



# SCOTTISH EXECUTIVE

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28 July 2004

Dear Sir or Madam

**CIRCULAR 3/2004 : THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (SCOTLAND) ORDER 2004**

Please find enclosed SEDD Circular 3/2004 : The Town and Country Planning (Electronic Communications) (Scotland) Order 2004.

The Circular has been issued to provide guidance on the provisions of the Town and Country Planning (Electronic Communications) (Scotland) Order 2004 which came into force on Wednesday 28 July.

Copies of the Order are available from Her Majesty's Stationery Office website <http://www.scotland-legislation.hmso.gov.uk>.

Yours faithfully

**MICHAEL LOWNDES**

Principal



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2004

THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (SCOTLAND) ORDER 2004

■ circular



SCOTTISH EXECUTIVE  
Development Department

## **Scottish Planning Series**

### **PLANNING CIRCULAR 3 2004**

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

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## 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.

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## INTRODUCTION

1. This Circular provides guidance on the Town and Country Planning (Electronic Communications) (Scotland) Order 2004 which came into force on 28 July 2004. The Order, made under sections 8 and 9 of the Electronic Communications Act 2000, allows for the use of electronic communications for certain procedures within the town and country planning system. It does this by amending existing legislation to remove legal impediments to the use of electronic communication and storage for planning purposes. The electronic elements of the planning system are intended to supplement rather than to replace the existing paper-based system. This is consistent with the Scottish Executive's commitment to promote greater involvement in the planning system for all and to allow for the provision of public services electronically where this is feasible.

## GENERAL

2. The overall policy objective embodied in the Order is to make it possible for those that wish to do so to use an electronic, rather than a paper-based, planning system. The existing paper-based system will continue to operate for as long as those engaging in the system wish to use it. The general approach which has been pursued in drafting the Order has been to allow a wide range of planning procedures to be carried out electronically by extending the legal definition of "in writing" to include electronic communications. Previously, the main impediments to the use of electronic communication were the requirements in planning legislation for something to be done in writing or sent by post. The Order therefore inserts general amending provisions in planning legislation to ensure that the term "writing" is construed as including electronic communication, provided that the notice or other document being transmitted is:-
  - a. capable of being accessed by the recipients
  - b. legible in all material respects ; and
  - c. in a form sufficiently permanent to be used for subsequent reference.
3. The Order provides for the use of electronic communications in connection with the following planning procedures :-
  - a. The submission of applications for planning permission
  - b. The submission of applications for listed building consent
  - c. The submission of appeals including appeals against enforcement notices
  - d. The submission of applications for consent to the display of advertisements
  - e. The submission of applications for the determination of prior approval under the General Permitted Development Order



- f. The submission of applications for review of mineral planning permissions
- g. Procedures under the Environmental Impact Assessment (Scotland) Regulations 1999.
- h. The transmission of certain plans, notices and documents in connection with Structure and Local Plans.

## **EXCLUSIONS FROM THE SCOPE OF THE ORDER**

- 4. There are a number of planning procedures excluded from the scope of the Order for which it is considered that electronic communication would not be appropriate, either because it cannot be assumed that electronic addresses of relevant parties would be known or available, or because criminal sanctions would apply in the circumstances where there was failure to comply with certain notices or where an interest in land may be affected. Examples are the neighbour notification process for planning applications and the service of enforcement and related orders.

## **THE PROVISIONS OF THE ORDER**

- 5. Section 8 of the Electronic Communications Act 2000 empowers the Scottish Ministers, with the consent of the Secretary of State, by order to modify any enactment or subordinate legislation for the purpose of authorising or facilitating the use of electronic communications. This Order modifies Scottish legislation relating to planning.
- 6. Articles 1 and 2 provide for citation, commencement, extent and interpretation.
- 7. Articles 3 to 6 modify certain provisions of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act").
- 8. Article 3 authorises the use of electronic communications for the specific purpose of sending notices of appeal against planning enforcement notices to the Scottish Ministers.
- 9. Article 4 amends section 271 of the 1997 Act to authorise the use of electronic communications for the general purpose of sending or giving notices or other documents under the provisions of the Act, where certain conditions are fulfilled, and subject to certain exceptions, for example cases where criminal sanctions attach to failure to comply with certain types of notice or where an interest in land may be affected. Section 271 applies for the purposes of other planning enactments, and so the modifications made to that section by this Order have effect, with further modifications as noted below, also for Schedules 9 and 10



to the 1997 Act and the Town and Country Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 (the Listed Buildings Act) (see section 79(1)).

10. Article 5 amends Section 125 of the 1997 Act to provide that where a planning authority requires information about activities on land in connection with the issue of planning contravention notices any requirement to give the address of a relevant person can be fulfilled only by giving a postal address.
11. Article 6 inserts definitions relating to electronic communication into section 277 (interpretation) of the 1977 Act. Article 6 also makes provision as to when electronic communications are deemed to have been received.
12. Articles 7 to 8 modify certain provisions in Schedules 9 and 10 to the 1997 Act in relation to the use of electronic communications for the purpose of making certain applications under these Schedules to a planning authority in relation to minerals.
13. Articles 9 to 11 modify certain provisions of the Listed Buildings Act.
14. Article 9 makes similar provision in relation to section 35 of the Listed Buildings Act to that made by article 3 in relation to section 130 of the 1997 Act.
15. Article 10 amends section 79 of the Listed Buildings Act consequential upon the amendments made to section 271 of the 1997 Act. In particular, it disapplies the use of electronic communications for the service of certain notices where criminal sanctions attach to failure to comply with those notices.
16. Article 11 makes amendments to section 81 (interpretation) of the Listed Buildings Act which are similar to those made by Article 6 in relation to section 277 of the 1997 Act.
17. Articles 12 to 21 give effect to the Schedules to this Order.
18. Schedule 1 amends the Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981 to authorise the use of electronic communications for giving certain notices under the Regulations, subject to specified conditions.
19. Schedule 2 amends the Town and Country Planning (Structure and Local Plans)(Scotland)Regulations 1983 to authorise the use of electronic communications for sending certain plans, notices and documents etc, subject to specified conditions and to facilitate the use of websites by local planning authorities for certain purposes under those Regulations subject to specified conditions.
20. Schedule 3 amends the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 to authorise the use of electronic communications for making applications and sending certain notices under these Regulations, subject to specified conditions.



21. Schedule 4 amends the Town and Country Planning (Listed Buildings and Conservation Areas)(Scotland) Regulations 1987, made under the Listed Buildings Act, to authorise the use of electronic communications for making certain applications, or giving notice of appeal to the Scottish Ministers under these Regulations, subject to specified conditions.
22. Schedule 5 amends the Town and Country (Appeals)(Written Submissions Procedure)(Scotland) Regulations 1990 to authorise the use of electronic communications for giving statements or notices under these Regulations, subject to specified conditions.
23. Schedule 6 amends the Town and Country (General Permitted Development)(Scotland) Order 1992 to authorise the use of electronic communications for the purpose of certain applications under this Order, subject to specified conditions.
24. Schedule 7 amends the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 to facilitate the use of electronic communications for making certain applications and appeals under the 1997 Act, to authorise the use of a website by the Scottish Ministers in relation to appeals under section 47 of the 1997 Act and to facilitate the use of an electronic register by local planning authorities.
25. Schedule 8 amends the Town and Country Planning (Enforcement of Control)(No.2)(Scotland) Regulations 1992 to authorise the use of electronic communications for sending certain notices etc and for making certain appeals to the Scottish Ministers, subject to specified conditions.
26. Schedules 9 and 10 amend rules governing the procedure for the conduct of certain inquiries under the 1997 Act.
27. Schedule 9 amends the Town and Country Planning (Determination by Appointed Persons)(Inquiries Procedure)(Scotland) Rules 1997. Schedule 10 amends the Town and Country Planning Appeals (Inquiries Procedure)(Scotland) Rules 1997. In the case of both Schedules, the amendments facilitate the use of electronic communications for the service of notices and other documents, authorise the supply of certain forms electronically by the Scottish Ministers, facilitate the use of websites for publication of certain documents and notices, authorise the use of electronic communications for notification of certain decisions and relax the requirements for multiple copies of documents to be supplied where electronic communications are used.
28. Schedule 11 amends the Environmental Impact Assessment (Scotland) Regulations 1999 to authorise the use of electronic communications for making certain applications and sending certain notices under these Regulations, to facilitate the use of websites by the Scottish Ministers and planning authorities and to relax the requirements for multiple copies of documents to be supplied where electronic communications are used.

## DEFINITION OF WORKING DAY

29. The Order makes provision as to when an electronic communication is deemed to have been received. It provides that, if an electronic communication is received at any time before the end of a day which is a working day, it shall be deemed to have been received on that day. The Order also provides that, if an electronic communication is received at any time during a day which is not a working day, it shall be deemed to be received on the next working day. It should be assumed for the purposes of electronic communication that "before the end of a day" means at any time up to midnight.
30. The purpose of this provision is to provide some certainty for both the sender and the recipient as to when an electronic communication would be deemed to be received, both in relation to the time of day when a communication is received by the recipient and the dates on which communications would not be able to be received. The Order excludes from the definition of "working day" Saturdays, Sundays, bank holidays and local and public holidays. It will be the responsibility of the person sending the electronic communication to establish whether or not there is a holiday in the place where the communication is received and to allow sufficient time for the receipt of their communication.

## PAYMENT OF FEES

31. The Order makes no reference to planning fees that accompany certain types of application to planning authorities because the Fees Regulations do not require that payment be made by any particular method. It is not therefore considered necessary to make any amendment to the Fees Regulations to provide for the circumstances in which applications are submitted electronically. However, the current guidance on the collection of planning fees makes clear that payment for an application should accompany the application when it is lodged.

## NECESSARY CONDITIONS FOR USE OF ELECTRONIC COMMUNICATIONS

32. The Order prescribes certain conditions which need to be complied with if electronic communication is to be used for the submission of applications, service of notices or the transmission of documents under the provisions of the Order. These conditions are that the notice or other document being transmitted is:
- a. capable of being accessed by the recipient ;
  - b. legible in all material respects ; and
  - c. in a form sufficiently permanent to be used for subsequent reference.



The condition requiring that an electronic communication is capable of being accessed by the recipient also makes it desirable for policy and practical purposes that:

- d. the person serving the notice or making the application accepts the responsibility for establishing that the intended recipient is capable of accessing the communication electronically ;
- e. where the recipient is a planning authority operating an electronic planning system, the system needs to be capable of acknowledging the receipt of electronic communications ; and
- f. the person serving the notice or making an application electronically accepts the responsibility for establishing that their communication has been received and acknowledged.

## **DEEMED CONSENT TO USE OF ELECTRONIC COMMUNICATIONS**

33. The Order provides that, where an electronic communication is used to make an application to a planning authority or for any other planning purpose, then the sender shall be deemed to have agreed to the use of electronic communication for all subsequent purposes relating to that communication that can be carried out electronically. The system of deemed consent is therefore only used when persons use electronic communication in initiating an approach to a planning authority. The Order also provides that a person may give notice that they no longer agree to the use of electronic communication through giving notice in writing to the planning authority.

## **ELECTRONIC SIGNATURES**

34. There is no express requirement within planning legislation for a signature, either written or electronic, in relation to forms or applications. There is arguably an implied requirement, insofar as the legislation says that an application must be made in a certain form. That form will usually have a space for a signature. In practice, planning authorities expect forms to be signed and they return unsigned forms to an applicant. The Order does not create a new requirement that a form must be signed. Nor does it remove the existing implied requirement. The Order simply reflects the assumption that if there is an implied requirement for a signature, then an electronic signature is acceptable. If an electronic signature meets the conditions prescribed in the Order necessary for the use of electronic communication, i.e. is capable of being accessed by the recipient and is legible, then for the purposes of e-planning an electronic signature will be treated the same as a written signature.

35. The Order does not attempt to define what is acceptable as an electronic signature. Given the rapid advance of information and communications technology any such definition would be likely to become obsolete and restrictive in a short space of time. The Order contains general provisions to require that electronic communications are of acceptable quality in terms of accessibility, legibility and permanence. This allows planning authorities sufficient flexibility to accept electronic communications, including electronic signatures, in an era of constant technological change.
36. Section 7 of the Electronic Communication Act 2000 provides for the authentication of electronic signatures. Section 7 states that, provided that certain conditions are met, electronic signatures are legally admissible as evidence of authenticity in court or other legal proceedings such as an appeal to the Reporter. The effect of this provision is to establish in a dispute as to the authenticity of a document that an electronic signature can be relied on in court in the same way as a written signature. This will be of assistance to both planning authorities and applicants who wish to rely on electronic signatures as part of electronic communications.

## **REQUIREMENT TO PROVIDE A POSTAL ADDRESS**

37. The Order provides that, where planning legislation imposes an obligation on a person to provide a name and address to another person, that obligation can only be fulfilled by making available a postal address. The purpose of this requirement is to allow planning authorities a means of establishing the authenticity of electronic communications and to deter frivolous, mischievous or malicious representations and impersonation.
38. Article 5 of the Order also introduces a requirement that, in the circumstances where a planning authority requires information about the activities on land of third parties or where information is required about any third party having an interest in land, the address given of such third parties must be a postal address. This is because it cannot be assumed that any person supplying information about third party interests will have access to the relevant electronic addresses. Also because planning contravention notices and interests in land are involved it is considered that it would not be appropriate to rely on electronic communication alone in these circumstances.



## **PLANNING ADVICE NOTE ON ELECTRONIC PLANNING SERVICE DELIVERY**

39. The making of the Order and the issue of this Circular will also be accompanied in August by the issue of a Planning Advice Note (PAN) on Electronic Planning Service Delivery. The Planning Advice Note will aim to disseminate advice and information about best practice in electronic planning and draws upon the work of the e-Planning Group formed by the Scottish Executive and planning authorities to exchange information about the operation of e-Planning systems and technology. The e-PAN will demonstrate ways in which the use of new technology can improve the delivery of planning services. It is envisaged that the guidance in the e-PAN will need to evolve to keep pace with technological advances and service development.

### **ENQUIRIES**

40. Any enquiries about the contents of this Circular should be addressed to Michael Lowndes, Planning Division 1, Area 2-H, Victoria Quay, EDINBURGH EH6 6QQ or e-mailed to [Michael.Lowndes@scotland.gsi.gov.uk](mailto:Michael.Lowndes@scotland.gsi.gov.uk)

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