CIRCULAR

SCOTTISH EXECUTIVE
Development Department

1 2004

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND DEEMED APPLICATIONS) (SCOTLAND) REGULATIONS 2004

circular

PLANNING SERIES

SCOTTISH EXECUTIVE
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Scottish Planning Series

PLANNING CIRCULAR 1 2004

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

This Circular supersedes SODD Circular 1/1997 and SEDD Circulars 4/2000 and 3/2002.

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circ.

PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Scottish Executive policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development control.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location-specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

This Circular summarises the Scottish Ministers' understanding of the general effect of the relevant primary or secondary legislation although the summaries do not carry statutory authority in themselves and legal advice should always be taken in case of doubt.

CONTENTS

INTRODUCTION

1. This Circular draws attention to the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (SSI 2004 No 219) which consolidate and revoke the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 1997 (SI 1997/10) as amended in 2000 (SSI 2000/150), and 2002 (SSI 2002/122). The Regulations came into force on 1 June 2004 and prescribe the fees for planning applications made on or after that date.

2. The 2004 Regulations make no changes to the fees scheme other than to increase the rates of fees by approximately 10% on commencement and by a further 10% approximately on 1 April 2005.

3. Regulation 15 revokes the existing regulations, except in relation to applications for planning permission deemed to have been made before the Regulations came into force.

SCOPE OF FEES

4. The fees scheme applies to:

   - applications for planning permissions; including "retrospective" applications where development has already taken place;
   - applications for approval of reserved matters following the grant of outline planning permission;
   - applications for consent to display advertisements;
   - deemed applications arising from enforcement notice appeals;
   - applications arising from certificates of lawful use or development;
   - certain applications for the prior approval of a planning authority;
   - applications made by or with the authority of the Crown under Section 1 of the Town and Country Planning Act 1984.

5. The fees scheme does not apply to any other type of application. In particular there are no fees for:

   - applications for listed building consent;
   - local authorities' proposals for their own developments which are subject to regulations made under Section 263 of the 1997 Act;

- consultations about Crown development under the procedure laid down in SDD Circular 21/1984;
- applications for certificates of appropriate alternative development;
- applications to lop or fell trees subject to tree preservation orders;

applications for consents required by any condition attached to a full planning permission, nor to any attached to an outline permission if the condition relates to anything other than a "reserved matter" as defined in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

6. The provisions for fees in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 take effect from 1 June 2004 and fees at the levels prescribed in these Regulations are payable for applications made on or after that date. Fees will increase by a further 10% approximately on 1 April 2005. Where an application for approval of reserved matters is made on or after 1 June 2004, or 1 April 2005 as the case may be, the fee prescribed in the 2004 Regulations is payable irrespective of whether the outline permission was granted before or after the aforementioned dates.

EXEMPTIONS

7. The Regulations provide for exemptions from fees for planning applications and applications for approval of reserved matters.

A. DISABLED PEOPLE

Applications for planning permission to alter or extend an existing dwellinghouse, or to carry out operations within the curtilage of an existing dwellinghouse, are exempt from payment of a fee if the planning authority is satisfied that the proposed development is intended solely to improve access, safety, health or comfort for a disabled person who is living in the house. This applies to cases where the disabled person is not yet in residence. The exemption does not apply to the construction of a new dwellinghouse. Applications for operations in connection with a building to which the public have access are also exempt from payment of a fee if the planning authority is satisfied that the proposed development is intended solely to provide means of access to or within the building for disabled persons. The exemption is not confined to those buildings where there is a statutory obligation to provide such access.

B. ARTICLE 4 DIRECTIONS

Where a planning application is required to be made only because a direction under Article 4 of the General Permitted Development Order is in force, the application is exempt from fees.

C. PLANNING CONDITIONS REMOVING PERMITTED DEVELOPMENT RIGHTS AND RIGHTS UNDER THE USE CLASSES ORDER

Where an application is required to be made only because the right to carry out development permitted by the General Permitted Development Order has been removed by a condition attached to a planning permission, that application is exempt from fees. Similarly, applications required only because the right to make a change of use within a class of the Use Classes Order has been removed by a condition are exempt.

D. AGRICULTURAL BUILDINGS

Applications for the erection of agricultural buildings (other than dwellinghouses) which are required solely because they are more than 3 metres high and within 3km of the perimeter of an airport, or because they are within 25 metres of the metalled portion of a trunk or classified road, are exempt from fees (but see paragraph 24 for applications for buildings exceeding 465 sq metres).

E. APPLICATIONS FOLLOWING REFUSAL, WITHDRAWAL, DISMISSED APPEAL OR NON-DETERMINATION

Regulations 7 and 8 provide that, where an application is withdrawn or refused, or where an appeal has been dismissed by the Scottish Ministers, or where the applicant has appealed to the Scottish Ministers on the grounds of non-determination by the planning authority of his application, the applicant may submit, without paying a fee, one further application for the same character or description of development on the same site. Where the original application was in outline, only an outline "revised" application may be exempt from fees. In the case of an application for approval of reserved matters, to be exempt the revised application must relate to the same reserved matters. In any case, the revised application must be made within 12 months of the decision on the earlier application or the appeal; in the case of a withdrawn application, within 12 months of the lodging of the earlier one; or, in the case of an appeal against non-determination, within 12 months of the expiry of the period within which the planning authority are required to decide the application. An applicant may benefit from this exemption only once for any given site or part of that site. If he needs to submit a further revised application, the full fee is payable. The Regulations allow revisions to schemes to include small amounts of land to accommodate revised access arrangements, but in no other circumstances are revisions which include additional land eligible for exemption from fees. In order to benefit from these provisions, it is necessary that the appropriate fee was paid for the original application.

F. REVISED APPLICATIONS

There may be cases where an applicant wishes to alter a development after planning permission has been granted. If the amendments are of a minor nature they may be dealt with without the requirement for a formal application as provided by Section 64 of the Town and Country Planning (Scotland) Act 1997. However, where a formal application is required to deal with variations there is an exemption from fee, similar to that described in (e) above and designed to cover the same degree of change to development proposals. The exemption applies where planning permission has been given and the same applicant submits one further application for the same character or description of development as that permitted, within 12 months of the grant of the permission and for the same site or part of it. Only one such application will be exempt. Where the original permission was in outline, only an application for outline permission can be exempt. The exemption also applies to applications for approval of reserved matters; and to revised applications for outline planning permission where the permission granted was not an outline permission; and to any application for development where in effect the applicant seeks a fresh permission which is not subject to the same conditions as the earlier permission.

G. PLAYGROUPS, VILLAGE HALLS ETC

There is no exemption from fees for applicants who need to apply for planning permission to change the use of a building to accommodate a playgroup or other activity. But planning authorities are asked to ensure that planning applications are requested only when they are really needed. It seems unlikely that specific planning permission would be needed to run a playgroup in a community building, such as a village or church hall, since this would tend to come within the normal run of uses of such buildings and therefore would not usually require planning permission.

REDUCED FEES

8. There are a number of cases where a reduced fee is payable:

A. DEVELOPMENT CROSSING PLANNING AUTHORITY BOUNDARIES

Where a development crosses the boundaries between planning authority areas the applicant is required to apply to each authority in whose area parts of the land are situated. However the applicant is not required to pay a fee to each planning authority. Amounts should be calculated separately for each application, in the normal way, and then added together. The applicant pays this amount or he pays – if less – an amount equal to 150% of the fee he would have paid had he been able to make one application. The fee is paid to the authority in whose area

the larger or largest part of the development is situated. The applicant should inform the other planning authorities to whom he is making application of his action.

B. ALTERNATIVE SCHEMES FOR THE DEVELOPMENT OF THE SAME LAND

In order not to discourage the submission of alternative applications for the same site, there is a special fee concession in those cases where the applications are submitted on the same date and by or on behalf of the same applicant. The concession does not apply to cases where development of different land is involved, where fees should be added together for each application in the normal way. Nor does it apply when a single application relates to the erection of a building where several alternative uses are proposed, where the normal fee for the erection of that building would be payable. However where other alternatives are submitted, for example where alternative positions on a site are envisaged or where alternative designs or forms of development or alternative uses for an existing building are proposed, the concession will apply. It applies regardless of whether the alternative proposals are contained on one or several application forms, providing that in the latter case all the forms are submitted on the same date. It applies to full and to outline applications and to applications for the approval of reserved matters. Fees should be calculated separately and in the normal way for each of the alternatives. The total fee payable is then calculated by adding to the highest of these separate accounts half the sum of the other separate amounts.

C. COMMUNITY COUNCILS

There is a concession for applications made by or on behalf of community councils (this also applies to their advertisement applications). The fee is half of whatever would be the normal fee for the application in question.

D. PLAYING FIELDS

Applications by non-profit-making clubs, or other non-profit-making sporting or recreational organisations, relating to playing fields for their own use are charged a flat rate fee (£240 from 1 June 2004 and £260 on or after 1 April 2005). The concession includes the change of use to use as playing fields together with associated operations (such as earth-moving, draining or levelling) but does not extend to the erection of buildings containing floor space. Playing fields would include football, hockey or cricket pitches, but not squash courts, tennis courts or golf courses.

E. RENEWAL OF PLANNING PERMISSION

Some applications are loosely referred to as “renewals” of planning permission. These attract the normal rate of fee. Where an applicant seeks to “renew” an unimplemented permission which has lapsed or will lapse because of time limits

imposed by virtue of Section 58 of the 1997 Act, including cases where the General Permitted Development Order allows this renewal to be sought by letter, a fee, calculated in accordance with the prevailing charges at the time the "renewal" application is submitted, must be paid. Planning authorities should have regard to paragraph 6 of the Schedule when considering the level of fee to be charged. However, if a "renewal" application of either kind is made within 12 months of the original permission, the exemption described at paragraph 7f may apply.

F. RESERVED MATTERS APPLICATIONS

A flat rate fee (£240 from 1 June 2004 and £260 on or after 1 April 2005) is payable for an application for approval of reserved matters in the circumstances specified in paragraph 17.

FEES FOR DEEMED APPLICATIONS

9. These are dealt with in Appendix A.

COLLECTION OF FEES

10. PAYMENT

Payment for applications to planning authorities should accompany the application when it is lodged. The absence of the correct fee does not invalidate the application and it should not be rejected on those grounds. However the GDPO provides that the 2 month statutory period within which the planning authority must notify the applicant of its decision does not begin to run until the appropriate fee has been paid. Therefore, when an otherwise correct application is received without the appropriate fee, the authority should send the applicant a request for the correct fee or balance and inform him that the 2 month statutory period for decision will begin on receipt of the fee or the amount outstanding and not before, and that a decision will not be notified to him before the correct fee has been paid.

11. CHEQUES

Where a fee is paid by cheque, and the cheque is subsequently dishonoured, the running of the 2 month period will be suspended between the date upon which the planning authority notifies the applicant that the cheque has been dishonoured and the date upon which the authority receives the appropriate fee. It is therefore unnecessary to wait until cheques have been cleared before beginning to process applications, although a planning authority may wish to be satisfied that the appropriate fee has been received before notifying the applicant of the decision.

12. CHECKING, REFUNDS AND ADJUSTMENTS

Planning authorities should confine their checking of fees submitted to the minimum consistent with good management practice. Where an application is made which in the opinion of the authority is not required for what is being proposed (for instance because of Schedule 1 to the GPDO, or the definition of development), the authority should return the application with the fee to the applicant, with an explanation. In those circumstances a fee ought not to have been paid. The Regulations do not provide for the refund of correct fees paid for valid applications once these are accepted, but refunds of any sums not required by the Regulations can be made at any stage. The fee is always determined on the basis of the application as made. Even if permission is granted for a development of a different size, or if the application is adjusted by agreement in the course of discussion with the applicant, or if an outline application needs to be supplemented by details (whether of reserved matters or otherwise) before it will be determined, no adjustment is made to the fee payable, either in the form of refunds or additional charges.

13. DISPUTES

If there is a disagreement between the applicant and the authority about the amount of the fee payable, the authority should seek to resolve the dispute with the applicant with as little delay to the processing of the application as possible. There is no formal disputes procedure laid down in the Regulations. The ultimate recourse is to the courts, although in the case where an applicant seeks to appeal against the non-determination of an application within the prescribed period, where the authority has refused to deal with the application on the grounds that the correct fee has not been paid, the Scottish Ministers will need to take a view on the matter as this will affect their jurisdiction to determine the appeal.

CALCULATION OF FEES

14. SITE AREA AND FLOOR SPACE

Wherever a fee is based on the site area, the site area is defined as the area to which the application relates; that is to say, the land being developed including any which changes its use as part of the development. This will normally be shown edged in red on the plan accompanying the application, while other land in the same ownership but not being developed is normally identified separately. Where a fee is based on site area and the proposed development relates to only a small part of the site the application may be restricted to the part of the site where the development is to occur by edging that part of the site in red. Wherever a fee is based on floor space, the floor space is taken to be the gross floor space (all storeys) to be created by the development shown in the application. For fees purposes this measurement is an external measurement, and includes the

thickness of external and internal walls. Floor space does not include other areas inside a building which are not readily usable by humans or animals, e.g. lift shafts, tanks, loft spaces. Where buildings featuring or comprising canopies are concerned, there can be no simple rule as to whether floor space is being created by the erection of the canopy, but the absence of external walls is not the determining factor. Petrol filling station canopies are, for example, unlikely to create floor space, but a dutch barn or other covered storage area would do. Where floor space or site area (as the case may be) is not an exact multiple of the unit of measurement provided by the fees scale, the amount remaining is taken to be a whole unit for fees purposes. For advice on common floor space in mixed development see paragraph 33. The fee is always determined on the basis of the application as made. Even if permission is granted for a development of a different size, or if the application is amended by agreement in the course of discussion with the applicant, no adjustment is made to the fee payable.

15. BUILDINGS ON THE SITE OF DEMOLISHED BUILDINGS

If an applicant intends to demolish an existing building and to rebuild on the same site the fee payable will be based on the area of the new building. If, for example, it were proposed to demolish a factory with 1,000 sq m of floor space and to erect one in its place of 2,000 sq m, the fee payable would be for the total floor space created by the new development i.e. 2,000 sq m.

16. DWELLINGHOUSES

The Regulations define "dwellinghouse" for fees purposes as "a building or part of a building which is used as a single private dwellinghouse and for no other purpose"; this differs from the GPDO definition, and includes a flat.

Fee calculations can be affected:

a. by whether existing accommodation involved in a proposal already amounts to a dwellinghouse, and

b. by whether accommodation to be created (e.g. by erection or change of use) will amount to a dwellinghouse.

The definition of a dwellinghouse would include:

a. private houses, flats and maisonettes (authorities will need to decide on the facts of each case whether a bed-sit flat is sufficiently self-contained to constitute a dwellinghouse: it is not practicable to cover all the possibilities here);

b. a house in multiple occupation with some rooms shared communally;

c. a holiday flat if self-contained and owned by a private owner (but not if let on a short-term basis to paying guests).

Not included is anything which is not a building – e.g. a caravan.

17. OUTLINE APPLICATIONS

With the exception of applications for operational development within category 6 of the fees scale (see Part II of the Schedule to the Regulations) and applications for the erection of a single dwellinghouse where the fee will be a flat rate of £240 (£260 from 1 April 2005), irrespective of the size of the site, all applications for outline permission are charged on the same scale, based on the site area. The rate of fee is £240 per 0.1 ha or part thereof, subject to a maximum fee of £6,000 for applications for 2.5 hectares or more (£260 and £6,500 respectively from 1 April 2005). An outline application must be made in the way described in Article 4 of the General Development Procedure Order. The applicant may include details of the development which are amongst those details listed by Article 2 of the General Development Procedure Order as "reserved matters", provided that details of at least one "reserved matter" are not given in that application and can still be reserved by the local authority for subsequent approval. The fee for an outline application is still the fee which should be charged and no fee may be charged for any additional details required to be submitted before the decision is made. Outline applications may be made for the erection, alteration or extension of buildings or other operations.

Where an applicant makes, and pays the fee for, a full application, planning authorities are asked to avoid granting only outline permission, except where the applicant understands and accepts that as a result he will require to pay further fees for reserved matters applications. In most cases it should be possible to grant a full planning permission, subject to conditions requiring submission of details. No further fee will then be required.

18. RESERVED MATTERS APPLICATIONS

Where an outline permission is granted, applications for approval required by a condition on that outline planning permission are subject to a payment of a fee only if they relate to reserved matters. Reserved matters are defined in Article 2 of the General Development Procedure Order as matters relating to:

a. the siting of the buildings authorised by the outline permission;
b. their design;
c. their external appearance;
d. the means of access to them;
e. the landscaping of the site.

An application for an approval which does not relate to one or more of these matters will not be liable for a fee. Nor will there be a fee for an application for an approval which is required by any condition attached to a full planning permission, even if the condition relates to one of the matters otherwise defined as a reserved matter.

Except where liable to the flat rate fee described below, an application for approval of reserved matters is charged at the same rate as for full applications

for planning permission. The fee is calculated under the category or categories appropriate to the development as a whole, on the normal basis of the number of dwellinghouses or the amount of floor space created. So for a housing scheme, an application for approval of one or more reserved matters will incur – if not the flat rate fee – a fee based on the number of dwellinghouses to be erected, whatever may be the reserved matters involved. If the information needed to calculate the fee is not apparent from the application or the outline permission, applicants will need to be asked to supply it.

Where an application for approval of reserved matters relates only to one part or phase of the development covered by the outline permission, fees should be charged on the basis of the number of dwellinghouses or the floor space included in that part or phase, and similarly for subsequent applications.

A simplified arrangement exists for charging a flat rate fee for reserved matters. It covers the submission of separate applications for differing reserved matters; separate applications for differing parts of a site; and revised applications not coming within the exemption described at paragraph 7f. The applicant concerned must be the same as the applicant who incurred the full rate fees for earlier reserved matters applications. Each reserved matters application made after obtaining the outline permission for a development incurs a fee at the full rate, whatever matters are involved, until the total amount paid by the applicant in respect of the reserved matters is equal to the fee that would have been paid at that time had approval been sought all at once in a single reserved matters application for the whole of the development covered by the original outline permission. When, but only when, that point is reached, any and all further applications pursuant to that outline permission will attract the flat rate fee of £240 (£260 on or after 1 April 2005). It is not necessary to consider what matters were reserved by the outline permission, and what matters are contained in the application in question.

An application for an approval of a minor aspect of one of the reserved matters which follows approval of the details of that reserved matter may not count as a reserved matters application within the meaning of the Regulations. For example, when details of a building's design and external appearance have been approved, a subsequent application which is required by a condition on the grant of approval for approval of the type of bricks should not be treated as an application for approval of the building's design or external appearance. No fees should be charged.

However, a major revision to an approved "reserved matter", such as a completely different house design, might require a new approval of that "reserved matter". In those circumstances a fee would be payable, unless the application for approval is exempt under the "free go" described at paragraph 7f. Planning authorities will need to exercise their own discretion in deciding whether the facts of the case require that new approval is sought.

CATEGORIES OF FEES *(Levels used are as at 1 June 2004)*

19. Appendices B(1) and (2) set out the list of fees for applications and deemed applications. The general provisions for fees and the scale of fees are set out in full in the Schedule to the Regulations.

20. **HOUSEHOLDER EXTENSION AND ALTERATIONS (CATEGORY 6)**

A flat rate fee of £120 is charged for applications to enlarge, improve, or alter an existing dwellinghouse, or to carry out works within its curtilage which are ancillary to the enjoyment of the dwellinghouse as such. This fee also applies to walls, fences or other enclosures along the boundary of the curtilage. Where an application relates to one or more existing dwellinghouses, the rate is £120 per dwellinghouse subject to a maximum of £240. Any outline application for the erection of buildings under these categories will incur the same fees.

21. **RESIDENTIAL DEVELOPMENT (CATEGORY 1)**

Full applications for the erection of dwellinghouses are charged according to the number of dwellinghouses which are to be created. The rate is £240 per dwellinghouse subject to a maximum of £12,000 for 50 or more.

22. **NON-RESIDENTIAL BUILDING WORKS (CATEGORY 2)**

Applications for full permission for buildings (other than dwellinghouses or buildings in the nature of plant and machinery) are charged according to the gross floor space to be created. Applications for development creating no new floor space, or not more than 40 sq m of new floor space, are charged a fee of £120. For buildings above that size the fee is £240 per 75 sq m or part thereof subject to a maximum of £12,000.

23. **PLANT AND MACHINERY (CATEGORY 5)**

Applications for the installation of plant and machinery are charged according to the area of the site at a rate of £240 per 0.1 hectare or part thereof, subject to a maximum of £12,000.

24. **AGRICULTURAL BUILDINGS AND GLASSHOUSES (CATEGORIES 3 AND 4)**

Applications for agricultural buildings, as defined in the Interpretation of Part 6 of the General Permitted Development Order exceeding 465 sq m in area, are charged at the rate of £240 for every 75 sq m or part thereof, beyond 465 sq m, subject to maximum of £12,000.

Applications for the erection of glasshouses on land used for agriculture (as defined in Category 4 in Table 1 to the Schedule) where the ground area to be covered by the development exceeds 465 square metres attract a fee of £1,380.

25. **ACCESS, CAR PARKS ETC FOR EXISTING USES (CATEGORY 7)**

Applications for the construction of service roads, other accesses, or car parks serving an existing use on a site are subject to a flat rate fee of £120.

26. **EXPLORATORY DRILLING FOR OIL AND NATURAL GAS (CATEGORY 8)**

Applications in respect of on-shore oil and natural gas exploration are charged according to the area of the site at a rate of £240 per 0.1 ha or part thereof, subject to a maximum of £18,000. For the purposes of calculation of fees for planning applications "exploratory drilling" should be taken to include "appraisal drilling".

27. **WINNING AND WORKING OF MINERALS (CATEGORY 9)**

Applications for the winning and working of minerals (other than peat) are charged according to the area of the site at a rate of £120 per 0.1 ha or part thereof, subject to a maximum of £18,000. The area will be the area to which the application relates and in the case of underground workings will include all the land under which any of the workings are to take place (development of oil and natural gas reserves is not regarded as "underground working"). The area should include the total area where development is to take place, including areas for landscaping.

Applications for the winning and working of peat are charged at the rate of £120 for each hectare of the site area, subject to a maximum of £1,800. Operations for any other purpose are charged at the rate of £120 for each 0.1 hectare of the site area, subject to a maximum of £1,200.

28. **WASTE DISPOSAL AND MINERALS STOCKING (CATEGORY 11)**

Applications for the disposal of waste, whether this involves operations or simply a change in the use of land, and for the stocking of minerals and other material extracted from the ground as part of the process of minerals extraction, are charged according to the area of the site at a rate of £120 per 0.1 ha or part thereof, subject to a maximum of £18,000. The site area should include any areas for landscaping.

29. **ENGINEERING AND OTHER OPERATIONS ON LAND (CATEGORY 9)**

Applications for engineering or other operations which do not fall into the categories above are charged according to the area of the site at a rate of £120 per 0.1 ha or part thereof subject to a maximum of £1,200 for sites of 1 ha and over.

30. **CONVERSION OF FLATS AND HOUSES ETC (CATEGORY 10)**

Applications for the change of use of any building to use as one or more separate dwellinghouses are charged at £240 for each new dwellinghouse created by the development, subject to a maximum of £12,000.

31. OTHER CHANGES OF USE (CATEGORY 12)

Applications for the change of use of buildings or land (other than the conversion to, or subdivision of, dwellinghouses, the tipping of waste or the stocking of minerals and spoil) are charged a flat rate fee of £240. An application for more than one change of use on a site or for a change of use which involves a number of separate buildings will still be liable to the single flat rate fee providing the application fits into one "use of land" category (for applications involving change of use together with works requiring planning permission and applications involving mixed category change of us, see paragraph 33 below). The fact that a permitted use of land or a new building has not begun does not prevent an application for a change of use being made; but where use of a new building is concerned its erection must be substantially completed.

32. DEVELOPMENT CARRIED OUT WITHOUT PERMISSION (SECTION 33 OF THE 1997 ACT)

Where the application relates to development carried out without permission, the fee is that as if the application were for planning permission for that development. In any other case, £120.

33. MIXED CATEGORY APPLICATIONS

Applications may often involve development which falls into more than one of the categories set out above (see paragraph 8b where alternative development is involved). For instance the application may relate to detailed permission for:

- dwellinghouses and other buildings;
- buildings together with other works;
- change of use together with works;
- more than one change of use;
- outline permission for dwellinghouses and other buildings.

Fees should be calculated separately under each of the categories which apply as follows:

a. Applications to erect residential accommodation with other buildings

The fee for an application (whether for full permission or outline permission or for approval of reserved matters) which involves both erection of buildings for residential purposes and other types of buildings (but only in this case) is calculated by adding together the fee appropriate for each development. This applies whether the 2 types are combined or in separate buildings. For outline applications, the fee is simply derived from the total site area. Where a mixed use

building includes common service floor space areas (e.g. foyers) serving both the residential and other parts of the building, these areas are divided pro-rata to the floor space of each type of development, and the non-residential portion of common floor space is added to the area of the non-residential floor space in the building for the purpose of calculating the fees.

b. **Other Mixed Applications**

Where an application relates to 2 or more categories, other than in the way described above, only the higher or highest of the fees calculated under those categories is charged.

34. ADVERTISEMENTS

All applications for express consent for the display of advertisements are subject to a flat rate fee of £120. Where the application relates to a number of individual advertisements to be displayed on a single site, a single fee will be charged for the site as a whole. But when a single application deals with advertisements to be displayed on more than one site, a fee will be payable for each site included in the application.

The only exception is for an application to display advertisements on parking meters, litter bins, public seating benches or bus shelters within a specified area. Regulation 14 provides that the whole of the specified area is to be regarded as one site for the purpose of calculating the fee. No further fee is payable where a revised application is made by the same applicant for the display of advertisements of the same description on the same site, following the withdrawal of an application or the refusal of consent, provided that the revised application is made within 12 months of the date of the earlier application, in the case of a withdrawn application; or within 12 months of the date of the refusal in any other case.

35. PRIOR APPROVAL DETERMINATIONS

Where an application for a determination as to whether the planning authority's prior approval is required in relation to development permitted under Schedule I to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 a flat rate fee of £46 is applicable.

36. FURTHER COPIES AND ENQUIRIES

Any enquiries about this Circular should be addressed to Ed Swanney, Scottish Executive Development Department, Planning Division, Area 2H, Victoria Quay, Edinburgh EH6 6QQ (telephone (0131) 244 7069. Further copies may be obtained by telephoning (0131) 244 7066 or from the Scottish Executive web-site at **www.**scotland**.gov.uk/planning**.

APPENDIX A

FEES FOR DEEMED PLANNING APPLICATIONS IN ENFORCEMENT NOTICE APPEALS TO THE SCOTTISH MINISTERS

1. Under Regulation 10 fees have to be paid for deemed planning applications associated with enforcement notice appeals. The fee payable is double that for the appropriate category with half paid to the Scottish Ministers, and enclosed with the appeal, and half to the planning authority.

2. The fee to be levied on deemed planning applications in such cases falls to be assessed in exactly the same way as the fee for corresponding express applications; and they are subject to the same exemptions, except that there are no exemptions similar to those in Regulations 7 and 8 for revised applications. However, in the case of a deemed application in consequence of an enforcement notice appeal, a refund is due if the enforcement notice is withdrawn by the planning authority at any stage. A refund is also due if the related appeal is withdrawn so that there are at least 21 days between the date of withdrawal and the date of the public inquiry, or the site visit made when the written submissions procedure is being used. For the purposes of this provision an appeal is regarded as withdrawn on the date on which the Scottish Ministers receive notice in writing of the withdrawal. In addition – and this reflects the fact that the fee is a charge solely for considering a deemed planning application (not for considering appeals as such) – refunds are due if:

   a. an enforcement notice appeal succeeds on any of the grounds (b) to (e) in Section 130(1) of the Town and Country Planning (Scotland) Act 1997;

   b. 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, or they dismiss the appeal on the grounds that the appellant has failed to comply with the requirements of Section 131(1)(a) of the Act;

   c. an enforcement notice is quashed and the appeal allowed by the Scottish Ministers because the planning authority have failed to submit prescribed information within a prescribed period;

   d. an enforcement notice is found to have no subject matter to appeal against since the purported enforcement notice had no legal effect.

3. Only a single fee is payable when an enforcement notice alleges that more than one development has taken place. The fee payable is determined according to the criteria relating to mixed development (see paragraph 33 of this Circular).

4. Where an enforcement notice is served on a number of different people, an appeal by one of the persons will suspend all enforcement proceedings until the appeal is resolved or withdrawn. A fee is payable for each appeal made against an enforcement notice.

5. Charging for deemed planning applications in this way has the effect that anyone who carries out unauthorised development is not able to obtain planning permission for it after the event without paying any fee which would have been due on a prior application.

6. However, if an appellant has already applied for planning permission to the planning authority before the enforcement notice was issued, and has paid the appropriate fee, and provided that his application or an appeal to the Scottish Ministers against its refusal had not been determined on or before the date of issue of the enforcement notice, he does not need to pay a further fee for his deemed application. This provision is to avoid the situation where an appellant would pay twice for an application to regularise the unauthorised development. No fee shall be payable where, in the case of an application deemed to have been made by virtue of Section 133(7) of the 1997 Act, the appellant had made an appeal to the Scottish Ministers under Section 47 of the 1997 Act before the date specified in the notice as the date on which it is to take effect.

More than one development alleged in Enforcement Notice

7. In relation to deemed applications arising in connection with enforcement appeals a fee is payable, in accordance with the provisions of the Regulations, in respect of each appeal. Where an enforcement notice is served relating to a number of different activities (either changes of use or operations) which come within more than one category in the Schedule to the Regulations the amount of the fee due in respect of the appeal is to be calculated as indicated in paragraph 3 above. However, where more than one enforcement notice has been served in respect of activities on the same site, and the appellant has appealed in respect of more than one of those notices, a separate fee is payable in respect of the development to which each of those notices relates.

8. Planning authorities are asked, at the same time as they serve an enforcement notice:

   a. to inform each recipient how much the planning application fee for the use of land or operations to which the notice relates would be, and advise him to send a payment for that amount with any appeal he makes to the Scottish Ministers; and

   b. to send the recipient a duplicate copy of the enforcement notice, and any enclosure, so that it can be sent to the Scottish Ministers with any appeal which may be made.

FEES FOR APPLICATIONS FOR CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

9. Certificates of Lawful Use or Development were introduced in 1992 and replaced the procedures for Established Use Certificates. The procedure provides a single coherent mechanism for establishing the planning status of land, i.e. whether an existing or proposed use or development is lawful for planning purposes. Anyone (not just a person with an interest in the land) can apply to a planning authority for a decision on whether a specified existing or proposed use, operational development, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes. Each application lodged with a planning authority must be accompanied by the appropriate fee as prescribed in Regulation 12 of the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004. There are certain exceptions, exemptions and maximum charges prescribed in the Regulations, but fees are payable in respect of applications regardless of the fact that the subject matter of the application may prove to be lawful for any reason.

10. Annex D of Circular 4/1999 deals more fully with Certificates of Lawful Use or Development and paragraphs 8 and 9 detail the fee levels to be applied. The following should be substituted:

a. In paragraph 8b for "£95" read "£120" on commencement and "£130" on or after 1 April 2005.

b. In paragraph 9a for "£190" read "£240" on commencement and "£260" on or after 1 April 2005; and for "£4,600" read "£12,000" on commencement and "£13,000" on or after 1 April 2005.

APPENDIX B1

SCALE OF FEES

WITH EFFECT FROM 1 JUNE 2004

1 *(Category of development)*	*2* *(Fee Payable)*
I. *Operations*	
1. The erection of dwellinghouses (other than development within category 6).	Where the application is for– (a) outline planning permission, £240 for each 0.1 hectare of the site area, subject to a maximum of £6,000; or for one dwellinghouse, £240; (b) other than outline planning permission, £240 for each dwellinghouse to be created by the development, subject to a maximum of £12,000.
2. The erection of buildings (other than buildings coming within category 1, 3, 4 or 6).	Where the application is for– (a) outline planning permission, £240 for each 0.1 hectare of the site area, subject to a maximum of £6,000; (b) other than outline planning permission– (i) where no floor space is to be created by the development, £120; (ii) where the area of gross floor space to be created by the development does not exceed 40 square metres, £120; (iii) where the area of gross floor space to be created by the development exceeds 40 square metres but does not exceed 75 square metres, £240; and (iv) where the area of gross floor space to be created by the development exceeds 75 square metres, £240 for each 75 square metres, subject to a maximum of £12,000.

1 *(Category of development)*	*2* *(Fee Payable)*
3. The erection on land used for the purposes of agriculture, of those works, structures or buildings excluded by virtue of paragraph 2(d) of Class 18 in Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 from that class (other than buildings coming within category 4).	(a) Where the application is for outline planning permission, £240 for each 0.1 hectare of the site area, subject to a maximum of £6,000; (b) in all other cases– (i) where the ground area to be covered by the development exceeds 465 square metres but does not exceed 540 square metres, £240; (ii) where the ground area to be covered by the development exceeds 540 square metres, £240 for the first 540 square metres and £240 for each 75 square metres in excess of that figure, subject to a maximum of £12,000.
4. The erection on land used for the purposes of agriculture, of glasshouses excluded by virtue of paragraph 2(d) of Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.	Where the ground area to be covered by the development exceeds 465 square metres, £1,380.
5. The erection, alteration or replacement of plant or machinery	£240 for each 0.1 hectare of the site area, subject to a maximum of £12,000.
6. The enlargement, improvement or other alteration of existing dwellinghouses.	(a) Where the application relates to one dwellinghouse, £120; (b) where the application relates to 2 or more dwellinghouses, £240.
7. (a) The carrying out of operations, including the erection of a building, within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such; (b) the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse; or (c) the construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land.	£120.

1 *(Category of development)*	*2* *(Fee Payable)*
8. The carrying out of any operations connected with exploratory drilling for oil or natural gas.	£240 for each 0.1 hectare of the site area, subject to a maximum of £18,000.
9. The carrying out of any operations not within categories 1 to 8.	In the case of operations for– (a) the winning and working of minerals, £120 for each 0.1 hectare of the site area, subject to a maximum of £18,000; (b) the winning and working of peat, £120 for each hectare of the site area, subject to a maximum of £1,800; (c) any other purpose, £120 for each 0.1 hectare of the site area, subject to a maximum of £1,200.
II. *Uses of Land*	
10. The change of use of a building to use as one or more separate dwellinghouses.	£240 for each additional dwellinghouse to be created by the development, subject to a maximum of £12,000.
11. (a) The use of land for the disposal of refuse or waste materials or for the deposit of material remaining after minerals have been extracted from land; or (b) the use of land for the storage of minerals in the open.	£120 for each 0.1 hectare of the site area, subject to a maximum of £18,000.
12. The making of a material change in the use of a building or land, other than a material change of use within category 10 or 11.	£240.

APPENDIX B2

SCALE OF FEES

WITH EFFECT FROM 1 APRIL 2005

1 *(Category of development)*	*2* *(Fee Payable)*
I. *Operations*	
1. The erection of dwellinghouses (other than development within category 6).	Where the application is for– (a) outline planning permission, £260 for each 0.1 hectare of the site area, subject to a maximum of £6,500; or for one dwellinghouse, £260; (b) other than outline planning permission, £260 for each dwellinghouse to be created by the development, subject to a maximum of £13,000.
2. The erection of buildings (other than buildings coming within category 1, 3, 4 or 6).	Where the application is for– (a) outline planning permission, £260 for each 0.1 hectare of the site area, subject to a maximum of £6,500; (b) other than outline planning permission– (i) where no floor space is to be created by the development, £130; (ii) where the area of gross floor space to be created by the development does not exceed 40 square metres, £130; (iii) where the area of gross floor space to be created by the development exceeds 40 square metres but does not exceed 75 square metres, £260; and (iv) where the area of gross floor space to be created by the development exceeds 75 square metres, £260 for each 75 square metres, subject to a maximum of £13,000.

1 *(Category of development)*	*2* *(Fee Payable)*
3. The erection on land used for the purposes of agriculture, of those works, structures or buildings excluded by virtue of paragraph 2(d) of Class 18 in Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 from that class (other than buildings coming within category 4).	(a) Where the application is for outline planning permission, £260 for each 0.1 hectare of the site area, subject to a maximum of £6,500; (b) in all other cases– (i) where the ground area to be covered by the development exceeds 465 square metres but does not exceed 540 square metres, £260; (ii) where the ground area to be covered by the development exceeds 540 square metres, £260 for the first 540 square metres and £260 for each 75 square metres in excess of that figure, subject to a maximum of £13,000.
4. The erection on land used for the purposes of agriculture, of glasshouses excluded by virtue of paragraph 2(d) of Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.	Where the ground area to be covered by the development exceeds 465 square metres, £1,520.
5. The erection, alteration or replacement of plant or machinery	£260 for each 0.1 hectare of the site area, subject to a maximum of £13,000.
6. The enlargement, improvement or other alteration of existing dwellinghouses.	(a) Where the application relates to one dwellinghouse, £130; (b) where the application relates to 2 or more dwellinghouses, £260.
7. (a) The carrying out of operations, including the erection of a building, within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such; (b) the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse; or (c) the construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land.	£130.

1 *(Category of development)*	*2* *(Fee Payable)*
8. The carrying out of any operations connected with exploratory drilling for oil or natural gas.	£260 for each 0.1 hectare of the site area, subject to a maximum of £19,500.
9. The carrying out of any operations not within categories 1 to 8.	In the case of operations for– (a) the winning and working of minerals, £130 for each 0.1 hectare of the site area, subject to a maximum of £19,500; (b) the winning and working of peat, £130 for each hectare of the site area, subject to a maximum of £1,950; (c) any other purpose, £130 for each 0.1 hectare of the site area, subject to a maximum of £1,300.
II. *Uses of Land*	
10. The change of use of a building to use as one or more separate dwellinghouses.	£260 for each additional dwellinghouse to be created by the development, subject to a maximum of £13,000.
11. (a) The use of land for the disposal of refuse or waste materials or for the deposit of material remaining after minerals have been extracted from land; or (b) the use of land for the storage of minerals in the open.	£130 for each 0.1 hectare of the site area, subject to a maximum of £19,500.
12. The making of a material change in the use of a building or land, other than a material change of use within category 10 or 11.	£260.

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