SCOTTISH STATUTORY INSTRUMENTS

2004 No. 332

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Electronic Communications) (Scotland) Order 2004

Made - - - - 27th July 2004

Coming into force in accordance with article 1

The Scottish Ministers, considering that authorisation made by this Order for the use of electronic communications and or electronic storage for any purpose, is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made for electronic communications or electronic storage than in other case, in exercise of the powers conferred by sections 8 and 9 of the Electronic Communications Act 2000(**1**) and all other powers enabling in that behalf, and with the consent of the Secretary of State in accordance with section 9(7)(c) of that Act, hereby make the following Order, a draft of which has been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) This Order may be cited as the Town and Country Planning (Electronic Communications) (Scotland) Order 2004 and shall come into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order–

"the 1997 Act" means the Town and Country Planning (Scotland) Act 1997(**2**); and

"the Listed Buildings Act" means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(**3**).

Use of electronic communications for appealing against enforcement notice

3. In section 130 of the 1997 Act (appeal against enforcement notices), in subsection (2)–

(**1**) 2000 c. 7. All by virtue of the modifications for Scotland in sections 8 and 9(7), the reference to the appropriate Minister is to be read as a reference to the Secretary of State, and the powers of the Secretary of State may be exercised by the Scottish Ministers, with the consent of the Secretary of State.
(**2**) 1997 c. 8.
(**3**) 1997 c. 9.

(a) omit "either"; and

at the end insert–

"; or

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

Use of electronic communications for service of notices

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

(2) In subsection (1), after paragraph (c) insert–

"(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (4), to that person at that address (subject to subsection (5)); or".

(3) After subsection (3), insert–

"(4) The condition mentioned in subsection (1)(cc) is that the notice or other document shall be–

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

(b) legible in all material respects; and

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

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

(5) Subsection (1)(cc) shall not apply to–

(a) serving a planning contravention notice;

(b) serving or giving notice to parties who must be notified of applications for planning permission and other matters in accordance with regulations made under sections 34 and 35;

(c) serving any notice, or withdrawal of any such notice under section 61;

(d) serving a notice under section 66(2);

(e) serving a notice under section 72(2) or a copy of an order under section 72(5);

(f) serving a purchase notice under section 88(2);

(g) serving any notice under section 90;

(h) serving a counter-notice under section 96(2) or 96(5)

(i) serving a counter-notice under 102;

(j) serving a blight notice under section 101(1);

(k) serving a copy of any enforcement notice by a planning authority;

(l) giving any notice under section 129 of the exercise of powers conferred by subsection (1) of that section;

(m) serving an enforcement notice issued by the Scottish Ministers;

(n) serving a stop notice, or of notice of withdrawal of a stop notice, by a planning authority;

(o) serving a stop notice by the Scottish Ministers;

(p) serving a breach of condition notice or of notice of withdrawal of a breach of condition notice;

(q) giving notice of the making of a tree preservation order, or service of a copy of such an order, in accordance with regulations under section 161;

(r) serving notice by a planning authority under section 179 requiring steps to be taken to abate the adverse effect on the amenity of any part of its district by reason of condition of any land within that district or an adjoining district;

(s) serving a notice under section 272 requiring information as to interests in land;

(t) serving a copy of a discontinuance, prohibition, suspension or supplementary suspension order made under Schedule 8; and

(u) serving a reminder under paragraph 4 of Schedule 10.".

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

5. In–

(a) paragraphs (c) and (e) of section 125(3) of the 1997 Act (power to require information about activities on land); and

(b) paragraphs (b) and (e) of section 272(2) of that Act (power to require information as to interests in land),

after "name and", insert "postal".

Insertion of definitions and interpretation provisions

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

(2) In subsection (1), insert the following definitions:–

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

"electronic communication" has the same meaning as in the Electronic Communications Act 2000 (c. 7);".

(3) After subsection (4), insert–

"(4A) Where an electronic communication is used for the purpose of serving on, or giving to, a person any notice or other document for the purposes of this Act, and the communication is received by that person–

(a) at any time before the end of a day which is a working day, it shall be deemed to have been received on that day; or

(b) at any time during a day which is not a working day, it shall be deemed to be received on the next working day,

and in this subsection "working day" means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(**4**), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.".

Applications for review of old mineral planning permissions

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

(**4**) 1971 c. 80.

(2) In paragraph 1 (interpretation), at the end insert–

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

(a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications; and

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

unless the applicant gives notice in writing to the planning authority in accordance with sub paragraphs (9) and (10).

(9) An applicant may give notice that the applicant no longer agrees to the use of electronic communications for the purposes mentioned in paragraphs (a) or (b) of sub-paragraph (8).

(10) Any such notice shall take effect on the date specified in it as the effective date, being a date occurring after the period of seven days, beginning with the date on which the notice is given.".

(3) In paragraph 9 (applications for approval of conditions, and appeals where conditions approved are not those proposed) in sub-paragraph (2)(d), for "an address" substitute "a postal address".

Applications for periodic review of mineral planning permissions

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

(2) In paragraph 2 (interpretation), at the end insert–

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

(a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications; and

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

unless the applicant gives notice in writing to the planning authority in accordance with sub-paragraphs (6) and (7).

(6) An applicant may give notice that the applicant no longer agrees to the use of electronic communications for the purposes mentioned in paragraph (a) or (b) of sub paragraph (5).

(7) Any such notice shall take effect on the date specified in it as the effective date, being a date occurring after the period of seven days, beginning with the date on which the notice is given.".

(3) In paragraph 6 (application to determine conditions to which mineral permissions are to be subject) in sub paragraph (2)(d), for "an address" substitute "a postal address".

Use of electronic communications for appeals against listed building enforcement notice

9. In section 35 of the Listed Buildings Act (appeal against listed building enforcement notice), in subsection (2)–

(a) omit "either"; and

(b) at the end insert–

"; or

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

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

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

(2) In subsection (1), for "subsection" substitute "subsections (1A) and".

(3) After subsection (1) insert–

"(1A) Subsection (1)(cc) of section 271 of the principal Act shall not apply to–

(a) serving a building preservation notice;

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

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

(d) serving a listed building enforcement notice issued by the Scottish Ministers; and

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

Insertion of definitions and interpretation into the Listed Buildings Act

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

(2) In subsection (1), insert the following definitions–

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

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

(3) After subsection (5), insert–

"(5A) Where an electronic communication is used for the purpose of serving on, or giving to, a person any notice or other document for the purposes of this Act, and the communication is received by that person–

(a) at any time before the end of a day which is a working day, it shall be deemed to have been received on that day; or

(b) at any time during a day which is not a working day, it shall be deemed to be received on the next working day;

and in this subsection, "working day" means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(**5**), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area in which the electronic communication is received.".

(**5**) 1971 c. 80.