SCOTTISH STATUTORY INSTRUMENTS

2004 No. 219

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004

Made - - - -	*13th May 2004*
Coming into force - -	*1st June 2004*

The Scottish Ministers in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with subsection (4) of that section, been laid before and approved by resolution of the Scottish Parliament:

Application, citation and commencement

1.—(1) These Regulations may be cited as the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 and shall come into force on 1st June 2004.

(2) These Regulations apply to–

(a) applications made on or after the day these Regulations come into force for–

(i) any planning permission or deemed application for planning permission;

(ii) approval of reserved matters;

(iii) a certificate of lawful use or development under section 150 or a certificate of proposed use or development under section 151 of the 1997 Act;

(iv) consent for the display of advertisements;

(v) a determination as to whether the planning authority's prior approval will be required in relation to development under Schedule 1 to the General Permitted Development Order; and

(b) deemed applications for planning permission in connection with an enforcement notice issued on or after the day these Regulations come into force.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

(**1**) 1997 c. 8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

"the 1984 Regulations" means the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984(**2**);

"community council" means a community council established under section 51 of the Local Government (Scotland) Act 1973(**3**);

"the General Permitted Development Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(**4**);

"the 1997 Act" means the Town and Country Planning (Scotland) Act 1997(**5**);

"dwellinghouse" means a building or part of a building which is used as a single private dwellinghouse, and for no other purpose;

"outline planning permission" and "reserved matters" have the same meaning as in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992(**6**);

"the Schedule" means the Schedule to these Regulations; and

"use of land" includes use of land for the winning and working of minerals.

(2) Expressions used in regulation 14 have the same meaning as in the 1984 Regulations.

(3) Any reference in these Regulations–

(a) to a numbered regulation, is a reference to the regulation so numbered in these Regulations;

(b) to a numbered paragraph, is a reference to the paragraph so numbered in the Schedule; and

(c) to a numbered Table is a reference to the Table so numbered in Part III of the Schedule.

Fees for planning applications

3.—(1) Subject to regulations 4 to 9 and paragraph 8(3) of the Schedule, where an application is made to a planning authority for planning permission or for the approval of reserved matters, a fee shall be paid to that authority in accordance with the provisions of these Regulations.

(2) The fee payable in respect of the application shall be calculated in accordance with the Schedule.

(3) Where a fee is due in respect of an application it shall be paid to the planning authority with which the application is lodged and shall accompany the application.

(4) Any fee paid under this regulation shall be refunded if the application is rejected as invalidly made.

Exceptions

4.—(1) Regulation 3 shall not apply where the planning authority to which the application is made is satisfied that it relates solely to the carrying out of operations–

(a) in the curtilage or for the alteration or extension of a dwellinghouse, other than the erection of a dwellinghouse, for the purpose of providing means of access to or within the dwellinghouse for a disabled person who resides or proposes to reside in that dwellinghouse, or of providing facilities designed to secure that person's greater safety, health or comfort; or

(**2**) S.I.1984/467, as amended by S.I 1992/1763 and S.I. 1996/252.
(**3**) Section 51 of the Local Government (Scotland) Act 1973 (c. 65) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 14.
(**4**) S.I. 1992/223, amended by S.I. 1992/1078 and 2084, 1993/1036, 1994/1442, 2586 and 3294, 1996/1266 and 3023, 2001/266, and 2003/341.
(**5**) 1997 c. 8.
(**6**) S.I. 1992/224, amended by S.I. 1992/2083, 1993/1039, 1994/2585 and 3293, 1995/2043, 1996/467, and 2001/245.

(b) for the purpose of providing means of access for disabled persons to or within a building or premises to which members of the public are admitted.

(2) In this regulation, "disabled person" has the same meaning as in section 1 of the Disability Discrimination Act 1995(**7**).

5.—(1) Regulation 3 shall not apply where the planning authority to which the application is made is satisfied–

(a) (i) that the application relates solely to development which is within one or more of the classes, other than Class 18, specified in Schedule 1 to the General Permitted Development Order; and

(ii) that the permission granted by article 3 of that Order does not apply in respect of that development by reason of and only by reason of–

(aa) a direction made under article 4 of that Order which is in force on the date when the application is made; or

(bb) the requirements of a condition imposed on a permission granted or deemed to be granted under Part III of the 1997 Act otherwise than by that Order; or

(b) that the application relates to development on land used for the purposes of agriculture, other than dwellinghouses or the buildings excluded by virtue of paragraph (2)(d) of Class 18 in Schedule 1 to the General Permitted Development Order from that class, and the development is to be used for purposes incidental to that use.

(2) The reference in paragraph (1)(a)(i) to an application which relates to development which is within one or more of the classes specified in Schedule 1 to the General Permitted Development Order shall include an application for planning permission for the continuance of a use of land, or the retention of buildings or works, without compliance with a condition subject to which a previous planning permission has been granted, and which prohibits or limits the carrying out of any development which is within one or more of the said classes.

6. Regulation 3 shall not apply where the planning authority to which the application is made is satisfied–

(a) that the application relates solely to the use of a building or other land for a purpose of any class specified in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997(**8**);

(b) that the existing use of that building or other land is for another purpose of the same class; and

(c) that the making of an application for planning permission in respect of the use to which the application relates is necessary by reason of and only by reason of a condition imposed on a permission granted or deemed to be granted under Part III of the 1997 Act.

7. Where all the conditions set out in regulation 8 and applicable, as the case may be, to paragraph (a) or (b), are satisfied, regulation 3 shall not apply to an application which is made by the same applicant for–

(a) planning permission for development of the same character or description as development to which an earlier application relates and to no other development and following–

(i) the withdrawal, before notice of decision was issued of that earlier application for planning permission;

(ii) the granting of planning permission for the development;

(**7**) 1995 c. 50.
(**8**) SI 1997/3061 as amended by SI 1998/1196.

(iii) the refusal of planning permission; or

(iv) the making of an appeal to the Scottish Ministers under section 47(2) of the 1997 Act (appeal in default of planning decision)(**9**) in relation to an application for planning permission; or

(b) approval of one or more reserved matters following–

(i) the withdrawal before notice of decision was issued of an application for approval of the same reserved matters;

(ii) the granting of approval of the same reserved matters;

(iii) the refusal to approve the same reserved matters; or

(iv) the making of an appeal to the Scottish Ministers under section 47(2) of 1997 Act in relation to an application for approval of the same reserved matters,

authorised by the same outline planning permission.

8. The conditions referred to in regulation 7 are–

(a) that the application is made within 12 months of the date–

(i) when the earlier application was made, in the case of a withdrawn application;

(ii) of the relevant grant of planning permission or grant of approval of details of reserved matters, as the case may be;

(iii) of the refusal; or

(iv) when under the relevant provisions of the General Permitted Development Order, the period for the giving of notice of a decision on the earlier application expired, in the case of an application which is made following an appeal under section 47(2) of the 1997 Act;

(b) in the case of an application for planning permission which is not made in outline, that the planning permission which has been granted is not an outline planning permission or that the earlier application was also not made in outline;

(c) in the case of an application for planning permission, the application relates to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site;

(d) in the case of an application for approval of reserved matters, the application relates to the same site as that to which the earlier application related, or to part of that site and to no other land;

(e) no application made by or on behalf of the same applicant in relation to the whole or any part of the site has already been exempted from regulation 3 by virtue of regulation 7 and this regulation; and

(f) the fee payable in respect of the earlier application was paid.

9. Regulation 3 shall not apply to impose a fee in relation to an application to a planning authority for permission to carry out development consisting of the winning and working of minerals where the application–

(a) is for a permission which consolidates two or more subsisting permissions; or

(b) does not seek permission for development which is not authorised by a subsisting permission.

(**9**) Section 47 was modified by SSI1999/1, regulation 45.

Fees for deemed applications

10.—(1) Subject to paragraphs (3) and (6), a fee shall be paid to the Scottish Ministers where an application for planning permission is deemed to have been made by virtue of section 133(7) of the 1997 Act (in consequence of an appeal against an enforcement notice).

(2) Subject to paragraphs (3) and (4) and regulation 15(2), the fee payable in respect of a deemed application shall be calculated in accordance with the Schedule.

(3) This paragraph applies where an application is deemed to have been made by virtue of section 133(7) of the 1997 Act. Where this paragraph applies–

(a) a fee shall be paid in respect of the application by every person who has made a valid appeal against the relevant enforcement notice;

(b) the fee payable shall be twice the fee calculated in accordance with the Schedule;

(c) half the fee shall be paid to the Scottish Ministers and the other half shall be paid to the planning authority which served the relevant enforcement notice.

(4) The fee due in respect of a deemed application shall accompany the written notice of the relevant appeal to the Scottish Ministers.

(5) In the case of an application deemed to have been made by virtue of section 133(7) of the 1997 Act, this regulation shall not apply where the person who has appealed against the relevant enforcement notice had–

(a) before the date when the notice was served, made an application to the planning authority for planning permission for the development to which the relevant enforcement notice relates and had paid the fee payable in respect of that application; or

(b) before the date specified in the notice as the date on which the notice is to take effect, made an appeal to the Scottish Ministers under section 47(2) of the 1997 Act,

and at the date when the relevant enforcement notice was served that application or, in the case of an appeal made before the date on which the enforcement notice is to take effect, that appeal, had not been determined.

(6) Regulations 4, 5 and 6 shall apply to a deemed application as they apply to an application for planning permission made to the planning authority, with the following modifications–

(a) references to the planning authority to whom the application is made shall be construed as references to the Scottish Ministers; and

(b) references to the development to which the application relates shall be construed as references to the use of land or the operations to which the relevant enforcement notice relates.

Refunds of fees for deemed applications

11.—(1) In the case of an application deemed to have been made by virtue of section 133 (7) of the 1997 Act, the amount of any fee paid in respect of the deemed application shall be refunded to the appellant in the following circumstances–

(a) where the Scottish Ministers decline jurisdiction on the relevant appeal under section 130 of the 1997 Act on the grounds that it does not comply with one or more of the requirements of subsection (1) of that section;

(b) where the Scottish Ministers under section 132(3) of the 1997 Act–

(i) dismiss the appeal on the grounds that the appellant has failed to comply with section 130(3) within the time prescribed under section 131(1); or