section of the circular), the receipt of which starts the period for determination. Where the planning authority uses its own application form, it must ensure that the form contains the minimum requirements set out in the DMR.
- 3.2 Where information is provided in accordance with the minimum statutory requirements that establishes the validation date (see paragraph 4.10) and the application must be registered as valid. Additional information might be required in order to determine an application for development in certain circumstances, but requests for such additional information should not delay the process of validation and registration and do not determine the validation date.
- 3.3 Applicants are encouraged to think beyond the statutory minimum requirements for an application and try to anticipate, in discussion with the planning authority, what additional information might be needed to support efficient processing of the application (see paragraphs 2.3-2.5).

##### **Applications for planning permission**

(Regulation 9)

- 3.4 The required content of an application for planning permission is as follows (see also paragraph 4.124 on national security):
  - (a) a written description of the development to which it relates;
  - (b) the postal address of the land to which the proposed development relates, or, if the land in question has no postal address, a description of its location;

## Circular 3/2013 Development Management Procedures

- (c) the name and address of the applicant and, where there is an agent, the name and address of that agent;
- (d) a plan:
  - (i) sufficient to identify the land to which it relates; and
  - (ii) showing the situation of the land in relation to the locality and in particular in relation to neighbouring land;
- (e) such other plans and drawings as are necessary to describe the development;
- (f) where any neighbouring land is owned by the applicant, a plan identifying that land;
- (g) one or other of the certificates required under regulation 15 in relation to owners and agricultural tenants;
- (h) where the application relates to a national development or a major development, a written pre-application consultation report;
- (i) where the application relates to an installation of an antenna to be employed in an electronic communication network, an ICNIRP<sup>8</sup> declaration;
- (j) a design statement or a design and access statement where required by regulation 13;
- (k) where the application relates to Crown land, a statement that the application is made in respect of Crown land; and
- (l) any fee payable under the Fees Regulations.

### Plans and drawings

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

### Applications for planning permission in principle

(Regulation 10)

3.6 There are differences between the requirements for the content of applications and accompanying documents for planning permission in principle and those for detailed planning permission. With the former there is:

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

3.7 It is for the applicant to decide what level of detail they wish to provide. However, it is open to planning authorities to require additional information using regulation 24 (Further Information) where necessary to determine the

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<sup>8</sup> International Commission on Non-Ionising Radiation Protection

application. While planning permission in principle is to establish the acceptability of a proposal in principle without having to develop the detailed proposals, applicants should discuss with planning authorities any additional information that is likely to be required. This may relate to matters such as design or access, transport assessment or the requirements of other legislation (for example, the EIA Regulations or the Conservation (Natural Habitats &c.) Regulations 1994).

### **Further applications**

(Regulation 11)

3.8 Regulation 11 provides that where a previous application was granted planning permission, development has not begun and the duration of the previous permission has not expired, a further application for planning permission (or planning permission in principle) for the same development does not need to include all of the information specified in regulations 9 or 10. Regulation 11 also applies to Section 42 Applications.

3.9 The information that must still be included in such further application is:

- the name and address of the applicant, and where an agent is acting on behalf of the applicant, the name and address of that agent;
- where any neighbouring land is owned by the applicant, a plan identifying that land;
- a certificate regarding the ownership of the proposal site and any agricultural tenants and the notification of these parties about the application;
- where the application relates to national development or major development, a pre-application consultation report (unless it is a Section 42 Application);
- where the application relates to Crown land, by a statement that the application is made in respect of Crown land;
- any fee payable under the Fees Regulations; and
- where the application is a Section 42 Application, a statement to that effect.

3.10 The application must be in writing (which can include electronic format) and must give enough information to allow the planning authority to identify the previous grant of permission.

### **Applications for approval of matters specified in conditions**

(Regulation 12)

3.11 These applications relate to conditions attached to planning permission in principle requiring the further approval, consent or agreement of the planning authority for any detailed aspect of the development. Regulation 12 applies to all applications for approval of matters specified in conditions attached to planning permission in principle.

3.12 An application in this regard must:

- be in writing (see paragraph 3.1);
- identify the planning permission in principle to which it relates;
- contain a description of the matter(s) to which it relates;
- contain the name and address of the applicant and any agent acting on behalf of the applicant;
- be accompanied by plans and drawings sufficient to describe the matter of the application where it involves the alteration or construction of buildings, other structures, roads or landscaping;
- where any neighbouring land is owned by the applicant, by a plan identifying that land; and
- the appropriate fee payable under the Fees Regulations.

3.13 These applications for approval of matters specified in conditions are not applications for planning permission. Therefore, the statutory requirements for PAC or design statements do not apply and there are specific fees for such applications. Requirements for neighbour notification, and for advertising where neighbour notification has not been carried out, apply.

3.14 The statutory time limits for seeking approval only apply where the condition requires approval to be obtained before development can be begun (see paragraphs 4.108 to 4.111 and Annex H). There is no statutory time limit on the period during which applications can be submitted for other approvals required by conditions. Also, there is no statutory limit on the number of such approvals which can be sought in any one application.

## **DESIGN STATEMENTS AND DESIGN AND ACCESS STATEMENTS**

(Regulation 13)

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

3.16 Certain applications for planning permission must be accompanied by a statement explaining the design principles and concepts that have been applied, and how issues relating to access for disabled people to the development have been dealt with.

3.17 The main aim of the statement is to inform the planning decision-making process. Statements should ensure development proposals are based on a

carefully considered design process and address the needs of people with disabilities in terms of access to the development and how such arrangements will be maintained. They should allow the applicant to explain and justify their proposals and help all those assessing the application (including elected members and communities) to understand the design rationale that underpins them.

### Applications requiring design or design and access statements

3.18 Applications for planning permission for national and for major developments require design and access statements.

3.19 Applications for planning permission for local development within:

- (a) a World Heritage Site;
- (b) a conservation area;
- (c) a historic garden or designed landscape;
- (d) a National Scenic Area;
- (e) the site of a scheduled monument; or
- (f) the curtilage of a category A listed building,

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

3.20 A design and access statement or design statement is **not** required for the following categories:

- (a) a Section 42 Application
- (b) an application for planning permission for–
  - (i) engineering or mining operations;
  - (ii) householder development; or
  - (iii) a material change in the use of land or buildings.

(c) an application for planning permission in principle.

3.21 Applications for marine fish farming development only require to be accompanied by a design statement where they are local developments in either a World Heritage Site, National Scenic Area or the site of a scheduled monument, or are major developments. These requirements do not apply where the development consists of an alteration or extension of an existing marine fish farm.

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



## Preparation of statements

- 3.23 Anyone involved in preparing such a statement should consider where appropriate the advice contained in Planning Advice Note 68: 'Design Statements'<sup>9</sup>. Where Scottish Government policy relates to design, for example the Scottish Planning Policy<sup>10</sup> or Designing Streets<sup>11</sup>, this may be referenced in the statement.
- 3.24 A design statement is a written statement about the design principles and concepts that have been applied to the development and which–
- (i) explains the policy or approach adopted as to design and how any policies relating to design in the development plan have been taken into account.
  - (ii) describes the steps taken to appraise the context of the development and demonstrates how the design of the development takes that context into account in relation to its proposed use.
  - (iii) states what, if any, consultation has been undertaken on issues relating to the design principles and concepts that have been applied to the development; and what account has been taken of the outcome of any such consultation.
- 3.25 A design and access statement is a document containing both a design statement and written statement about how issues relating to access to the development for disabled people have been dealt with.
- 3.26 A design and access statement must: 'Explain the policy or approach adopted as to access and how: (i) policies relating to such access in the development plan have been taken into account; and (ii) any specific issues which might affect access to the development for disabled people have been addressed'. This should explain how the applicant's policy / approach adopted in relation to access fits into the design process and how this has been informed by any development plan policies relating to access issues.
- 3.27 Developers should consider setting out in the statement how access arrangements make provision both to and through the site to ensure users have equal and convenient access. Where Scottish Government policy relates to access, for example the number of parking spaces for disabled people, this may be referenced in the statement.
- 3.28 It is not intended that the statement extends to the consideration of internal aspects of individual buildings. This is a matter better considered under building standards legislation. However, the location and design of doors and windows, etc. will depend on an understanding of the internal layout of a building and may therefore be reflected in the statement.

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<sup>9</sup> <http://www.scotland.gov.uk/Publications/2003/08/18013/25389>

<sup>10</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/newSPP>

<sup>11</sup> <http://www.scotland.gov.uk/Publications/2010/03/22120652/0>

- 3.29 The statement must: 'Describe how features which ensure access to the development for disabled people will be maintained'. The arrangements for long-term management and maintenance are as important as the actual design. Therefore, content on maintenance will help the planning authority come to a view on how best, possibly through agreements or conditions, such features are to be maintained in the long term.
- 3.30 The statement must: 'State what, if any, consultation has been undertaken on issues relating to access to the development for disabled people and what account has been taken of the outcome of any such consultation' (see paragraphs 3.31 – 3.32).

### Consultation

- 3.31 There is no statutory requirement to undertake formal consultation as a part of the preparation of design or design and access statements. Where consultation has been undertaken, this must be included in the statement with an indication of how this has influenced the final proposal. The statement should indicate with whom consultation was undertaken: for example, community groups, user groups or statutory consultees. Planning Advice Note 78: 'Inclusive Design'<sup>12</sup> recognises that access panels are a useful source to consult on design, as they are able to give advice based on personal experience and local knowledge. A list of access panels is available from the website of the Scottish Disability Equality Forum ([www.sdef.org.uk](http://www.sdef.org.uk)).
- 3.32 PAC on national and major developments may also provide an opportunity to inform the design and access statement with the views of the community.

### Presentation of information

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

### Advice and guidance on access

- 3.34 The general principles set out in Planning Advice Note 68 for the preparation of a design statement should be considered when a design and access statement is being prepared. Some guidance and advice is available within Scottish Government planning documents on how these issues should be addressed:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning>

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<sup>12</sup> <http://www.scotland.gov.uk/Publications/2006/03/07164427/0>

3.35 As the advice and guidance contained in these documents may be material considerations, developers, architects and designers should refer to these as appropriate.

### **Considering the content of the statement**

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

## **4. PROCESSING PLANNING APPLICATIONS**

### **SCHEMES OF DELEGATION**

(Section 43A)

4.1 General powers to delegate decision making to committees or officers exist under the 1973 Act<sup>13</sup>. However, section 43A of the 1997 Act requires planning authorities to have schemes delegating, to a person appointed for that purpose (the appointed officer), the determination of applications for planning permission for local developments or any application for consent, agreement or approval required by a condition on a grant of planning permission for a local development. These applications for local development cannot be delegated to officers for decision other than through a section 43A scheme of delegation.

4.2 Where a decision has been taken by an appointed officer under a section 43A scheme of delegation, or in cases where the applicant wishes to challenge the appointed officer's failure to determine an application so delegated, the route to challenge is a review by the local review body rather than an appeal to Scottish Ministers.

4.3 The procedures for adopting new schemes of delegation and for carrying out local reviews are set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013/157)<sup>14</sup> and the related circular (5/2013).

### **VALIDATION AND ACKNOWLEDGEMENT OF APPLICATIONS**

(Regulations 9 - 12, 14 and 17)

4.4 It is for the planning authority to check whether the application meets the requirements of regulations 9, 10, 11 or 12 as appropriate. The administrative

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<sup>13</sup> Applications for major development which is contrary to the development plan or national development cannot be delegated to officers for decision due to requirements for pre-determination hearings and decision by full council – see paragraphs 4.69 – 4.75.

<sup>14</sup> <http://www.legislation.gov.uk/ssi/2013/157/contents/made>

### Circular 3/2013 Development Management Procedures

checking of applications in this regard should be carried out as soon as possible but certainly within 5 working days of receiving the application. Since neighbour notification will follow the validation process, it is important that planning applications are processed with the minimum of delay.

- 4.5 With reference to PAC reports, design statements and design and access statements, the crux for the purposes of validation is whether they meet the statutory requirements on form and content.
- 4.6 With design statements and design and access statements, assessment of the quality of the information submitted is to be addressed when considering the application, rather than during the validation process.
- 4.7 With PAC reports, whether the applicant might have done more to respond to any comments made is not relevant at the validation stage. Nor are qualitative judgements on how a public event was run, unless the planning authority concludes that events were so ineffectual that the applicant has failed to carry out the required step or steps (see Annex E on declining to determine applications).
- 4.8 The validation date, from which the time period for determination runs, is the date when the final piece of information required by regulation 9, 10, 11 or 12 as appropriate has been received by the planning authority.
- 4.9 The planning authority is required to acknowledge receipt of the application once the final piece of information is received. That acknowledgement must:
  - include an explanation of the timescales within which the planning authority is to give notice to the applicant of its decision on the application; and
  - inform the applicant of the right to appeal to Scottish Ministers or to require a local review of the planning authority's decision or failure to make a decision.

(See the section on Time Periods for Determination paragraphs 4.79 – 4.86 below)

- 4.10 The acknowledgement should also include the date of receipt of the last item of information specified in the DMR – **the validation date**. This is required so the applicant is clear about when decisions should be issued or when appeals can be made or local reviews sought on the grounds of non-determination and the time limits for pursuing such appeals or local reviews. Any confusion over the validation date, as opposed to the date of receipt of additional information, could have implications for appeals or local reviews on the grounds of non-determination being made within the relevant statutory time limits.
- 4.11 Where an initial application does not contain sufficient information to meet validation requirements the planning authority must notify the applicant of the information that is necessary to validate the application. Once that information is received, then an acknowledgement must be sent.

- 4.12 In acknowledging receipt of applications or requesting missing information authorities may at the same time request any information beyond the statutory minimum which is required to determine the application. However, it should be clearly stated what information is required to comply with validation requirements and what is additional information required to determine the application (see paragraph 4.10).
- 4.13 Planning authorities are not obliged to process applications where there is a failure on the part of the applicant to comply with the requirements on content in regulations 9, 10, 11 or 12. In such circumstances the time period for determining the application will not start.

### **DECLINING TO DETERMINE APPLICATIONS**

(Section 39)

- 4.14 Section 39 sets out the circumstances in which planning authorities may and, in some cases, must decline to determine an application, even where the information required by regulations 9, 10, 11 or 12 has been submitted. There is no specific time limit as to when these powers can be exercised. However, the expectation is that their use should be considered upon receipt of an application. See Annex E for further details.

### **NEIGHBOUR NOTIFICATION AND PUBLICITY**

(Regulation 18)

- 4.15 Neighbour notification requirements apply to applications for planning permission (regulation 9), planning permission in principle (regulation 10), further applications for such permission (regulation 11) and applications for approval of matters specified in conditions attached to planning permission in principle (regulation 12). Notice is to be sent to premises on “neighbouring land”. The term “neighbouring land” is defined in regulation 3 as:

“an area or plot of land (other than land forming part of a road<sup>15</sup>) which, or part of which, is conterminous with or within 20 metres of the boundary of the land for which the development is proposed.”

- 4.16 The boundary of the land for which development is proposed is determined in the circumstances of the case, but need not be a property boundary. For example, in the case of farms or estates where a building is being erected in one part of the farm or estate, it is not the whole farm or estate that is being developed so it would not make sense to use the boundary of the farm or estate as the boundary of the land for which development is proposed. In the case of a specific site for the purposes of a supermarket, industrial or business premises, for example, then the boundary of that specific site will normally be the boundary of the land for which development is proposed. With most private

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<sup>15</sup> “road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984 - <http://www.legislation.gov.uk/ukpga/1984/54/contents>

## Circular 3/2013 Development Management Procedures

houses in urban areas, for example, it will probably be the property boundary. In practice the boundary of the land to be developed will normally be indicated by a red line on the application location plans.

- 4.17 The premises on neighbouring land to which neighbour notification should be sent do not have to be within 20 metres of the boundary of the land for which development is proposed. Such premises can be elsewhere on the neighbouring land. In using the term “area or plot”, the aim is to identify this as a discrete piece of land. Where such neighbouring land consists of open fields, countryside or woodland with no obvious premises on it, then an advert would be necessary.
- 4.18 Planning authorities should carry out neighbour notification as soon as possible after the application has been validated. This is to ensure that, given the minimum period of 21 days within which individuals can make representations, the planning authority can determine applications with the minimum of delay.
- 4.19 A single notice must be sent to the “Owner, Lessee or Occupier” at the address of the neighbouring land. Under regulation 18(2)(b), where there are no premises on the neighbouring land to which the notification can be sent, the planning authority must place a notice in a local newspaper in accordance with regulation 20 (see paragraphs 4.23 to 4.29 below). Regulation 20 includes certain exceptions to the requirement for newspaper notices in such circumstances. Relevant planning authorities are also required to give notice of applications to the Cairngorm National Park Authority within 5 days of the validation date where the proposed development is in the area of the Park Authority.
- 4.20 The notices sent to neighbours must include the following information:
- the date of the notice (notices should be dated and sent on the same date);
  - the name of the applicant and the name and address of any agent;
  - the planning authority reference number for the application;
  - a description of the development;
  - the postal address of the site or, in the absence of such an address, a description of the location of the land;
  - how the application, plans, drawings and other related documents can be inspected;
  - where and by when (at least 21 days after the date the notice is sent) representations can be made;
  - a location plan showing the position of the proposed development in relation to neighbouring land;
  - a statement of where more information can be obtained on planning application procedures;
  - in relation to applications which require PAC, a statement that despite the fact that comments may have been made to the applicant prior to the application being made, persons wishing to make representations in respect of the application should do so to the planning authority in the manner indicated in the notice.

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

#### Notification of minerals applications

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

#### Publication of an application by the planning authority

(Regulation 20 and schedule 4)

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

- it is not possible for the authority to carry out neighbour notification of an application under regulation 18 because there are no premises on neighbouring land to which the notification can be sent. This does not apply where all of the neighbouring land without premises is owned by the applicant or the planning authority, or where the application is for a householder development. Newspaper advertising may still be required if triggered by one of the other criteria below;
- in relation to an application for planning permission or planning permission in principle (regulations 9, 10 or 11), an applicant has certified under regulation 15 that it has not been possible to notify all owners and agricultural tenants of the proposed development;
- the application is made under regulations 9, 10 or 11 and relates to a class of development likely to have a wider impact on amenity (as specified in schedule 3); or
- the application is made under regulations 9, 10 or 11 and is for development which is contrary to the development plan.

4.24 Where a proposed development falls within more than one of the categories listed above, the planning authority is not required to publish more than one notice. Similarly where an application is advertised under sections 60(2)(a) and 65(2)(a) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997<sup>16</sup> (publicity for applications affecting conservation areas and listed buildings), there is no need to advertise under regulation 20.

4.25 As specified in schedule 4, the published notice must provide a description of the location and nature of the proposed development and information on how representations may be made to the planning authority.

4.26 As with notices to neighbours, where applications have been subject to PAC requirements, advertisements must also explain clearly that, despite any comments made to prospective applicants during PAC, any formal

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<sup>16</sup> <http://www.legislation.gov.uk/ukpga/1997/9/contents>

representations on the application should be made directly to the planning authority within the prescribed time period.

- 4.27 Published notices must also include a date by which representations should be made to the planning authority. This date or period must be not less than 14 days after the date on which the notice was published.
- 4.28 In order to determine planning applications within the prescribed 2 or 4 months from the validation date, planning authorities should arrange for notices to be published as soon as possible, and certainly within 14 days of the validation date.
- 4.29 Published notices should be clear, concise and fit for purpose.

#### General issues regarding publicity

- 4.30 To avoid confusion, it would be helpful to align the dates for representations to be made in response to published notices and those sent to identified neighbours, bearing in mind the prescribed minimum periods.
- 4.31 In acknowledging representations, planning authorities should make people aware of their policy in relation to the publication of comments.
- 4.32 Where possible, notices to identified neighbours should be hand delivered or sent by first class post, since the use of second class mail could result in recipients having a significantly reduced period within which to make representations.
- 4.33 Planning authorities should keep a record of details of the neighbour notification, advertising and posting of site notices carried out in relation to applications. This is for the purposes of transparency and to assist in any further notification (where, for example, an environmental statement is subsequently submitted under the EIA Regulations or to assist the Local Review Body in identifying whether it has to undertake any of these requirements).

#### Recovering costs of publicising applications

- 4.34 The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009<sup>17</sup> provide for the recovery from the applicant of costs of publicising planning applications required by regulation 20. These regulations require that the cost of publication of a notice be divided among the applications to which the notice relates.
- 4.35 The planning authority must write (electronic communication is allowed where the applicant has agreed to such communication) to the applicant advising them of the costs and these regulations require the applicant to pay within 21 days of being notified. Under the 1997 Act, the planning authority cannot

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<sup>17</sup> <http://www.legislation.gov.uk/ssi/2009/257/contents/made>



determine the application until these costs have been recovered from the applicant.

## **LISTS OF APPLICATIONS**

(Section 36A and regulations 21 - 23)

4.36 The 1997 Act and the DMR contain require planning authorities to have a register of applications, to prepare weekly lists and provide a list of extant applications which are all to be accessible to the public.

### **List of extant applications**

(Regulation 21 and 22)

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

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

4.38 The information to be kept on this section of the list is:

- (a) the reference number given to the application by the planning authority or, as the case may be, Scottish Ministers;
- (b) the site location;
- (c) the name of the applicant and agent (if any);
- (d) a description of the proposed development; and
- (e) the date of expiry of the period allowed for representations in any neighbour notification or publication of the application.
- (f) in relation to applications for approval of matters specified in conditions, a description of the matter in respect of which the application is made; and,
- (g) in relation to applications made to Scottish Ministers for urgent Crown development, an identification of the application as one made to Scottish Ministers and a statement that representations may be made to Scottish Ministers and where any such representations should be sent.

4.39 The second section of the list relates to proposal of application notices received by the planning authority in relation to requirements for PAC. This section is to include:

- the reference number given to the application by the planning authority or, as the case may be, Scottish Ministers;
- the site location;
- a description of the proposed development; and

## Circular 3/2013 Development Management Procedures

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

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

4.41 Where Scottish Ministers have notified an application for urgent Crown development under section 242A to the planning authority, the date referred to at (e) in paragraph 4.38 will be provided by Scottish Ministers.

4.42 The list shall also contain a statement as to how further information in relation to an application may be obtained from the planning authority. The list must be updated on a weekly basis to remove determined applications and proposal of application notices that are no longer current (where an application is submitted, the prospective applicant indicates no application will be made, or 12 months has elapsed since notice was given).

4.43 Planning authorities are to make the list of applications available online. In order to ensure that the list is more widely available to the general public, it must also be accessible at its principal office and public libraries within its district. How the list is made available at these offices is a matter for the planning authority (hard copy or electronic versions for example).

4.44 The requirement to maintain the list only relates to applications and notices received by the planning authority on or after 3 August 2009<sup>18</sup>.

### Weekly lists

(Regulation 23)

4.45 A weekly list must be sent to every community council in the district of the planning authority and made available for inspection in the principal planning office and public libraries. This list shall contain all applications made to the planning authority under regulations 9, 10, 11 or 12 and to Scottish Ministers within the previous week. In addition to the relevant information requirements, the weekly list shall contain a statement as to how further information relating to the application may be obtained from the authority.

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<sup>18</sup> Introduced by Article 5 of the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009  
<http://www.legislation.gov.uk/ssi/2009/222/contents/made>

- 4.46 The “weekly list” is to contain the same information as that on the list of extant applications.
- 4.47 It will be for planning authorities and individual community councils to consider the most appropriate way of disseminating this information, which may be electronically.
- 4.48 Community councils may request formal consultation on particular applications. Even if they do not, there is also a requirement to consult them on development likely to affect the amenity in the area of the community council.
- 4.49 Planning authorities may wish to consider if there are other persons who should be provided with the weekly list (such as elected representatives or Police Architectural Liaison Officers, referred to in Planning Advice Note 77: ‘Designing Safer Places.’<sup>19</sup>).

## **PLANNING REGISTERS**

(Section 36, regulation 16 and schedule 2)

- 4.50 Schedule 2 to the DMR sets out the requirements for registering entries on applications for planning permission and planning permission in principle (paragraphs 1 to 4 of schedule 2) and for certificates of lawful use or development (paragraph 5 of schedule 2). Paragraphs 6 and 7 of schedule 2 contain provisions applicable to registers generally. Paragraph 1 of schedule 2 requires the register of applications for planning permission to be kept in two parts.
- 4.52 Separate provisions arising from the EIA Regulations require that the register contains relevant screening and scoping opinions and certain other information where the development is subject to EIA (see Circular 3/2011<sup>20</sup> on the EIA Regulations for further information).
- 4.53 Information on Part I of the register is to relate to those applications which have not been finally disposed of. Part II of the register relates to applications which have been determined.

## **Reports on handling**

(Schedule 2)

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

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<sup>19</sup> <http://www.scotland.gov.uk/Publications/2006/03/08094923/0>

<sup>20</sup> <http://www.scotland.gov.uk/Publications/2011/06/01084419/0>

4.55 The required contents of a report are set out in schedule 2. The format and structure of the report is a matter for the planning authority. In many cases the contents of the report should be similar to reports prepared for planning committees. Reports of handling should be proportionate to the nature, scale and complexity of the proposal.

#### Certificates of lawful use or development

4.56 Schedule 2 lists the information that shall be kept by the planning authority in respect of every application for a certificate under section 150 (certificate of lawfulness of existing use or development) or 151 (certificate of lawfulness of proposed use or development) of the 1997 Act. It also requires the planning authority to place information on the register where there has been an appeal to Scottish Ministers in relation to such certificates.

#### Provisions applicable to registers generally

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

4.58 Where the register is kept electronically, the authority may make it available for public inspection on a website maintained by the authority. The amount and quality of planning information available on planning authority websites is increasing, making the planning process more transparent and accessible. ePlanning allows the progress of applications and appeals to be tracked, comments to be made and decisions better understood.

4.59 The Scottish Government have issued 'Publishing Planning Applications Online – Data Protection Guidance for Planning Authorities'<sup>21</sup>, containing general guidance on web publication. On the issue of security sensitive material, planning authorities are not obliged to keep the contents of the register on their website. When dealing with applications where there are potentially security sensitive issues raised by plans and drawings or other information, planning authorities should consider restricting web access to such material. The latter would mean that anyone wishing to view such material has to attend the planning office to view it, and there is some opportunity to monitor access. Where information raises issues of national security, then information will be subject to more severe restrictions (see paragraph 4.124).

#### Timeframe for placing material on the Register

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

- The information on applications made but undetermined should be placed on Part I of the register on or before the earliest date on which neighbour

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<sup>21</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/online/dataprotection>

notification is undertaken and/ or notice of the application is published in a newspaper;

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

## **REQUESTING FURTHER INFORMATION ON APPLICATIONS**

(Regulation 24)

4.61 Planning authorities can require applicants to provide any additional information, beyond that required by the regulations on the content of applications, in order to deal with the application. The time period for determining the application under regulation 26 will continue to run. Ideally, such information requirements should be discussed prior to an application being submitted so that as far as possible the application as submitted contains the information necessary to determine the application. Processing agreements provide a vehicle for this for complex or substantial developments (see Chapter 6).

4.62 Any requirements for additional information, whether they are identified in the pre-application or post-application stages, should be necessary, proportionate and clearly scoped to avoid unnecessary costs to applicants and public bodies. Similarly, it is important that the information subsequently submitted meets these criteria.

## **VARIATION OF APPLICATIONS**

(Section 32A)

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

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

## **CONSULTATION ON APPLICATIONS**

(Regulations 25, 30 and 37 and schedule 5)

4.65 The DMR contain the provisions for consultation by the planning authority on applications for planning permission and planning permission in principle. They

also provide (regulation 30) that Scottish Ministers can direct that planning authorities must consult with other authorities, bodies or persons on a particular case or class of case before planning permission can be granted. Consultees specified in the DMR may (except regarding consultation in relation to major hazards – paragraphs 3 and 4 of schedule 5) write to a planning authority to indicate that consultation with them is not required on a particular case or class of case or on development in a particular area or areas, and the planning authority will not be obliged to consult on such cases. Regulation 37 contains specific requirements for consulting the Cairngorms National Park Authority.

- 4.66 The planning authority must give consultees under the DMR at least 14 days to respond before they determine the application. With national or major developments, suitable timescales should be agreed in a processing agreement although such timescales cannot be less than the statutory 14 days. Where a consultee fails to respond within the timescale the planning authority is not obliged to await a response. However, planning authorities will wish to consider the potential impact of proceeding without the views of a consultee.
- 4.67 As well as the provisions in the DMR, requirements for consultation on planning applications are also set out in directions contained in Scottish Government circulars. There are also requirements in other legislation, such as the EIA Regulations and the Conservation (Natural Habitats &c.) Regulations 1994, applicable in certain cases.
- 4.68 Where an application is for development straddling local authority boundaries, the local authorities involved should inform the Local Government Boundary Commission Scotland ( [lgbcs@scottishboundaries.gov.uk](mailto:lgbcs@scottishboundaries.gov.uk) ). This is to allow the Commission to consider the need to re-align the boundary to ensure clarity about which local government area the resulting development is located. This is especially an issue with housing developments as regards council tax, education provision and other services.

## **PRE-DETERMINATION HEARINGS**

(Section 38A and regulation 27)

- 4.69 Pre-determination hearings are required in certain cases. Their purpose is to allow the views of applicants and those who have made representations to be heard before a planning decision is taken. The planning authority has discretion over how hearings will operate in its area.
- 4.70 The opportunity to attend pre-determination hearings must be provided in respect of applications for planning permission and planning permission in principle for major developments which are significantly contrary to the development plan, and for all national developments.
- 4.71 The planning authority must give the applicant and people who submitted representations to them in respect of the application an opportunity of appearing before and being heard by a committee of the authority. The 1997 Act allows the planning authority to specify the procedures for arranging and

conducting hearings. This includes ensuring the matters discussed at a hearing are relevant, efficient and avoid repetition. Attendance, beyond those who have a right to appear before and be heard by the committee, is to be such as the authority consider appropriate. Further guidance on pre-determination hearing procedures is contained in Annex F.

### **Major developments which are significant departures from the development plan**

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

### **REFERRAL OF APPLICATIONS TO FULL COUNCIL FOR DECISION**

- 4.74 To add further transparency and accountability to the decision-making framework, cases in which an opportunity to attend a pre-determination hearing must be provided, under section 38A of the 1997 Act, must also be decided by the full council<sup>22</sup>.
- 4.75 Authorities should have administrative arrangements in place to convene meetings of the full council to make the decisions on these developments. Members should receive the necessary training and advice to enable them to discharge this function.

### **NOTIFICATION TO SCOTTISH MINISTERS**

- 4.76 Directions requiring planning authorities to notify to Scottish Ministers specified applications or classes of applications (for example, the direction in Circular 3/2009 on ‘Notification of Planning Applications’) apply regardless of whether the appointed officer, a planning committee or local review body is determining an application. Where an application subject to such a direction is also subject to requirements on pre-determination hearings, then notification of applications that the planning authority are minded to grant should be made following the decision of the full council.
- 4.77 Regulation 33 enables Scottish Ministers to direct planning authorities to consider attaching conditions when granting planning permission. We envisage this power being used primarily where applications have been notified to

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<sup>22</sup> section 14(2) of the Planning etc (Scotland) Act 2006 amended the Local Government (Scotland) Act 1973 to this effect

Scottish Ministers and where call-in of an application would not be considered necessary by Scottish Ministers if a condition, which the planning authority had not previously proposed, were to be attached to the consent.

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

## **TIME PERIODS FOR DETERMINATION**

(Regulations 14 and 26)

- 4.79 It is important that applications are handled and determined efficiently to support certainty and confidence in the planning system. Planning authorities and applicants should not allow applications to drift for long periods with little or no progress being made.
- 4.80 The following paragraphs describe the statutory time periods for determining applications, the rights to appeal and local review where decisions are not issued, and the ability for applicants and planning authorities to agree extended periods.
- 4.81 The planning authority have up to 4 months to determine applications for planning permission for national developments and major developments and up to 2 months to determine applications for planning permission for local developments. Applications for approval of matters specified in conditions attached to planning permission in principle are subject to a 2 month time period. These time periods run from the date the last piece of information required by the DMR on content of applications is received, i.e. the validation date (regulation 14).
- 4.82 The 2 month time period for determining applications also applies where an applicant seeks the approval, consent or agreement of the planning authority as a result of a condition attached to a planning permission (including permission granted by a development order). While no formal application is required under the DMR, applicants still have a right to have a response within the specified time period and, as appropriate, a right to appeal or to seek a local review of the planning authority's decision or its failure to issue a decision.
- 4.83 Planning authorities must not determine applications before the end of periods allowed for representations to be made (regulation 26(3)(b) refers). These periods are those in relation to neighbour notification, site notices for applications for underground working of minerals, advertisement in local newspapers and notices in relation to applications affecting conservation areas or listed buildings.



- 4.84 Where an application is subject to environmental impact assessment, the EIA Regulations amend the time periods to the effect that a 4 month period for determination applies. Where the date on which the Environmental Statement ('ES') is submitted is later than the validation date, that 4 month period runs from the date on which the ES and accompanying documents are submitted.
- 4.85 Where the provisions at regulation 26(3)(b) prevent the planning authority from granting permission, this does not alter the period for making an appeal or seeking a review on the grounds of non-determination of the application – see the following sections on “Local reviews” and “Appeals to Scottish Ministers”.
- 4.86 Planning authorities and applicants can agree extended periods for determining applications before this right to appeal or seek local review arises – again see the following paragraphs on “Local reviews” and “Appeals to Scottish Ministers”. Whether this facility is used or not, planning authorities and applicants should ensure applications do not become inactive over sustained periods and are brought to a conclusion within a reasonable timeframe.

### Local reviews

- 4.87 Once a decision is issued on an application for a local development delegated in accordance with a section 43A scheme of delegation, the applicant can seek a local review of a refusal or a grant with conditions. This must be done within 3 months beginning with the date of the decision notice<sup>23</sup>.
- 4.88 Where a decision notice on such an application is not issued within the prescribed 2 month period, or 4 month period in EIA cases ('the period allowed for determination of the application'<sup>24</sup>), the applicant has 3 months beginning with the date of expiry of that period within which to seek a local review on the grounds of non-determination of the application. See paragraphs 4.10 and 4.12 on the importance of clarity of the validation date.
- 4.89 The planning authority and the applicant can agree in writing an extended period for determination, and the 3 months for seeking a review on the grounds of non-determination will begin with the date of expiry of the period of the agreed extension.
- 4.90 If the review body does not conduct a review sought on the grounds of non-determination within 3 months beginning with the date the requirement to review is made, the application is automatically refused permission. There is

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<sup>23</sup> For example:

(1) The date of the planning authority's decision notice is 1 September – your full notice of local review must be received on or before 30 November (note: 1 December would be the start of the fourth month, and so too late).

(2) The planning authority has not made a decision on your planning application, and it should have done so by 15 March. You can seek a local review regarding non-determination, but the last day by which you can do so is 14 June.

<sup>24</sup> 'period allowed for determination' is defined in relation to applications to which local review applies in regulation 8(2) of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 - <http://www.legislation.gov.uk/ssi/2013/157/contents/made>

then a right of appeal to Scottish Ministers. The time limit for making an appeal is 3 months.

- 4.91 Where the 3 month period for seeking a review on the grounds of non-determination elapses without a review being sought, the applicant would be able to seek a review of the eventual decision on the application once it is issued.
- 4.92 Local reviews also apply where the section 43A scheme delegates applications for approval of matters specified in conditions (regulation 12) and other applications for approval, consent or agreement sought as a result of a condition on planning permission relating to local development. Further guidance is set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013/157) and the related circular (5/2013).

### Appeals to Scottish Ministers

- 4.93 In any other case (for example, a local development not delegated to an appointed officer, a national development or a major development), the applicant has a right of appeal to Scottish Ministers against the decision of the planning authority on the application. Such an appeal must be made within a period of 3 months beginning with the date of the decision notice<sup>25</sup>.
- 4.94 Where a decision notice on such an application is not issued within the appropriate 2 month or 4 month time period ('the period allowed for determination of the application'<sup>26</sup>), the applicant may appeal to Scottish Ministers within 3 months beginning with the date of expiry of that time period or of any extended period agreed upon in writing between the applicant and the planning authority. As with local reviews, if no appeal was sought on the grounds of non-determination, the applicant would have a right of appeal against the eventual decision. See paragraphs 4.10 and 4.12 on the importance of clarity of the validation date.
- 4.95 More information on appeals can be found in the Town and Country Planning (Appeals) (Scotland) Regulations 2013 (SSI 2013/ 156) and the related Circular 4/ 2013.

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<sup>25</sup> For example:

- (1) The date of the planning authority's decision notice is 1 September – your full notice of an appeal to Scottish Ministers must be received on or before 30 November (note: 1 December would be the start of the fourth month, and so too late).
- (2) The planning authority has not made a decision on your planning application, and it should have done so by 15 March. You can appeal to Scottish Ministers regarding non-determination, but the last day by which you can do so is 14 June.

<sup>26</sup> 'the period allowed for determination' in relation to applications subject to a right of appeal to Scottish Ministers is defined in regulation 3(2) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 - <http://www.legislation.gov.uk/ssi/2013/156/contents/made>

## DECISION NOTICES

(Regulation 28)

4.96 With regard to applications for:

- planning permission;
- planning permission in principle;
- approval of matters specified in conditions attached to planning permission in principle; or
- any other consent, agreement or approval required by a condition attached to planning permission (i.e. including those that do not require a formal application under regulations 9, 10, 11 or 12),

the planning authority, within the prescribed time periods for determining the application (see paragraph 4.79 – 4.86 above), must:

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

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

### The contents of the decision notice

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

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

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

4.99 In addition, under regulation 28, the decision notice to the applicant or agent on applications for planning permission or planning permission in principle must include:

- General Information - a description of the proposed development (including a description of any variation to the original proposal agreed with the applicant under section 32A of the 1997 Act); a description of the location including a postal address (where applicable); and the reference number of the application. The notice must also include identification of the plans and

drawings showing the proposed development irrespective of whether the application has been approved, approved subject to conditions or refused;

- Duration of planning permission – see paragraphs 4.103 – 4.111. The decision notice must include a statement on the effect of section 58 or 59 on duration or, where a planning authority has directed that different time periods to those in sections 58 and 59 should apply, the effect of such a direction;
- Section 75 planning obligation - where such an agreement is to be entered into, the decision notice must indicate where the terms or a summary of such terms can be inspected.

4.100 Decision notices on applications for approval of matters specified in conditions attached to planning permission in principle shall, in addition to the minimum set out in paragraph 4.99 above, include:

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

4.101 Where a decision on any application is made to refuse or to approve subject to conditions, the decision notice must be accompanied by either:

- notification of the right to a local review by the planning authority (Form 1 of schedule 6 to the DMR); and
- a statement drawing attention to information on how to seek a local review:  
or
- notification of the right to appeal to Scottish Ministers (Form 2 of schedule 6 to the DMR); and
- a statement drawing attention to where to find out more information on how to make an appeal.

## **NOTICE OF REQUIREMENTS FOR NOTICES**

(Sections 27A, B and C and regulations 40 and 41)

4.102 Paragraphs 5.1 to 5.11 describe requirements for developers to submit notices of initiation of development and of completion of development to the planning authority and, in certain cases, have a notice on-site during development. Planning authorities are required under the 1997 Act, when granting planning permission, to give applicants notice of the requirement for a notice of initiation of development (it also makes sense to advise them of the requirements for notice of completion of development and, where appropriate, for on-site notices). The decision notice would be an appropriate mechanism for giving the applicant such notice.

## **DURATION OF PLANNING PERMISSION**

- 4.103 The following paragraphs set out the statutory default time periods on duration of planning permission and the powers for planning authorities to set alternative time periods. Planning authorities should consider carefully the nature of the development and issues such as the prevailing economic climate and reach a view on whether the statutory default time limits are appropriate in the circumstances of the case or whether they should specify a different period.
- 4.104 It is open to applicants to make a case to the planning authority to use the available discretion to set a different time period for duration. In the case of planning permission in principle, a number of the periods for starting development and applying for approval required by conditions on the permission can be varied by direction (see Annex H).

### **Planning Permission**

(Section 58)

- 4.105 Section 58(1) specifies that planning permission will expire after 3 years from the date on which it is granted unless the development to which it relates has been started.
- 4.106 The planning authority may in granting planning permission direct that a longer or shorter period than 3 years may apply. Although these time periods are not a condition to the planning permission, it is open to the applicant to appeal to Scottish Ministers against, or seek a local review by the planning authority of, the 3 year time period, or any different period directed by the planning authority, as if it were such a condition.
- 4.107 Whilst there is no standard form for such a direction, planning authorities may wish to consider writing to the applicant citing the relevant powers and specifying the time periods for the duration of permission. The decision notice must include reference to the effect of section 58 (or section 59 – see following paragraphs) or details of any direction.

### **Planning Permission in Principle**

(Section 59)

- 4.108 Planning permission in principle is permission granted in accordance with the DMR and subject to a condition (or conditions) that the development in question will not be begun until certain matters have been approved by the planning authority. Planning permission in principle will lapse unless development is begun within 2 years from the grant of the last such approval.
- 4.109 Applications for approval required before development can be begun must be made within 3 years from the grant of planning permission in principle, or, if later, within 6 months from when an earlier application for approval for the

same matters was refused or dismissed on appeal or review. Where the latter 6 month period applies, only one application for such approval can be made after 3 years from the grant of planning permission in principle. Note that these time limits for applying for approval apply only where the condition requires approval to be obtained **before** development can be begun (see Annex H). There is no statutory time limit for applying for other approvals or agreements required by conditions on planning permission in principle.

- 4.110 Moreover the planning authority can direct that different time periods apply in relation to the 3 year period for making an application for approval or the 3 year period after which only one more application for approval can be made. The authority can also direct that a different time period applies for the 2 year period after the final approval is given and within which development must be started. Directions can also specify different time periods for different parts of the development. Such directions can be made only at the point when planning permission is granted. See Annex H for more information. An applicant can, as appropriate, appeal to the Scottish Ministers against or seek a local review by the planning authority of time periods substituted by a direction, and/or the statutory 2 year period within which development must be started.
- 4.111 Authorities should be mindful that some major developments, particularly those involving multiple interests, will benefit from longer timescales than the statutory 3 year period for applying for certain approvals.

## MARINE FISH FARMING

(Regulation 36)

- 4.112 This regulation applies the DMR to applications for marine fish farming development subject to certain modifications.
- 4.113 Regulation 7 is modified so that advertising of public events for pre-application consultation is required in the district of the planning authority for the marine planning zone<sup>27</sup> in which the marine fish farm development is proposed, rather than in the locality in which the proposed development is situated.
- 4.114 Regulation 9 on the content of planning applications is modified so that the requirement to give the postal address of the site or a description of the location of the land is changed to require a description of the location of the development. Similarly, the requirement to provide a plan sufficient to identify the land to which the application relates and neighbouring land is modified to a plan sufficient to identify the location of the development. The requirement for a plan identifying any neighbouring land owned by the applicant does not apply.

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<sup>27</sup> These are defined in the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (SSI 2007/268 <http://www.legislation.gov.uk/ssi/2007/268/contents/made>)

## Circular 3/2013 Development Management Procedures

- 4.115 The requirements in regulation 13 for a design and access statement are also modified to the extent that only a design statement would be required for marine fish farming developments, and only those which are major developments or which are a local development in a World Heritage Site, National Scenic Area or within the site of a scheduled monument. A design statement is not required for alterations or extensions to an existing marine fish farm.
- 4.116 Regulations 10 (Applications for Planning Permission in Principle), 18 (Notification by the Planning Authority) and 41 (Display Notices) are omitted in relation to marine fish farming developments.
- 4.117 Regulation 20 (Publication of application by the planning authority) is modified to the effect that all marine fish farm development applications require to be advertised (given the lack of neighbour notification).
- 4.118 Schedule 2 is amended so that entries in registers referring to the address or location of the land are changed to a description of the location of the development.
- 4.119 Schedule 5 on consultation is modified to refer to community councils whose area is adjacent to the marine planning zone in which the proposal is located, rather than community councils in whose area the proposal is located.
- 4.120 Regulation 36(8) makes clear that where an application relates in part to marine fish farm development and in part to other development, the modifications apply only for the purposes of that application to the extent to which it relates to marine fish farming.

### **CAIRNGORMS NATIONAL PARK**

(Regulation 37)

- 4.121 Regulation 37(1) modifies the validation date under regulation 14 to the date on which an application is called in by the Cairngorms National Park Authority. Consequently the time periods for determination of the application under regulation 26 run from this later date.
- 4.122 The planning authority is to notify the National Park Authority within 5 days beginning with the validation date where an application for development in the area of the National Park Authority is submitted.
- 4.123 The planning authority is required to consult the National Park Authority where it believes the development which is the subject of the application is likely to affect land in the area of the National Park.

## **APPLICATIONS – NATIONAL SECURITY**

4.124 Regulation 38 specifies that withholding information which the applicant considers to be national security sensitive from an application does not invalidate that application. This is subject to the requirement that a written statement is included explaining that this national security consideration (as defined in regulation 38) is the reason for not submitting the information. If the planning authority are unable to determine the review without the withheld information, then the case could be appealed on the grounds of non-determination or called in for determination by Scottish Ministers, and special procedures for dealing with national security sensitive information applied.

## **5. POST APPLICATION PROVISIONS**

### **NOTIFICATION OF INITIATION OF DEVELOPMENT**

(Sections 27A, B and C and regulations 40 and 41)

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



### **Failure to submit a notice of initiation of development**

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

### **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

(Section 27B)

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

### **DISPLAY OF NOTICE WHILE DEVELOPMENT IS CARRIED OUT**

(Section 27C and regulation 41)

- 5.9 For certain classes of development the developer must, for the duration of the development, display a sign or signs containing certain information. A notice would be required for any development that is either:
- national development; or
  - major development; or
  - a development of a class specified in schedule 3 to the DMR.
- 5.10 The notice must be in the form in schedule 7 to the DMR and must be: displayed in a prominent place at or in the vicinity of the site of the development; readily visible to the public; and printed on durable material. It is a breach of planning control not to display such a notice.

5.11 The requirements under sections 27A, B and C apply to developments where planning permission was given on or after 3 August 2009.

## **CERTIFICATES OF LAWFUL USE OR DEVELOPMENT**

5.12 See Annex F of Circular 10/2009 on 'Planning Enforcement'<sup>28</sup> for guidance on certificates of lawful use or development.

## **6. PROCESSING AGREEMENTS**

### **THE USE OF AGREEMENTS**

6.1 A processing agreement is an agreed framework for processing a planning application or related group of applications. The Scottish Government's expectation is that planning authorities and statutory consultees should actively promote and encourage the use of processing agreements associated with major or national developments and also substantial or complex local developments.

6.2 The Scottish Government has published a template for processing agreements:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/dev-man/Processing-Agreement>

6.3 Processing agreements can deliver a number of benefits:

- More effective and earlier engagement of key stakeholders.
- Clarity early in the process about information requirements and any matters to be addressed by legal agreement;
- Clearer lines of communication;
- Greater predictability and certainty over the timing of key stages;
- Greater transparency in decision making for everyone involved in the process; and
- Faster decision making through effective project management with a focus on delivery;

6.4 A processing agreement does not guarantee the grant of planning consent. Associated planning applications will be considered on their merits and against the terms of the development plan and other material considerations. The agreement should be based on a shared understanding of the key stages in the process and involve key statutory consultees as appropriate at the outset.

6.5 The prescribed 'period allowed for the determination of the application' (see paragraphs 4.79- 4.86) is not appropriate in every instance. Where the parties agree that the proposal will take longer to determine than the prescribed period, they should agree in writing to extend this period (provided for under sections 43A(8)(c) and 47(2) of the 1997 Act). This extended period has implications for

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<sup>28</sup> <http://www.scotland.gov.uk/Publications/2009/09/16092848/0>

when the applicant can appeal to Scottish Ministers or seek a local review on the grounds of non-determination. Where a processing agreement incorporates such an agreed extended period there will be no right to appeal or seek a review against non-determination of the application until the expiry of the agreed extended period in the agreement.

## **PREPARING AN AGREEMENT**

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

## **SCOPE**

- 6.8 Processing agreements can cover applications for planning permission (including planning permission in principle) and any resulting agreement or approvals required by conditions imposed on permissions for national or major developments, or more substantial or complex local developments. Where appropriate, the parties may also incorporate the consideration of other consents, such as listed building consent, in the processing agreement to enable a more integrated approach to be taken. The agreement should cover all stages up to issue of the decision notice, including the signing of any related planning obligation.
- 6.9 The elements for inclusion in the processing agreement should be discussed at the outset. It will be for the parties involved to agree a bespoke approach to each processing agreement.

## **FORM AND CONTENT OF PROCESSING AGREEMENTS**

- 6.10 The Scottish Government expects processing agreements to be as concise, clear and simple as possible. The link in paragraph 6.2 includes a suggested template for such agreements, which can act as a starting point. A processing agreement should not create an additional layer of bureaucracy or be an excessively time consuming process in itself. The key objective is to establish a realistic timescale for processing which takes account of the amount of the information which needs to be considered and the process required to determine the application. The processing agreement should therefore contain any written agreement to extend the ‘period allowed for the determination of the

application'. The parties may decide who drafts the agreement, though in most cases this will be the planning authority.

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

- **Roles and responsibilities**

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

- **Information requirements**

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

- **Decision-making framework**

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

- **Project Plan / Key Milestones**

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

- **Timescales**

Where the parties agree that the proposal will take longer than the statutory period to determine they should agree to extend the period after which an appeal may be made to Scottish Ministers or review sought from the planning authority against non-determination of the application, in accordance with section 47(2) or 43A(8)(c) as the case may be, and record it in the agreement. It will not be possible to appeal against non-determination in advance of that agreed timescale.

## **7. SUPERSEDED CIRCULAR**

7.1 Circular 3/2009 on 'Development Management Procedures' is revoked.

## **8. FURTHER COPIES AND ENQUIRIES**

8.1 Any enquiries about the content of the Circular should be addressed to The Planning and Architecture Division, Scottish Government, 2H - South, Victoria Quay, Leith, Edinburgh, EH6 6QQ (Telephone 0131 244 7888). Copies of the circular may be obtained from the Scottish Government website at [www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning) .

## ANNEX A

### DEFINING A MATERIAL CONSIDERATION

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

### Circular 3/2013 Development Management Procedures

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

## ANNEX B

### PRE-APPLICATION CONSULTATION – SCREENING PROCESS

(Section 35A and regulation 5)

1. This optional process is started by a prospective applicant submitting a notice to the planning authority (a 'pre-application screening notice') requiring the authority to make a statement as to whether the proposal would be of a class that requires statutory PAC. Under section 35A(5) and regulation 5, the 'pre-application screening notice' must contain:
  - a) a description in general terms of the development to be carried out;
  - b) the postal address, if any, of the site at which the development is to be carried;
  - c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
  - d) detail as to how the prospective applicant may be contacted and corresponded with;
  - e) a statement as to whether a screening opinion or screening direction has previously been issued on the need for EIA in respect of the development.
2. In preparing the notice, a prospective applicant should include enough detail within the general description of the proposal to enable the planning authority to determine the class of development within the hierarchy. Any plan showing the site should be to a proper cartographic base, for example Ordnance Survey, and use an appropriate scale.
3. Part (e) above has been inserted by regulation 5 to facilitate the identification of proposals previously screened as Schedule 1 development in the EIA Regulations, which are categorised as major developments in the hierarchy.
4. Although this information should be sufficient to make a decision, the planning authority has powers under section 35A(6) to request further information where necessary to determine whether the proposal is in a class categorised as requiring PAC. The authority has 21 days to respond to a screening notice which does not include any time between requesting additional information and its receipt (sections 35A(7) and (8)). Any request by the planning authority for further information would need to be made before the 21 day period elapsed.
5. If the proposal is not considered to be in a category for which PAC is required, and the proposal does not then alter significantly prior to submission of a planning application within 12 months, the planning authority cannot subsequently alter its initial view.
6. The screening processes for EIA and for PAC are separate statutory procedures. Therefore a screening opinion under the EIA Regulations would not in itself function as a view on the need for PAC.



### **Circular 3/2013 Development Management Procedures**

7. It is open to the prospective applicant to proceed with PAC without a screening notice. In most instances it should be clear whether PAC is required from the definition of major and national developments. Where a pre-application screening notice and a proposal of application notice are submitted together, they can be processed concurrently rather than consecutively.

## ANNEX C

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

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

## ANNEX D

### PLANS AND DRAWINGS

1. All applications should be accompanied by a location plan and almost all will require a site plan. Where the applicant owns some or all of the “neighbouring land” (see paragraph 4.15 of the main circular), a plan showing such land must be included. The following are not statutory requirements but an indication of what planning authorities can reasonably expect by way of a minimum of information on these plans:

**Location plan** – this must identify the land to which the proposal relates and its situation in relation to the locality: in particular in relation to neighbouring land. Location plans should be a scale of 1:2500 or smaller.

**Neighbouring land owned by the applicant** – where required, this could be incorporated into the above plan or on a separate plan of similar scale.

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

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

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

- show the proposed works in relation to what is already there;
- show all sides of the proposal;
- indicate, where possible, the proposed building materials and the style, materials and finish of windows and doors;
- include blank elevations (if only to show that this is in fact the case);
- where a proposed elevation adjoins another building or is in close proximity, the drawings should clearly show the

## Circular 3/2013 Development Management Procedures

relationship between the buildings, and detail the positions of the openings on each property.

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

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

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

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

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

## ANNEX E

### DECLINING TO DETERMINE PLANNING APPLICATIONS

#### Repeat Applications

1. Section 39(1) contains discretionary powers for planning authorities to decline to determine repeat planning applications. Where Scottish Ministers have, within the previous 2 years, refused permission on a similar application<sup>29</sup> on call-in or appeal (section 39(1)(a)) and, in the opinion of the planning authority, there has been no significant change in the relevant parts of the development plan or other material considerations since that decision, the planning authority can refuse to deal with the application.
2. The same discretionary power applies where more than one similar application has been made in the previous 2 years and no appeal has been made or has been made but not determined. In these cases the above criterion relating to changes in the development plan or other material considerations relates to the period since the most recent refusal (or deemed refusal<sup>30</sup>) of a similar application.
3. The same criteria for exercising this discretion apply where an application is subject to a right to local review by the planning authority rather than a right to appeal to Scottish Ministers. For example, where a similar application has been refused on local review within the previous two years and there is no change in the development plan or other material considerations, then the planning authority may decline to determine the application.

#### Applications without the necessary pre-application consultation (PAC)

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

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<sup>29</sup> Applications are “similar” only if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.

<sup>30</sup> When an appeal is made on the grounds of non-determination of the application, the application is then deemed to be refused at that point.

### **Circular 3/2013 Development Management Procedures**

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

## ANNEX F

### PRE-DETERMINATION HEARINGS PROCEDURES

1. Mandatory pre-determination hearings under section 38A will be held by a committee of the authority, in whatever format adopted by the authority. Planning authorities may consider developing, consulting on and publishing standard procedures for pre-hearing arrangements (invitations, availability of information etc.), hearing arrangements 'on the day' and any post-hearing recording and follow-up. Any hearing should take place after the expiry of the period for making representations on the application but before the planning authority decides the application. It will be for the committee to decide whether it wishes to have hearings on the same day as the related planning applications are determined by full Council, or to make alternative arrangements.
2. Among the issues that planning authorities will wish to consider in determining their procedure for pre-determination hearings are:
  - the order of proceedings (for example, the applicant and those who made representations to address Committee in turn);
  - to avoid repetition it may be necessary to ask one objector to speak on behalf of a group of objectors rather than allowing all objectors a right to address the Committee individually;
  - the maximum time available for applicants. Rules governing witnesses and those who made representations to present their cases and respond to each other's statements;
  - the opportunity for Committee members to ask questions of applicants, consultees, objectors and supporters;
  - the opportunity for Committee members to ask for additional advice and information from planning officials;

### Other applications for which planning authorities may require Hearings

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

## ANNEX G

### CHANGES TO THE REGULATIONS AND CIRCULAR

1. This annex highlights the main changes made to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 which are now reflected in this new version of the Circular on Development Management Procedures.
2. Also, Schedule 9 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 lists the statutory instruments which previously amended the 2008 Regulations, but which are now revoked as the changes are contained in the DMR. Not all of these amendments affected the Circular. A short summary of the effect of these statutory instruments is also included here.

#### The Main Changes incorporated into the new circular

**Interpretation** – the new statutory definition of “householder development” used in the DMR is included, as is the amended definition of “neighbouring land” (excluding a road), and references to regulations have been updated as appropriate. The definition of “statutory consultees” used here is not based on any statutory definition but is for the purposes of the circular.

**Chapter 2 Pre-application Phase** – this contains some additional good practice material on PAC and reference to the fact PAC no longer applies to Section 42 Applications.

**Chapter 3 Making a planning application** – includes the new requirements for a plan showing neighbouring land owned by the applicant and a statement that the land involved in a proposal is Crown land in relevant cases. The text on reduced requirements on content for ‘Further applications’ is amended to include these new requirements but to remove the requirement for a PAC report for Section 42 Applications. The ‘Design Statements and Design and Access Statements’ section is amended to deal with earlier amendments that a design statement is not required for extensions and alterations to existing marine fish farms. Document references are also updated in this section.

**Chapter 4 Processing planning applications** – The section on ‘Schemes of Delegation’ is amended regarding the removal of the restriction on delegating to appointed officers applications for local development in which the planning authority has an interest. Annex E on ‘Declining to Determine Applications’ now reflects the changes which put local review cases on a similar footing to cases where appeals to Scottish Ministers are involved. The sections on ‘Validation and on Local Reviews’ and appeals are amended to emphasise the need for clarity of the validation date. The section on ‘Neighbour Notification and Publicity’ is updated to deal with the removal of a road as neighbouring land and the reduced requirements to advertise applications where there are no premises on neighbouring land to which notification can be sent. The section on ‘Consultation on Applications’ is amended with regard to the ability of consultees to write to authorities under regulation 25 to reduce the



need for consultation (the original restriction on this facility with regard to paragraph 3 of Schedule 5 is extended to include paragraph 4 – both relate to consultation in relation to major accident hazards). There is also reference to notifying the Local Government Boundaries Commission Scotland of developments which straddle local authority boundaries. The section on 'Time Periods for Determination' is amended to take account of the ability to agree extensions on applications to which a right to local review applies. The section on 'Decision Notices' is amended due to the requirement to include an indication of where information on making appeals or seeking local reviews can be found. The 2011 amendment to the form of words for notifying applicants of the time periods for their rights of appeal and local review is incorporated in the text and an example of calculating such time periods is provided in a footnote. The wording of the paragraphs in the section on 'Duration of planning Permission' have been amended. Reference to the new provisions of 'Applications – National Security' is included.

**Chapter 6 Processing Agreements** – This is amended to include a link to a template for processing agreements and update the text about when processing agreements should be used.

**Annex F Pre-determination Hearings Procedures** – change to list of issues for planning authorities to consider.

### **Summary of the Scottish Statutory Instruments Amending Development Management Procedures Since 2008 (now incorporated in the DMR)**

**SSI 2009/220** Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009 – amendments made to the 2008 Regulations before they came into force and which were included in the original Circular.

**SSI 2010/460** The National Scenic Areas (Consequential Modifications) (Scotland) Order 2012 – amended the DMR, amongst other legislation, to change the definition of “National Scenic Area”.

**SSI 2010/60** The Management of Extractive Waste (Scotland) Regulations 2010 – these regulations included an amendment to Schedule 3(2)(d) of the DMR to include reference to “management of extractive waste”.

**SSI 2011/138** Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 – Some technical amendments to tighten the wording of regulations; an amendment removing the need for a design statement for extensions or alterations to marine fish farms; a new requirement to consult the Crofters Commission; amendment of the form for notice of rights of appeal and local review.

**SSI 2011/139** – Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 – removed the direction making power regarding EIA cases from the DMR (power now included in SSI 2011/139).

**SSI 2011/377** The Historic Environment (Amendment) (Scotland) Act 2011 (Saving, Transitional and Consequential Provisions) Order 2011 – amended the definition of “Historic Garden and Designed Landscape” used in the DMR.

## Circular 3/2013 Development Management Procedures

**SSI 2012/165** Town and Country Planning (Development Management Procedure) (Scotland) Amendment Regulations 2012 – introduced the requirement to consult Historic Scotland on development affecting Historic Battlefields.

**SSI 2012/325** Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2012 – changes to take account of the removal of the requirement for PAC regarding Section 42 Applications and to introduce the ability to agree extensions to periods of determination for applications to which local review applies.

**SSI 2013/155** Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Changes to the definition of “neighbouring land” and a reduction in the requirement to place newspaper notices where there are no premises to which neighbour notification can be sent; an additional requirement to consult Network Rail on proposals near railway lines; an extension of the restriction on the ability of consultees on major-hazard related development to write to planning authorities under regulation 25 to reduce the need for consultation; and an extension of the list of regulations which apply to a person to whom decisions on local development are delegated.

## ANNEX H

### DURATION OF PLANNING PERMISSIONS IN PRINCIPLE

#### Introduction

1. Planning authorities will wish to give careful consideration as to the appropriate duration of a planning permission in principle ('PPP') where such permission is to be granted, and to the time limit for making applications for approval of matters specified in conditions. This will be the case particularly where the permission relates to development intended to take place in phases over a number of years. Examples might include large housing schemes, plot-by-plot housing schemes, business parks, or other similar development where the details of later phases are not yet known. All parties should seek to avoid a scenario where it only subsequently becomes clear after a PPP has been granted that the timetable for making applications and implementing the development is unrealistic.
2. In all cases, authorities will wish to allow reasonable flexibility for developers, whilst seeking to minimise uncertainty surrounding the implementation in practice of the permission.
3. The following terms are used for the purposes of this guidance:

**'Requisite approval'**: approval of matters specified in condition(s) attached to planning permission in principle where such approval, consent or agreement of the planning authority is required before the development in question can begin.

**'Development in question'**: The development to which the particular condition relates. The condition may restrict any development or only part of the development depending on the wording of the individual condition.

**'Approval of matters specified in conditions'**: approval, consent, or agreement of the planning authority for any detailed aspects of the development, whether or not that approval is required before development can begin.

4. Guidance on procedures for applications for the approval of matters specified in conditions, including 'requisite approvals', is available in paragraphs 3.11 – 3.14 of this Circular.

#### Background

5. Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended, ('the Act') provides that:

## Circular 3/2013 Development Management Procedures

- a. To be a PPP the planning permission granted must be subject to a condition or conditions requiring the approval of certain matters (a 'requisite approval') before the development in question can begin.
- b. Section 59(2)(b) provides that applications for requisite approval may be made at different times in relation to different matters and different parts of the development.
- c. Section 59(2)(a)(i) provides that applications for requisite approval must be made within 3 years of the date of the grant of permission. However, section 59(5)(a) enables the planning authority when granting permission to substitute, through direction, an alternative time period.
- d. Section 59(7) provides that this direction may substitute different time periods for different parts of a development.
- e. In terms of section 59(4), PPP will lapse 2 years after the last requisite approval is obtained, unless the development to which the permission relates has begun. However, Section 59(5)(b) provides for the substitution, through direction, of an alternative time period for the lapsing of the permission. Again section 59(7) provides this direction may substitute different time periods for different parts of a development.
- f. Directions made under Section 59(5) must be made at the time at which the PPP is granted, and there is no provision to issue a direction after a grant of PPP. The time periods in section 59(3) and (4) can only be altered by means of direction(s) under section 59(5).
- g. Applicants may, as the case may be, appeal or seek a local review, of the period specified in a direction up to 3 months after the grant of PPP.
- h. A Planning Permission in Principle which has lapsed, or which is no longer capable of being implemented, may be a material consideration to be taken into account in determining any future application for planning permission in respect of the site.

### Procedures for seeking approvals

6. All applications for approval, consent or agreement required by a condition attached to a planning permission in principle are subject to the procedural requirements of regulations 12 and 18 (and where applicable regulation 20) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013<sup>31</sup> ('the DMR'). Regulation 12 requires an application for consent to be made in writing including certain information. There is however no limit on the number of approvals which can be sought in any single application. Regulation 18 requires neighbour notification of the application and, where applicable, regulation 20 requires notice of the application to be published in a newspaper. Applications will also attract a

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<sup>31</sup> SSI 2013/155.

fee. The aim of these requirements is to ensure that opportunity is provided for consultation to take place, as the key details of a development that has been approved in principle are being submitted.

7. An authority may, in determining an application for approval, consent, or agreement, grant such an application subject to conditions. Where such a condition is imposed requiring further approvals or consents, the time limits in S.59(2) would not apply to applications for those further approvals or consents.

### **Timescales for seeking approvals**

8. Section 59(7) of the Act expressly provides that a direction under section 59(5) can substitute different time limits for making an application for a requisite approval for different parts of the development. In this way, the Act recognises, and provides for, the principle of phased development, and enables the planning authority to make directions where appropriate to set different timetables for the approval and implementation of different parts of the permission. This means, for example, that by using directions under section 59(5), a planning authority (or Ministers) can alter the effect of section 59(2)(a)(i) to substitute a different period (the substituted period) for the usual period of 3 years, and that this may be done for all of the development or for only part of the development. In the latter case, the result would be that applications for the requisite approvals for the part of the development specified in the direction would have to be made before the end of the substituted period.
9. The planning authority, in discussion with the applicant, will therefore wish to give consideration, prior to the granting of a PPP, as to the appropriate statutory time period within which applications for approvals should be made. This will involve giving consideration as to the need for any direction(s) under Section 59(5) of the Act.
10. Equally however, it will be important for the applicant to be clear as to the need to adhere to the time limits for submission of all requisite approvals in terms of section 59, and to consider whether they need to ask the authority to make directions to set an alternative timetable. In this way, all parties can seek to avoid a scenario where it only subsequently becomes clear after a PPP has been granted that the timetable for making applications and implementing the development is unrealistic. If the timetable is not considered carefully at the point of granting PPP, the result may be that a development cannot be implemented as originally envisaged, for example because the time period for submitting applications for approval may expire before such applications can realistically expect to be made.
11. If the intention is that a development is to be implemented in phases, or approvals for parts of a development should be submitted in phases, the conditions themselves need to be framed to recognise this.

### Drafting conditions to a PPP

12. In light of all of the above, planning authorities and developers will wish to give consideration to the wording of individual conditions, and in particular will wish to ensure clarity as to:
- Which conditions require the further approval, consent or agreement of the planning authority, and consequently are subject to the procedures set out in regulation 12 of the DMR;
  - Where a further approval is required, whether this is necessary before the development as a whole can begin, or before part of the development can begin.
  - Whether the matters to be approved concern the development as a whole, or whether they relate only to particular phases. For example, where a condition requires the approval of the planning authority on the 'siting, design, and external appearance of all buildings,' whether this relates to all buildings across the development as a whole, or only in relation to a particular phase of development.
  - Authorities may wish to consider using an advisory note to clearly set out the timetable for making applications for requisite approvals.
  - Authorities are reminded of the need to ensure that all conditions imposed on a PPP meet the tests set out in Circular 4/1998.<sup>32</sup>

### The use of Directions to substitute alternative time periods

13. Authorities may wish to use and adapt the following forms of wording when making directions under section 59(5) of the Act in relation to a planning permission in principle:
- *The [planning authority] direct that subsections (2)(a)(i) and (3) of section 59 of the Town and Country Planning (Scotland) Act 1997 apply as respects [ the PPP ] with the substitution for the period of 3 years referred to in each of those subsections, of the period of [ X years].*
- And
- *The [planning authority] direct that subsection (4) of section 59 of the Town and Country Planning (Scotland) Act 1997 applies as respects [ the PPP ] with the substitution for the period of 2 years referred to in that subsections, of the period of [ X years].*

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<sup>32</sup> <http://www.scotland.gov.uk/Publications/1998/02/circular-4-1998/circular-4-1998-circular>

**Summary:**

- Applications for 'requisite approvals' required by condition to a PPP must usually be made within 3 years.
- Authorities can substitute an alternative time period or periods through direction at the time at which PPP is granted.
- In this way, the Act recognises and provides for the principle of phased development, including in circumstances where it may be appropriate for different parts of the development to be implemented according to different timetables.

## ANNEX I

### APPLICATIONS FOR PLANNING PERMISSION UNDER SECTION 42 OF THE ACT

1. Section 42 of the Act applies to applications for a new planning permission or new planning permission in principle for a development but with different conditions from those attached to a previous permission for that development.

#### Background

2. Planning authorities will wish to note the following in relation to Section 42 applications:
  - a. The effect of granting permission for a section 42 application is such that a new and separate permission exists for the development with different (or no) conditions attached. The previous planning permission remains unaltered by, and is not varied by, the decision on the section 42 application.
  - b. The duration of the new permission is specified in the Act. Alternatively, authorities may direct that a longer or shorter period applies. (See Annex H to this Circular.)<sup>33</sup>
  - c. The need to attach to the new permission any of the conditions from the previous permission which it is intended should apply to the new planning permission.
  - d. The need to secure any section 75 legal obligation (or other agreement) to the new permission, where it is intended this should still apply.

#### Consultation and publicity

3. Statutory requirements concerning the consultation and publicity of planning applications, and in respect of decision notices etc., apply to section 42 applications unless otherwise stated. The key differences are:
  - There is no requirement for pre-application consultation on section 42 applications;
  - There are reduced requirements concerning the content of section 42 applications (regulation 11(2) of The Town and Country Planning

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<sup>33</sup> Section 58 of the Act does not apply to planning permission granted for a limited period in accordance with Section 41(1)(b) of the Act. In such cases a condition limiting the duration of the permission would be required.



(Development Management Procedure) (Scotland) Regulations 2013<sup>34</sup> ('the DMR') refers);

- A reduced fee applies to section 42 applications.
4. Requirements set out in other legislation apply as for any application for planning permission and include, for example, the requirements of The Conservation (Natural Habitats &c.) Regulations 1994 and the provisions of the Town and Country Planning Environmental Impact Assessment (Scotland) Regulations 2011.

#### **Determining a Section 42 application**

5. In determining a Section 42 application, authorities may consider only the issue of the conditions to be attached to any resulting permission. However, in some cases this does not preclude the consideration of the overall effect of granting a new planning permission, primarily where the previous permission has lapsed or is incapable of being implemented.
6. Where it is considered that permission should be granted subject to different conditions or no conditions, a new permission should be granted and all conditions attached.
7. If it is considered that planning permission should be granted subject to the same conditions as the previous permission, the section 42 application should be refused. The making, granting, or refusal of a section 42 application does not alter or effect the previous permission or its conditions.
8. Where a new permission is granted, the new duration will be as specified in Section 58 or 59 of the Act. However, it would be possible for the planning authority to direct that an alternative time period applies. Annex H of this Circular refers.
9. In terms of section 42(4), section 42 does not apply if the permission was granted subject to a condition as to the time within which development was to be begun, and that time period has expired without the development having been begun. Following changes made through the Planning etc. (Scotland) Act 2006, there will be limited circumstances where this will be the case.
10. Since 3 August 2009, the duration of a planning permission is specified in section 58 or 59 of the 1997 Act as appropriate, as are the time limits for making applications for requisite approvals under a PPP. The duration of a planning permission (and in the case of a PPP the time limits for making

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<sup>34</sup> SSI 2013/155.

### Circular 3/2013 Development Management Procedures

applications for requisite approvals) can be altered by direction but (other than for the purposes of appeals or local reviews) they are not conditions subject to which the previous planning permission was granted. Section 42 therefore does not apply in relation to non-compliance with these timescales.

#### **Summary:**

- The effect of granting a section 42 application is such that a new permission exists for the development with different or no conditions attached.
- Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation.
- The duration of the new permission will be as specified in Section 58 or 59 of the Act, unless the authority granting planning permission directs otherwise.



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