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NOTIFICATION OF PLANNING APPLICATIONS

■ circular

Scottish Planning Series

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**Notification of
Planning Applications**

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INTRODUCTION

1. The primary responsibility for the operation of the planning system and service lies with local and national park authorities. They are best placed to make decisions about matters which affect their areas. But there can be some occasions when the Scottish Government will become involved in the planning application process. This circular explains the Government's role.
2. A properly functioning planning system is essential to achieving the Scottish Government's central purpose of increasing sustainable economic growth. It has a particular role to play in supporting Scotland's economic recovery, by reducing the regulatory burden so that planning can act as an aid, not a barrier, to growth. Unnecessary planning delays constrain investment, so the Government is intensifying its reforms to simplify the planning system and speed up decisions on planning applications and appeals.
3. As an important contribution towards these reforms, the Scottish Government signalled in the new *Scottish Planning Policy* and in *Delivering Planning Reform*, both published in October 2008, that there would be a more proportionate involvement in planning cases by central government. The changes to the processes and requirements for notifying Scottish Ministers of planning applications, set out in this circular, deliver on that commitment.
4. The Annex to this circular contains the *Town and Country Planning (Notification of Applications)* (Scotland) Direction 2009, which replaces the 2007 Notification Direction and subsequent amendments. The circular provides guidance on those circumstances in which planning authorities must, as a matter of routine, notify Scottish Ministers where they propose to grant planning permission. It updates and replaces the guidance previously given in SEDD Circular 5/2007, which is now withdrawn.



SCOTTISH MINISTERS' ROLE IN PLANNING APPLICATIONS

5. Scottish Ministers have a general power to intervene by calling in any planning application for their own determination. In practice though, Ministers will exercise this power very sparingly, recognising and respecting the important role of local authorities in making decisions on the future development of their areas. It is not the Scottish Government's role or intention to micro-manage planning authority decision-making.
6. However, there can be circumstances where proposed development raises issues of such national importance that it is reasonable for Scottish Ministers to call in a planning application from the local authority; in effect to take over the role of decision-maker. It is at Ministers' discretion whether to do so. For example, Ministers might choose to intervene in circumstances where a Government agency has expressed strong concerns about the impact of development on their national interests, or where the possible impacts or benefits of a proposed development extend well beyond the area of the local authority to the extent that they become of national importance. However, simply because a particular development proposal may be complex or controversial does not make it of strategic importance or of national interest. The existence of a substantial number of objections is not in itself sufficient ground to merit call-in for decision at a national level.
7. Sometimes, as well as being the decision-maker on a planning application, a planning authority will have some other interest in the proposed development, for example as the developer or the owner of the land. This in itself is not unreasonable; in fact it is quite normal and occurs regularly. In these circumstances though, it is essential that the planning authority does not allow any possible conflict of interests to have an undue influence on its planning assessment. Planning authorities generally exercise their duties fairly in such matters, recognising how essential it is that probity is scrupulously observed. But to protect the integrity of the planning system, Ministers may sometimes feel the need to become involved where a planning authority seeks to make a decision on a development in which it has an interest, where that proposed development would involve a significant departure from the authority's own development plan and in which the authority has not provided a reasonable or convincing argument to substantiate its decision.

CHANGES TO THE SYSTEM FOR NOTIFICATION TO SCOTTISH MINISTERS

8. One of the broad principles underpinning the modernised planning system is that the constraints and requirements that planning imposes should be necessary and proportionate.
9. Historically, planning applications have routinely been notified to Scottish Ministers where one or more specified triggers have been met. Most of those triggers have been matters such as decisions to grant consent being made which are out of accord with development plan and/or national planning policy, or where objections had been lodged by certain government departments or agencies. In practice though, this has led to a high number of applications, many of a very minor nature, being notified to Scottish Ministers even though there was no realistic prospect of Ministers intervening by calling the applications in. Consistently, around 90% of planning applications notified to Scottish Ministers have not subsequently been called in. This has not been an efficient way to operate, adding to the workload of local authorities as well as the Scottish Government, and also adding substantially to applicants' timescales for a decision on their planning applications.
10. For this reason, the Scottish Government is now introducing a more proportionate system for national involvement in planning cases, which retains an appropriate level of national scrutiny in circumstances where the Scottish Government should rightly be involved, but removes from the notification process the vast majority of applications which raise no issues of national interest. This will allow planning authorities to issue their planning decisions without unnecessary delay.



NOTIFICATION OF APPLICATIONS DIRECTION

11. The new Notification Direction (attached Annex) comes into effect on **1 April 2009**. The provisions of the 2007 Notification Direction (as amended) will remain in force until that date.
12. The Schedule to the new Direction sets out the categories of planning applications and circumstances in which planning authorities must notify Scottish Ministers before they can grant planning permission. The following paragraphs explain the categories.

Category 1: Development in which planning authorities have an interest

13. The requirement to notify Scottish Ministers where a planning authority has some interest in a development proceeding, and where the proposal involves a significant departure from the authority's own development plan, provides important checks and balances integral to the fair operation of the planning system. In previous directions, notification to Scottish Ministers has been required in wider circumstances, to include where the development involves a departure from the development plan, irrespective of the scale of departure, and where there has been a substantial body of objections. In practice, this has led to a great many applications being notified to Ministers, in respect of developments which are largely in line with the approved and adopted development plan for the area. The Scottish Government considers it reasonable for planning authorities to make decisions which do not depart, to any significant scale, from their development plans. So the notification requirement relating to applications where the authority has an interest is now limited to those occasions where the development would involve a significant departure from the development plan. In these circumstances, planning authorities will be expected to demonstrate when notifying applications to Ministers, that they have carefully considered the development plan and there is reasonable justification for departing from its terms.

14. The 2007 Notification Direction required planning authorities to inform objectors of their intention to grant planning permission and their reasons for doing so, and to invite further comment, prior to notifying Ministers. Experience has shown this to be largely a paper exercise, causing additional administrative burden and delay to the planning process, while adding little value to the scrutiny of these applications. Therefore the requirement to re-consult those who have already given their views on an application has been removed from the new direction. Also removed are the requirements for planning authorities to explain why a proposed development had not been planned in advance through the development plan process, and what alternative developments to that proposed had been considered for the site in question. Again, experience has shown that these requirements have not added value to the process and are not necessary or particularly relevant when assessing a proposed development alongside the terms of the development plan and material considerations, as required by planning legislation.

Category 2: Objection by government agency

15. The national interest can sometimes be engaged in planning applications where central government departments or agencies have raised objections to a proposed development, due to potential implications for their interests. The notification requirements relating to objections by such government interests, in the terms set out in the schedule to the direction, have been retained.
16. A commitment has been made by Transport Scotland, the Scottish Environment Protection Agency, Historic Scotland and Scottish Natural Heritage to ensure more proportionate consultation and to focus their responses on matters of genuine national interest. It is therefore quite likely that the number of applications required to be notified to Scottish Ministers as a result of objections from government agencies will fall.

Category 3: Opencast coal and related minerals

17. The Scottish Government has no intention to routinely require notification of applications which do not accord with matters of national planning policy, that mostly being a matter for planning authorities to apply, taking account of local circumstances. However, one area of particular and ongoing concern is where opencast coal workings would occur within 500 metres from the edge of an existing community or sensitive establishment. Therefore, this notification requirement is retained.



REMOVAL OF OTHER STANDARD NOTIFICATION CATEGORIES

18. The 2007 Notification Direction and its predecessors included a range of other triggers for notification of planning applications to Scottish Ministers (e.g. development contrary to development plans; major retail development; development subject to environmental impact assessment), which do not feature in the new direction. Removing these categories certainly does not signal that Scottish Ministers are no longer interested in any of the developments which would previously have been notified under any of these categories. However, it is clear that in the past a very significant proportion of those planning applications have not raised any issues of national interest which would have merited Ministerial intervention. It has been an inefficient method of considering a need for a national planning decision, and a regulatory burden, which has led to far too many planning permissions being delayed.
19. Scottish Government planning officials will take a far more proportionate approach to requiring notification of these other planning applications to Ministers, so as to pick up only those which seem likely to raise issues of national importance. Other than in the circumstances contained in the Schedule to the Direction, as explained at paragraphs 13 to 17 above, the future method for requiring notification will be by issuing case-specific notification directions to require the specified applications to be passed to Scottish Ministers. Such directions will only be issued where it appears there may be some matter of national interest involved, requiring consideration as to whether call in by Ministers might be necessary. On occasions where the Scottish Government issues a case-specific notification direction to a planning authority, it will do so as early as possible in the process to ensure certainty for all concerned. It does not follow though that any application notified to Scottish Ministers will subsequently be called in; it simply allows an opportunity to consider whether that action would be necessary.

20. To operate this new approach, Scottish Government planning officials will develop closer links with planning authority officials to identify current and future applications with a possible national interest. This enhanced liaison will be supported by new online planning information systems, introduced through the e-planning programme, which will provide further means for Scottish Government officials to keep abreast of major developments across Scotland.
21. The new arrangements will provide early clarity for planning authorities and applicants over applications which should, and those which should not, be notified to Scottish Ministers. Importantly, these arrangements will remove the burden on planning authorities to notify large numbers of applications unnecessarily.

OTHER NOTIFICATION DIRECTIONS STILL IN FORCE

22. While the new Notification Direction in the attached Annex replaces the 2007 direction, a number of other, separate directions remain in force – for example, those requiring notification of certain applications which may affect National Scenic Areas, or on land within the vicinity of royal residences, airports, MoD establishments etc. along with case or location-specific directions addressed to individual planning authorities.

SUBMISSION OF DOCUMENTS TO SCOTTISH MINISTERS

23. The information that planning authorities must provide to the Scottish Government is set out in the Notification Direction. This is a legal requirement and it is vital that all relevant information is provided when the application is first notified to ensure there are no unnecessary delays in processing times and in decision-making. Scottish Ministers' 28-day consideration period cannot commence until all necessary information has been provided in compliance with the terms of the direction. The following text is intended to assist planning authorities in identifying the information which must be provided to Ministers.



- **(a) Planning application and plans**
 - a full copy of the application form
 - a full set of plans as considered by the planning authority
 - supporting documents (e.g. transport assessment, retail impact assessment etc.)
 - a note of the postcode for the development site where it is not clear from the application form
- **(b) Environmental statement/strategic environmental assessment**
 - where an application has been subject to EIA, a full copy of the environmental statement including any appendices
 - for 'Schedule 2' developments, a copy of any screening opinion
 - where there is an SEA relevant to the proposed development, the environmental report should be included with the submission
- **(c) Appropriate assessment**
 - a copy of any appropriate assessment by the authority under the terms of the Conservation (Natural Habitats, & c.) Regulations 1994
- **(d) Consultation responses and representations**
 - copies of all internal and external consultation responses, even if all they offer is "no comment", ensuring the respondents are clearly identified
 - copies of all individual letters of representation and petitions (including details of the organiser, if known). Where proforma letters are involved, one copy and a list of all the other names and addresses will suffice.
 - A full list of names and addresses of all those who made representation
- **(e) Comments on consultation responses and representations**
 - The committee report and/or other statement providing the planning authority's comments on consultation responses and representations
- **(f) Reasons for proposing to grant planning permission**
 - A statement clearly explaining the reasons why the authority proposes to grant planning permission. The statement will usually be the committee report. But where that does not provide a full explanation, for example, where a planning authority decides to grant planning permission against the advice of its officials, a separate statement of the reasons for the decision will be needed.

Electronic submission of notification documents to Scottish Government

24. Many planning authorities have now adopted methods for handling planning applications electronically. With the commencement of the e-planning project, all planning authorities will publish application documents on their websites. The Scottish Government would expect, wherever possible, that planning authorities provide the information required by the Notification Direction by means of a link, or series of links to the relevant case files on their websites.
25. Submission should be made by e-mail to the following address:

PlanningNotification@scotland.gsi.gov.uk

Sending documents by post

26. Where it is necessary to send hard copies of some or all of the required documents, they should be addressed to:

The Scottish Government
Directorate for the Built Environment
Area 2-J (South)
Victoria Quay
Edinburgh
EH6 6QQ

SCOTTISH GOVERNMENT HANDLING OF NOTIFIED APPLICATIONS

27. Where a planning authority notifies Scottish Ministers of its intention to grant planning permission, Ministers consider whether to call in the application or clear it back to the authority to decide the matter as it thinks fit. Scottish Government officials should usually be able to tell the authority within the 28-day period set out in the direction whether Ministers propose to take any action. Scottish Ministers do not need to wait until the end of that 28-day period, and will issue their decision as soon as they are ready to do so. The Scottish Government is committed to efficient decision-making, but in exceptional circumstances it may take a little longer to reach a conclusion, in which case Ministers will issue a further direction, extending the period for their consideration of the matter. The Scottish Government will produce an annual statement of its performance on planning matters, including its handling of notified planning applications.



28. In respect of any application notified to Scottish Ministers, if on the expiry of the 28-day period set out in the direction (or any extended period) the Scottish Government has not issued a direction under either:
- (i) section 46 of the Town and Country Planning (Scotland) Act 1997, calling in the planning application; or
 - (ii) article 17 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992; extending the period for the Government's consideration, the planning authority can proceed to determine the application.

FURTHER COPIES AND ENQUIRIES

29. Any enquiries about this circular should be addressed to either Lyndsey Murray (0131 244 7070) or Ed Swanney (0131 244 7069) at Scottish Government, Directorate for the Built Environment, Area 2-J (South), Victoria Quay, Edinburgh EH6 6QQ, by e-mail to Lyndsey.Murray@scotland.gsi.gov.uk or Ed.Swanney@scotland.gsi.gov.uk. Further copies of the circular may be obtained by telephoning (0131) 244 7543 or from the Scottish Executive website at: www.scotland.gov.uk/Topics/built-environment/planning.

ANNEX**THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS) (SCOTLAND) DIRECTION 2009**

The Scottish Ministers give the following Direction in exercise of the powers conferred on them by articles 17 and 22(3) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and all other powers enabling them in that behalf:

Citation, commencement and interpretation

1.—(1) This direction may be cited as the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and comes into force on 1st April 2009.

(2) In this Direction—

“environmental report” means the environmental report prepared in accordance with the Environmental Assessment (Scotland) Act 2005(1);

“environmental statement”, “Schedule 2 development” and “screening opinion” have the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999(2).

Information to be given to the Scottish Ministers

2.—(1) Where a planning authority proposes to grant planning permission for development falling within any of the descriptions of development listed in the Schedule to this Direction, it shall send the Scottish Ministers the following information:

(1) 2005 asp 15.

(2) S.S.I. 1999/1 as relevantly amended by S.S.I. 2002/324, S.S.I. 2003/341 and S.S.I. 2006/614.



- (a) a copy of the planning application, accompanying plans and associated documentation (e.g. transport/retail assessment), together with the full address and post-code of the site to be developed;
- (b) a copy of any environmental statement accompanying the application or, where an environmental statement has not been prepared:
 - (i) a copy of any screening opinion given by the planning authority in respect of any Schedule 2 development; and
 - (ii) a copy of any environmental report that is relevant to the development;
- (c) a copy of any appropriate assessment relating to the application, carried out under Part IV of the Conservation (Natural Habitats, &c.) Regulations 1994 (3).
- (d) copies of all observations submitted by consultees and all representations and petitions received, together with a list of the names and addresses of those who have submitted observations/made representations (including details of any petition organiser if known). Where 'pro-forma' representations are received, only one copy example need be submitted, but all names and addresses must be provided. Copies of petitions should be submitted, but only the organiser or first named should be included in the list of names and addresses;
- (e) the planning authority's comments on the consultees' observations and on representations received;

- (f) the planning authority's reasons for proposing to grant planning permission, including, where relevant, a statement setting out the reasoning (i) behind the authority's decision to depart from the development plan, and/or (ii) for taking the decision it has, in light of any objections received.

(2) Where the planning authority holds the information set out in sub-paragraphs (a) to (f) above on its website, it may comply with some or all of the requirement to provide this information to the Scottish Ministers by means of an e-mail to the Scottish Government containing a link, or a series of links, to the relevant pages on the authority's website.

Restriction on grant of planning permission

3. A planning authority must not grant planning permission for development falling within any of the descriptions of development listed in the Schedule to this Direction before the expiry of a period of 28 days beginning with the date notified to them by the Scottish Ministers as the date of receipt by the Scottish Ministers of the information which the planning authority are required to give to the Scottish Ministers under paragraph 2.

4. The following directions are hereby revoked:

- (a) The Town and Country Planning (Notification of Applications) (Scotland) Direction 2007 (issued with Planning Circular 5/2007).
- (b) The Town and Country Planning (Notification of Applications) (Scotland) Amendment Direction 2007 (issued with Planning Circular 7/2007).



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SCHEDULE

DESCRIPTIONS OF DEVELOPMENT FOR WHICH APPLICATIONS MUST BE NOTIFIED TO SCOTTISH MINISTERS

1. Development in which planning authorities have an interest

Development:

- (a) for which the planning authority is the applicant/developer;
- (b) in respect of which the planning authority has a financial or other (e.g. partnership) interest; or
- (c) to be located on land wholly or partly in the planning authority's ownership or in which it has an interest;

in circumstances where the proposed development would be significantly contrary to the development plan for the area.

2. Objection by Government agency

(i) Development Affecting Trunk Roads and Special Roads

Development which has been the subject of consultation with Scottish Ministers under article 15(1)(j)(i), (ii), (iiA), (iiB) or (iiC) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, as amended, where the Scottish Ministers (acting through Transport Scotland) have advised against the granting of planning permission or have recommended conditions which the planning authority does not propose to attach to the planning permission.

(ii) Development in the Vicinity of Major Hazards

Development which has been the subject of consultation with the Health and Safety Executive under article 15(1)(f) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 where the Health and Safety Executive has advised against the granting of planning permission or has recommended conditions which the planning authority does not propose to attach to the planning permission.

(iii) Nature Conservation

Development which has the potential to affect:

- (a) a Site of Special Scientific Interest where the site has been notified to the planning authority by Scottish Natural Heritage or its predecessors under section 23 of the National Parks and Access to the Countryside Act 1949, section 28 of the Wildlife and Countryside

Act 1981 or section 3 and section 5 of the Nature Conservation (Scotland) Act 2004;

- (b) a European site as defined in regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994;
- (c) a site which has been announced by the Scottish Ministers as a proposed Special Protection Area or proposed Special Area of Conservation, or
- (d) an area designated by the Scottish Ministers (or a previous Secretary of State) as a wetland of international importance in accordance with the 1971 Convention on Wetlands of International Importance especially as a waterfowl habitat (The Ramsar Convention);

where Scottish Natural Heritage on being consulted by the planning authority has indicated that the development may adversely affect such a site and has advised against granting planning permission, or has recommended conditions which the planning authority does not propose to attach to the planning permission.

(iv) Scheduled Monuments and Category A Listed Buildings

Development which has been the subject of consultation under article 15(1)(j)(v) or (vi) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 where the Scottish Ministers (acting through Historic Scotland) have advised against the granting of planning permission or have recommended conditions which the planning authority does not propose to attach to the planning permission.

(v) Flooding

Development which has been the subject of consultation with the Scottish Environment Protection Agency (SEPA) under article 15(1)(h)(i) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 where SEPA has advised against the granting of planning permission or has recommended conditions which the planning authority does not propose to attach to the planning permission.

(vi) Playing Fields

Development which is likely to

- (a) result in the loss of an outdoor sports facility;
- (b) prejudice the existing use of an outdoor sports facility for that purpose; or
- (c) prevent the use of land, which was last used as an outdoor sports facility, from being used again for that purpose,

To which the Scottish Sports Council (**sportscotland**) has objected or has recommended conditions which the planning authority does not intend to

attach to the planning permission. For the purposes of this paragraph “outdoor sports facility” means land used as –

- (a) outdoor playing fields extending to not less than 0.2ha used for any sport played on a pitch;
- (b) outdoor athletics tracks;
- (c) golf courses;
- (d) outdoor tennis courts, other than those within a private dwelling, hotel or other tourist accommodation; and
- (e) outdoor bowling greens.

(vii) Marine Fish Farming Development

Marine fish farming development which may affect a site designated as a controlled site under section 1 of the Protection of Military Remains Act 1986 where the Secretary of State has advised against the granting of planning permission or has recommended conditions which the planning authority does not propose to attach to the planning permission, or where the planning authority proposes to attach conditions which the Secretary of State has advised against.

3. Opencast coal and related minerals

Development consisting of works connected with the extraction of coal by opencast methods, and other minerals extracted in association with works to extract opencast coal, where the site boundary falls within 500 metres from the edge of an existing community or sensitive establishment.

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