STATUTORY INSTRUMENTS

1978 No. 892 (S. 73)

TOWN AND COUNTRY PLANNING, SCOTLAND

The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1978

Made - - -	*19th June* 1978
Laid before Parliament	*29th June* 1978
Coming into Operation	*21st July* 1978

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 1978 and shall come into operation on 21st July 1978.

Interpretation

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

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

"the Act of 1973" means the Local Government (Scotland) Act 1973(b);

"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;

"excepted purpose" means—

(*a*) any purpose connected with the winning and working of minerals, their treatment or disposal, or their grading, washing, grinding or crushing; or

(*b*) any purpose connected with the prospecting for or testing of mineral deposits; or

(*c*) any purpose connected with—

(i) the construction or assembly of installations or any part thereof for use in connection with the exploration for or exploitation of offshore petroleum as defined in section 20(2) of the Offshore Petroleum Development (Scotland) Act 1975(c);

(a) 1972 c. 52. (b) 1973 c. 65. (c) 1975 c. 8.

(ii) the fabrication of pipelines for conveying petroleum;

(iii) the construction of shore installations for the reception of petroleum and for the storage or onward despatch thereof;

(iv) the construction of shore installations associated with the processing of oil and gas;

"the General Development Order" means the Town and Country Planning (General Development) (Scotland) Orders 1975 to 1976(**a**);

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

"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(**b**);

"petroleum" has the same meaning as in the Petroleum (Production Act) 1934(**c**);

"planning authority" shall be construed in accordance with section 172 of the Act of 1973;

"regional planning authority" has the same meaning as in section 172(4) of the Act of 1973;

"shore installations associated with the processing of oil and gas" include refineries, gas liquefaction plants, plants for the manufacture or processing of petrochemicals and administrative buildings and marine terminal facilities associated with such shore installations;

"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 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(**d**).

(2) Reference 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 (use as boarding or guest house or hotel providing sleeping accommodation or residential school or college or home or institution for children, old people, etc.) of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1973(**e**) and references to development for residential purposes shall be construed accordingly.

(3) In paragraph 8 of Schedule 1 to these regulations, the reference to land does not include a building.

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

(**a**) S.I. 1975/679; 1976/693, 1307. (**b**) 1969 c. 48. (**c**) 1934 c. 36.
(**d**) 1968 c. 73. (**e**) S.I. 1973/1165. (**f**) 1889 c. 63.

(5) Any reference in these regulations to any order shall be construed as a reference to such an order as amended or replaced by any subsequent order.

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 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.

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.

Revocation and saving

6.—(1) The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1976(**a**) are hereby revoked.

(2) Section 38 of the Interpretation Act 1889 shall apply as if these regulations were an Act of Parliament and as if the regulations revoked by these regulations were an Act of Parliament repealed by an Act of Parliament.

(**a**) S.I. 1976/210.

(3) Any appeal of which notice was given before the coming into operation of these regulations shall be determined as if these regulations had not been made.

Bruce Millan,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
19th June 1978.

Regulation 3

SCHEDULE 1

Classes of Appeals to be Determined by Appointed Persons

Appeals relating to development by operations

1. The erection, or the enlargement or other alteration, of a building or buildings for use as not more than 60 dwellinghouses.

2. The development for residential purposes of land not exceeding 2 hectares (4·94 acres) in extent where the application does not specify the number of dwellinghouses to which it relates.

3. The erection or the enlargement or other alteration of any building for use for other than residential purposes or an excepted purpose, provided that the aggregate floor space created by the development does not exceed 500 square metres (5,381·55 sq ft) and the area of land to which the application relates does not exceed 8,000 square metres (9,567·2 sq yds).

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

5. The carrying out of building, engineering or other operations on land for a purpose ancillary or incidental to existing or proposed development of any kind specified in the foregoing or following classes.

Appeals relating to development by change of use

6. A change in the use of a building or buildings to use as not more than 60 dwellinghouses.

7. A change in the use of a building or buildings to use for or in connection with any purpose other than residential purposes or an excepted purpose, provided that the aggregate floor space used for such purpose does not exceed 500 square metres (5,381·55 sq ft) and the area of land to which the application relates does not exceed 8,000 square metres (9,567•2 sq yds).

8. A change in the use of land to use for any purpose other than an excepted purpose, provided that the area of land involved does not exceed 4,000 square metres (4,783 sq yds).

Regulation 4

SCHEDULE 2

CLASSES OF CASE EXCEPTED FROM SCHEDULE 1

Where the appeal relates to:—

1. Development to which a direction given by the Secretary of State under the provisions of article 8 of the General Development Order applies.

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 by them subject to conditions, where the planning authority have included in their reasons for their decision the statement that it has been made following an expression of views, by a government department or a new town development corporation, that the application should not be granted wholly or in part, or should be granted only subject to conditions.

6. Development for which planning permission has been refused by a regional planning authority, or granted by them subject to conditions, where the regional planning authority have exercised the powers under section 179(1) of the Act of 1973 in respect of the application.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations revoke and re-enact, with amendments, the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1976.

The principal amendments, which are incorporated in Schedule 1, have the effect of extending the prescribed classes of appeals under sections 33, 34 and 85 of the Town and Country Planning (Scotland) Act 1972 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 3 prescribes the classes of appeals by reference to Schedule 1, which has been amended to include most types of building operations and most uses of land (subject in both cases to limitations on the number and size of buildings and on the area of land involved) other than development for an excepted purpose as defined in Regulation 2(1) (for example, a purpose connected with mineral and oil relative developments).

Regulation 4 provides that certain excepted classes of appeals, which are set out in Schedule 2, which would otherwise fall within the prescribed classes are to continue to be determined by the Secretary of State. Apart from the addition of cases which have been called in by regional planning authorities under section 179 of the Local Government (Scotland) Act 1973, these classes are the same in substance as those set out in the regulations of 1976 (though drafting amendments have been made in Schedule 2).

Regulation 5, which re-enacts regulation 5 of the regulations of 1976 without amendments of substance, provides for the advertisement by planning authorities of any direction made by the Secretary of State under paragraph 1 of Schedule 7 to the Act whereby specified classes of appeals are to be determined by him instead of by an appointed person.

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