STATUTORY INSTRUMENTS

1976 No. 210 (S. 14)

TOWN AND COUNTRY PLANNING, SCOTLAND

The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1976

Made - - - -	13*th February* 1976
Laid before Parliament	26*th February* 1976
Coming into Operation	1*st April* 1976

In exercise of the powers conferred on me by section 273 of and paragraph 1 of Schedule 7 to the Town and Country Planning (Scotland) Act 1972**(a)** and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1976 and shall come into operation on 1st April 1976.

Interpretation

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

"the Act" means the Town and Country Planning (Scotland) Act 1972;

"planning authority" shall be construed in accordance with section 172 of the Local Government (Scotland) Act 1973**(b)**;

"local authority" has the meaning assigned to it by section 275(1) of the Act;

"dwellinghouse" means a building used for residential purposes and includes a flat or other separate dwelling which is comprised in a larger building of which it forms part;

"operational land", except in relation to land of the Post Office, has the meaning assigned to it by section 211 of the Act as read with section 212 of the Act, and in relation to land of the Post Office means, subject to section 212 of the Act so far as applicable, land of the Post Office of any such class as may be specified in regulations made pursuant to paragraph 93(4) of Schedule 4 to the Post Office Act 1969**(c)**;

"statutory undertakers" means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of electricity, gas, hydraulic power or water

(a) 1972 c. 52. (b) 1973 c. 65. (c) 1969 c. 48.

and includes the British Airports Authority, the Post Office and companies which are deemed to be statutory undertakers by virtue of section 141(2) of the Transport Act 1968**(a)**.

(2) References in these regulations to the use of land or buildings for residential purposes shall be construed as excluding a use falling within any of Classes X, XI, or XIII of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1973**(b)** and references to development for residential purposes shall be construed accordingly.

(3) For the purposes of Schedule 2 to these regulations development or land is concurrently the subject of another appeal to the Secretary of State or of an application referred to him or of an order where that appeal, application or order comes into the jurisdiction of the Secretary of State within the period of one month before or after the giving of notice of the appeal to which Schedule 1 of these regulations relates.

(4) The Interpretation Act 1889**(c)** applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Classes of appeal for determination by Appointed Persons

3. Subject to Regulation 4 hereof, the Secretary of State hereby prescribes the following classes of appeal to be determined by a person appointed for the purpose by the Secretary of State instead of by the Secretary of State, namely:—

(*a*) appeals under section 33 of the Act (appeals against planning decisions), as originally enacted or as applied by section 34 of the Act (appeals in default of planning decisions), where the appeal relates to an application for planning permission to carry out development of land or for approval of matters reserved by a planning permission for development of land, being in either case development wholly within any one or more of the descriptions in the classes of appeal specified in Schedule 1 to these regulations;

(*b*) appeals under section 85 of the Act (appeals against enforcement notices) where the breach of planning control alleged in the enforcement notice consists in the carrying out of development wholly within any one or more of the descriptions in the classes of appeal specified in Schedule 1 to these regulations or failure to comply with a condition or limitation on a grant of planning permission for any such development.

Classes of appeal reserved for determination by the Secretary of State

4. Regulation 3 hereof shall not apply to:—

(*a*) any such appeal as mentioned therein if it relates to an application in respect of development falling within any one or more of the classes of case specified in Schedule 2 to these regulations, or to an enforcement notice alleging a breach of planning control in respect of development falling within any one or more of the classes of case specified in the said Schedule; or

(*b*) any such appeal as is mentioned in paragraph (*b*) of that regulation where the grounds upon which the appeal is made (as originally indicated in the notice of appeal or as amended at any time before the expiry of the period specified in the notice as the period at the end of which the notice is to take effect) include any of the grounds set out in paragraphs (*b*) to (*e*) of section 85(1) of the Act.

(a) 1968 c. 73. (b) S.I. 1973/1165 (1973 II, p. 3533). (c) 1889 c. 63.

Publicity for Directions under paragraph 1 *of schedule* 7 *to the Act*

5. On the making by the Secretary of State of a direction under paragraph 1 of Schedule 7 to the Act he may by notice in writing enclosing a copy of the direction require the planning authority of any area for which the direction has effect to publish as soon as may be a notice in at least one newspaper circulating in the area; and this notice shall contain a concise statement of the effect of the direction and shall specify the place or places where a copy of the direction may be seen at all reasonable hours.

Saving

6. These regulations shall not apply to any appeal of which notice was given before the coming into operation of these regulations.

William Ross,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
13th February 1976.

SCHEDULE 1

CLASSES OF APPEALS TO BE DETERMINED BY APPOINTED PERSONS

Appeals in respect of Development by Operations

1. The development for residential purposes of land not exceeding 0·8 hectare (2 acres) in extent where the application for planning permission is an outline application within the terms of Article 5(2) of the Town and Country Planning (General Development) (Scotland) Order 1975(a) and the appeal arises therefrom or on an application for approval required under Article 6 of that Order.

2. The erection, enlargement or other alteration of a building or buildings for use as not more than 10 dwellinghouses, where the application for planning permission is not an outline application.

3. The carrying out of building, engineering or other operations on land for a purpose ancillary to the existing use of land for residential purposes, or ancillary or incidental to development of land for residential purposes.

4. The formation, laying out or widening of a means of access or the laying down of hard standing for the parking of vehicles.

Appeals in respect of change of use

5. The change in the use of a building or buildings to use as not more than 10 dwellinghouses.

6. The change in the use of a building or buildings in use as not more than 10 dwellinghouses to another use for residential purposes.

SCHEDULE 2

CLASSES OF CASES EXCEPTED FROM SCHEDULE 1

1. Development in respect of which the Secretary of State has given a direction under Article 8 of the General Development Order restricting the grant of planning permission, e.g. where a trunk road or special road was affected.

2. Development by a local authority.

3. Development by statutory undertakers on operational land or on land in the case of which the circumstances mentioned in section 214(2) of the Act apply.

4. Development by the National Coal Board on land of a class specified in regulations made under section 259 of the Act.

5. Development for which planning permission has been refused by a planning authority, or granted subject to conditions, following an expression of views by a Government Department or new town development corporation that the application should either not be granted or be granted only subject to conditions.

6. Development where the same development is concurrently the subject or part of the subject of another appeal to the Secretary of State or of an application referred to him under any provisions of the Act.

7. Development where the same land is concurrently the subject or part of the subject of another appeal to the Secretary of State or of an application referred to him in respect of development wholly or partly outside the classes specified in Schedule 1 to these regulations.

8. Land or buildings used as boarding or guest houses, hotels with sleeping accommodation, residential schools and homes etc. (i.e. any use falling within classes X XI and XIII of the Town and Country Planning (Use Classes) (Scotland) Order 1973).

(a) S.I. 1975/679 (1975 I, p. 2410).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations prescribe classes of appeals (set out in Schedule 1) which are to be determined by persons appointed for the purpose by the Secretary of State instead of being determined by the Secretary of State.

Regulation 4 provides that certain excepted classes of appeals (set out in Schedule 2) which would otherwise fall within the prescribed classes are to continue to be determined by the Secretary of State. Insofar as appeals against enforcement notices which are included in the appeals covered by these regulations are concerned, regulation 4 also excepts from the prescribed classes appeals made on grounds which include any of the grounds set out in paragraphs (*b*) to (*e*) of section 85(1) of the Town and Country Planning (Scotland) Act 1972.

Regulation 5 provides for the advertisement by planning authorities of any direction made by the Secretary of State under paragraph 1 of Schedule 7 to the Town and Country Planning (Scotland) Act 1972 whereby specified classes of appeals are to be determined by him instead of by an appointed person.

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