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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 332**

**TOWN AND COUNTRY PLANNING**

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

*Made - - - - 27th July 2004*

*Coming into force in accordance with article 1*

The Scottish Ministers, considering that authorisation made by this Order for the use of electronic communications and or electronic storage for any purpose, is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made for electronic communications or electronic storage than in other case, in exercise of the powers conferred by sections 8 and 9 of the Electronic Communications Act 2000<sup>(1)</sup> and all other powers enabling in that behalf, and with the consent of the Secretary of State in accordance with section 9(7)(c) of that Act, hereby make the following Order, a draft of which has been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Town and Country Planning (Electronic Communications) (Scotland) Order 2004 and shall come into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

**Interpretation**

2. In this Order—

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997<sup>(2)</sup>; and

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997<sup>(3)</sup>.

**Use of electronic communications for appealing against enforcement notice**

3. In section 130 of the 1997 Act (appeal against enforcement notices), in subsection (2)—

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(1) 2000 c. 7. All by virtue of the modifications for Scotland in sections 8 and 9(7), the reference to the appropriate Minister is to be read as a reference to the Secretary of State, and the powers of the Secretary of State may be exercised by the Scottish Ministers, with the consent of the Secretary of State.

(2) 1997 c. 8.

(3) 1997 c. 9.

- (a) omit “either”; and  
at the end insert–  
“; or
- (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.”.

#### **Use of electronic communications for service of notices**

4.—(1) Section 271 of the 1997 Act (service of notices) is amended as follows.

(2) In subsection (1), after paragraph (c) insert–

“(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (4), to that person at that address (subject to subsection (5)); or”.

(3) After subsection (3), insert–

“(4) The condition mentioned in subsection (1)(cc) is that the notice or other document shall be–

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference;

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(5) Subsection (1)(cc) shall not apply to–

- (a) serving a planning contravention notice;
- (b) serving or giving notice to parties who must be notified of applications for planning permission and other matters in accordance with regulations made under sections 34 and 35;
- (c) serving any notice, or withdrawal of any such notice under section 61;
- (d) serving a notice under section 66(2);
- (e) serving a notice under section 72(2) or a copy of an order under section 72(5);
- (f) serving a purchase notice under section 88(2);
- (g) serving any notice under section 90;
- (h) serving a counter-notice under section 96(2) or 96(5)
- (i) serving a counter-notice under 102;
- (j) serving a blight notice under section 101(1);
- (k) serving a copy of any enforcement notice by a planning authority;
- (l) giving any notice under section 129 of the exercise of powers conferred by subsection (1) of that section;
- (m) serving an enforcement notice issued by the Scottish Ministers;
- (n) serving a stop notice, or of notice of withdrawal of a stop notice, by a planning authority;
- (o) serving a stop notice by the Scottish Ministers;

- (p) serving a breach of condition notice or of notice of withdrawal of a breach of condition notice;
- (q) giving notice of the making of a tree preservation order, or service of a copy of such an order, in accordance with regulations under section 161;
- (r) serving notice by a planning authority under section 179 requiring steps to be taken to abate the adverse effect on the amenity of any part of its district by reason of condition of any land within that district or an adjoining district;
- (s) serving a notice under section 272 requiring information as to interests in land;
- (t) serving a copy of a discontinuance, prohibition, suspension or supplementary suspension order made under Schedule 8; and
- (u) serving a reminder under paragraph 4 of Schedule 10.”.

### **Postal addresses to be provided in response to certain notices requiring information**

#### **5. In–**

- (a) paragraphs (c) and (e) of section 125(3) of the 1997 Act (power to require information about activities on land); and
- (b) paragraphs (b) and (e) of section 272(2) of that Act (power to require information as to interests in land),

after “name and”, insert “postal”.

### **Insertion of definitions and interpretation provisions**

6.—(1) Section 277 of the 1997 Act (interpretation) is amended as follows.

(2) In subsection (1), insert the following definitions:–

““address”, in relation to electronic communications, means any number or address used for the purposes of such communications;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7);”.

(3) After subsection (4), insert–

“(4A) Where an electronic communication is used for the purpose of serving on, or giving to, a person any notice or other document for the purposes of this Act, and the communication is received by that person–

- (a) 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; or
- (b) at any time during a day which is not a working day, it shall be deemed to be received on the next working day,

and in this subsection “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(4), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.”.

### **Applications for review of old mineral planning permissions**

7.—(1) Schedule 9 to the 1997 Act (review of old mineral planning permissions) is amended as follows.

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(4) 1971 c. 80.

(2) In paragraph 1 (interpretation), at the end insert–

“(8) Where an electronic communication is used to make an application to a planning authority under any of paragraphs 6, 7 or 9 below, the applicant shall be deemed to have agreed–

- (a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications; and
- (b) that the applicant’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application (or other such address as the applicant may notify in writing to the planning authority),

unless the applicant gives notice in writing to the planning authority in accordance with sub paragraphs (9) and (10).

(9) An applicant may give notice that the applicant no longer agrees to the use of electronic communications for the purposes mentioned in paragraphs (a) or (b) of sub-paragraph (8).

(10) Any such notice shall take effect on the date specified in it as the effective date, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

(3) In paragraph 9 (applications for approval of conditions, and appeals where conditions approved are not those proposed) in sub-paragraph (2)(d), for “an address” substitute “a postal address”.

#### **Applications for periodic review of mineral planning permissions**

**8.**—(1) Schedule 10 to the 1997 Act (periodic review of mineral planning permissions) is amended as follows.

(2) In paragraph 2 (interpretation), at the end insert–

“(5) Where an electronic communication is used to make an application to a planning authority under paragraphs 5 or 6 below, the applicant shall be deemed to have agreed–

- (a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications; and
- (b) that the applicant’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application (or such other address as the applicant may notify in writing to the planning authority),

unless the applicant gives notice in writing to the planning authority in accordance with sub-paragraphs (6) and (7).

(6) An applicant may give notice that the applicant no longer agrees to the use of electronic communications for the purposes mentioned in paragraph (a) or (b) of sub paragraph (5).

(7) Any such notice shall take effect on the date specified in it as the effective date, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

(3) In paragraph 6 (application to determine conditions to which mineral permissions are to be subject) in sub paragraph (2)(d), for “an address” substitute “a postal address”.

#### **Use of electronic communications for appeals against listed building enforcement notice**

**9.** In section 35 of the Listed Buildings Act (appeal against listed building enforcement notice), in subsection (2)–

- (a) omit “either”; and
- (b) at the end insert—
  - “; or
  - (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date”.

### **Use of electronic communication for service of notices under the Listed Buildings Act**

**10.**—(1) Section 79 of the Listed Buildings Act (application of certain provisions under the general provisions of principal Act) is amended as follows.

- (2) In subsection (1), for “subsection” substitute “subsections (1A) and”.
- (3) After subsection (1) insert—
  - “(1A) Subsection (1)(cc) of section 271 of the principal Act shall not apply to—
    - (a) serving a building preservation notice;
    - (b) serving a copy of a listed building enforcement notice by a planning authority;
    - (c) giving notice under section 34 of this Act of the exercise of powers conferred by subsection (7) of that section;
    - (d) serving a listed building enforcement notice issued by the Scottish Ministers; and
    - (e) giving notice to parties who must be notified of applications for listed building consent and other matters in accordance with regulations made under section 10 of that Act.”.

### **Insertion of definitions and interpretation into the Listed Buildings Act**

- 11.**—(1) Section 81 of the Listed Buildings Act (interpretation) is amended as follows.
- (2) In subsection (1), insert the following definitions—
    - ““address”, in relation to electronic communications, means any number or address used for the purposes of such communications;”;
    - “electronic communication” has the same meaning as in the Electronic Communications Act 2000;”.
  - (3) After subsection (5), insert—
    - “(5A) Where an electronic communication is used for the purpose of serving on, or giving to, a person any notice or other document for the purposes of this Act, and the communication is received by that person—
      - (a) 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; or
      - (b) at any time during a day which is not a working day, it shall be deemed to be received on the next working day;
- and in this subsection, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(5), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area in which the electronic communication is received.”.

### **Amendment of regulations relating to development by planning authorities**

12. The Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981(6) are amended in accordance with Schedule 1 to this Order.

### **Amendment of regulations relating to structure plans**

13. The Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983(7) are amended in accordance with Schedule 2 to this Order.

### **Amendment of control of advertisement**

14. The Town and Country Planning (Control of Advertisement) (Scotland) Regulations 1984(8) are amended in accordance with Schedule 3 to this Order.

### **Amendment of listed building and conservation areas**

15. The Town and Country Planning (Listed Building and Buildings in Conservation Areas) (Scotland) Regulations 1987(9) are amended in accordance with Schedule 4 to this Order.

### **Amendment of regulations relating to planning appeals**

16. The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990(10) are amended in accordance with Schedule 5 to this Order.

### **Amendment of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

17. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(11) is amended in accordance with Schedule 6 to this Order.

### **Amendment of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992**

18. The Town and Country Planning (General Development Procedure) (Scotland) Order 1992(12) is amended in accordance with Schedule 7 to this Order.

### **Amendment of regulations relating to enforcement appeals**

19. The Town and Country Planning Enforcement of Control (No 2) (Scotland) Regulations 1992(13) are amended in accordance with Schedule 8 to this Order.

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(6) S.I.1981/829 was amended by S.I. 1984/238.

(7) S.I. 1983/1590 as amended by S.S.I. 2003/1 Article 7. There are other amendments not relevant to this Order.

(8) S.I. 1984/467 as amended by S.S.I. 1992/1763.

(9) S.I. 1987/1529.

(10) S.I. 1990/507.

(11) S.I. 1992/223 as amended by S.I. 1992/1078 and 2084, 1993/1036, 1994/1442, 2586 and 3294, 1996/252, 1266 and 3023, 1997/1871 and 3060, 1998/1226, S.S.I. 1999/1, S.I. 2000/2040, S.S.I. 2001/266 and 2003/341.

(12) S.I. 1992/224; amended by S.I. 1992/2083, 1993/1039, 1994/2585 and 3293, 1996/467, 1997/749, S.S.I. 1991/1, 2001/245 and 2003/1.

(13) S.I. 1992/2086.

### **Amendment of certain rules relating to planning inquiries**

**20.**—(1) The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) (Scotland) Rules 1997(**14**) are amended in accordance with Schedule 9 to this Order.

(2) The Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1997(**15**) are amended in accordance with Schedule 10 to this Order.

### **Amendment of regulations relating to environmental impact assessments**

**21.** The Environmental Impact Assessment (Scotland) Regulations 1999(**16**) are amended in accordance with Schedule 11 to this Order.

St Andrew's House, Edinburgh  
27th July 2004

*MARY MULLIGAN*  
Authorised to sign by the Scottish Ministers.

I consent

19th July 2004

*KEITH HILL*  
Minister of State,  
Office of the Deputy Prime Minister

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(14) S.I. [1997/750](#); amended by S.I. [1998/2312](#).

(15) S.I. [1997/796](#); amended by S.I. [1998/2311](#).

(16) S.I. [1999/1](#); amended by [S.S.I. 2002/324](#).

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SCHEDULE 1

Article 12

Amendment of The Town and Country Planning (Development  
by Planning Authorities) (Scotland) Regulations 1981

1. In regulation 2 (interpretation), after “in these regulations” insert—  
““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(17)

2. After regulation 2, insert—

“2A.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to forms, plans, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, plan, notice or other document to any other person (“the recipient”).

(3) The requirement shall (except in a case referred to in paragraph (4)) be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The case is a requirement of giving notice under regulation 4(2)(a).

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient—

- (a) at any time before the end of the day which is a working day, it shall be deemed to have been received on that day;
- (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(18), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

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(17) 2000 c. 7.

(18) 1971 c. 80.



(8) In a case to which this paragraph applies, and except where a contrary intention appears, a person making an application or giving or serving a notice using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to an application or notice, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application or notice; and
- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in accordance with regulation 10A that the person wishes to revoke the agreement.”.

3. After regulation 10 insert—

**“Withdrawal of consent to use of electronic communications**

**10A.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

SCHEDULE 2

Article 13

Amendment of The Town and Country Planning  
(Structure and Local Plans)(Scotland) Regulations 1983

1. In paragraph (1) of regulation 2 (interpretation), after the definition of “duly made” insert—  
““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(19);”.
2. After regulation 2, insert—

**“2A.—(1)** In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and

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(19) 2000 c. 7.

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- (b) references to statements, forms, plans, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form except in a case referred to in paragraph (4).

(2) Paragraphs (3) to (9) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement shall (except in a case referred to in paragraph (4)) be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are—

- (a) submitting a certified copy of a structure plan under regulation 12;
- (b) serving a certified copy of a notice under regulation 20;
- (c) submitting certified copies of alterations of structure plans;
- (d) serving a certified copy of a local plan under regulation 29; and
- (e) serving a certificate or certified copy of a local plan under regulation 38(2).

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by a recipient—

- (a) 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; or
- (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(20)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any notice, form, certificate, plan, representation or other document, or to copy such a document, any such requirement may be complied with by sending one copy only of the notice, form, certificate, plan, representation or other document, or copy thereof in question.

(9) In a case to which this paragraph applies, and except where a contrary intention appears, a person making a representation, objection or giving or serving a notice using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to a request, notice, objection (as the case may be) which are capable of being carried out electronically;

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(20) 1971 c. 80.

- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the request, notice or objection; and
- (c) that the person's deemed agreement under this paragraph shall subsist until the person gives notice in accordance with regulation 41A that the person wishes to revoke the agreement."

3. After regulation 19 (notification of a decision) insert–

**“Use of electronic communications**

**19A.**—(1) Paragraph (2) applies where an electronic communication is used for the purpose of notification of a decision–

- (a) under regulation 19; and
- (b) under regulation 40 for notice of approval, modification or rejection of a local plan.

(2) Notification in writing of a decision and reasons for the purposes of regulation 19 or 40 shall be deemed to have been given to a person for the purposes of this regulation where–

- (a) the Scottish Ministers and the person have agreed that the decision and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;
- (b) the decision and reasons are a decision and reasons to which that agreement applies;
- (c) the Scottish Ministers have published the decision and reasons; and
- (d) the person is notified, in a manner for the time being agreed between that person and the Scottish Ministers, of–
  - (i) the publication of the decision and reasons on a website;
  - (ii) the address of the website; and
  - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed."

4. After regulation 41 insert–

**“Withdrawal of consent to use of electronic communications**

**41A.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing–

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given."

5. After regulation 45 insert–

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“**45A.**—(1) Where a planning authority maintain a website for the purpose of allowing inspection of any statements forms, maps, plans or documents, any notice required under these Regulations shall (in addition to any other matters required to be contained in it) state the address of the website.”.

### SCHEDULE 3

Article 14

#### Amendment of The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984

1. In paragraph (1) of regulation 2 (interpretation), after the definition of “discontinuance notice”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(21);”.

2. After regulation 2, insert—

“**2A.**—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to forms, plans, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, plan, notice or other document to any other person (“the recipient”).

(3) The requirement shall (except in a case referred to in paragraph (4)) be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are—

- (a) serving notice on any person under regulation 11(2);
- (b) sending any document referred to in regulation 11(4);
- (c) serving a notice under regulation 11(6);
- (d) serving a notice under regulation 14;
- (e) serving a notice of an order for confirmation of revocation and modification of consent under regulation 22(2); and
- (f) notifying a claim under regulation 23(1).

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(21) 2000 c. 7.

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(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient—

- (a) 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; or
- (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(22)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) In a case to which this paragraph applies, and except where a contrary intention appears, the person making an application, appeal or objection or giving or serving the notice using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to the application, appeal, objection or notice, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, appeal, objection or notice; and
- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in accordance with regulation 32A that the person wishes to revoke the agreement.”.

3. In regulation 20 (notification of a decision)—

(a) after paragraph (2) insert—

“(2A) Notification in writing of a decision and reasons for the purposes of paragraphs (1) and (2) shall be deemed to have been given to a person for the purposes of this regulation where—

- (a) the Scottish Ministers and the person have agreed that decision and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;
- (b) the decision and reasons are a decision and reasons to which that agreement applies;
- (c) the Scottish Ministers have published the decision and reasons; and
- (d) the person is notified, in a manner for the time being agreed between that person and the Scottish Ministers, of—
  - (i) the publication of the decision and reasons on a website;
  - (ii) the address of the website; and
  - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.”.

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(22) 1971 c. 80.

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4. After regulation 32 insert—

**“Withdrawal of consent to use of electronic communications**

**32A.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

SCHEDULE 4

Article 15

Amendment of The Town and Country Planning (Listed Building and Buildings in Conservation Areas) (Scotland) Regulations 1987

1. In paragraph (1) of regulation 2 (interpretation), after the definition of “Crown land and Crown interest”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(23);”.

2. After regulation 2, insert—

**“2A.—(1)** In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;
- (b) references to forms, plans, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, plan, notice or other document to any other person (“the recipient”).

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

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(23) 2000 C.7.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient—

- (a) 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; or
- (b) at any time during a day which is not a working day, or at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(24)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(6) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.”.

3. After regulation 8 (appeals), insert—

**“Use of electronic communications**

**8A.**—(1) Paragraphs (2) and (3) apply where an electronic communication is used for the purpose of making an application—

- (a) under regulation 3, for listed building consent or conservation area consent; or
- (b) under regulation 4, for the variation or discharge of conditions attached to a listed building consent or conservation area consent.

(2) Paragraph (1) of regulation 3 or, as the case may be, of regulation 4 shall apply as if for “two further copies of the form,” there were substituted “any related”.

(3) The reference to paragraph (3) of regulation 3 to the date when the form and certificate were lodged with the planning authority shall be construed in accordance with regulation 2A(5) above.

(4) In a case to which this paragraph applies, and except where a contrary intention appears, a person making an application, appeal or claim or giving or serving the notice using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to the application, appeal, claim or notice, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, appeal, claim or notice; and
- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in writing that the person wishes to revoke the agreement, and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

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(24) 1971 c. 80.

## SCHEDULE 5

Article 16

Amendment of The Town and Country Planning (Appeals)  
(Written Submissions Procedure) (Scotland) Regulations 1990

1. In regulation 2 (interpretation)—
  - (a) in the definition of “appeals questionnaire” after “Regulations” insert—
 

“, and for this purpose a form is deemed to be supplied where the Scottish Ministers have published it on a website and have notified the planning authority of—

    - (i) publication of the form on the website;
    - (ii) the address of the website; and
    - (iii) the place on the website where the form may be accessed, and how it may be accessed;”.
  - (b) after the definition of “application”, insert—
 

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(25);”.
2. After regulation 2, insert—
 

“**2A.**—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

  - (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
  - (b) references to notices or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by another person for the purpose of fulfilling any requirement in these Regulations to give or send any notice or other document to any other person (“the recipient”).

(3) The requirement shall be deemed to be fulfilled where the form, notice or other document transmitted by means of the electronic communication is—

  - (a) capable of being accessed by the recipient;
  - (b) legible in all material respects; and
  - (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient—

  - (a) at any time before the end of the day which is a working day, it shall be deemed to have been received on that day; or
  - (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act

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(25) 2000 c. 7.



1971(26), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(6) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.”

3. In regulation 3 (application), after paragraph (2) insert–

“(2A) Where an appellant or, as the case may be, the appellant and the planning authority, so informs the Scottish Ministers using electronic communications, the appellant shall be deemed to have agreed–

- (a) to the use of such communications for all purposes relating to that appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications with the appellant is the address incorporated into, or otherwise logically associated with, the appellant’s notice of appeal;
- (c) that the appellant’s deemed agreement under this paragraph shall subsist until the appellant gives notice with regulation 8A that the appellant wishes to revoke the agreement;

and the references in paragraphs (3) and (4) of this regulation to an appeal being disposed of on the basis of written submissions shall not be deemed to preclude the use of electronic communications in accordance with this paragraph and regulation 2A.”

4. In regulation 4 (notice to interested parties) paragraph (1) is amended as follows–

- (a) in sub-paragraph (a), after “by post” insert “or by means of electronic communication”; and
- (b) in sub-paragraph (b), after “by post” insert “or by means of electronic communication”.

5. After regulation 8 insert–

**“Withdrawal of consent to use of electronic communications**

**8A.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing–

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”

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## SCHEDULE 6

Article 17

Amendment of The Town and Country Planning (General Permitted Development) (Scotland) (Order) 1992

1. In paragraph (2) of article 2 (interpretation) after the definition of “dwellinghouse”, insert—
  - ““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(27);”.
2. At the end of article 2, insert—
  - (5) In this Order and in relation to the use of electronic communications or electronic storage for any purpose of this Order which is capable of being carried out electronically—
    - (a) the expression “address” includes any number or address used for the purpose of such communications or storage, except that where this Order imposes any obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
    - (b) references to documents, forms, maps, plans, drawings, certificates or other documents or to copies of such things, include references to such documents or copies of them in electronic form.
  - (6) Paragraphs (7) to (12) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in this Order to give or send any application, notice or other document to any other person (“the recipient”).
  - (7) The requirement shall (except in a case referred to in paragraph (8)) be deemed to be fulfilled where the application, notice, or other document transmitted by the electronic communication 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.
  - (8) The cases are—
    - (a) making a direction under article 4; and
    - (b) giving notice of a direction under article 5.
  - (9) In paragraph (7) “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.
  - (10) Where the electronic communication is received by the recipient—
    - (a) 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; or
    - (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(28), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area in which the electronic communication is received.

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(27) 2000 c. 7.

(28) 1971 c. 80.

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(11) A requirement in this Order that any application, plan, notice, form or other document should be in writing is fulfilled where the document meets the criteria in paragraph (7) and “written” and cognate expressions are to be construed accordingly.

(12) In a case to which this paragraph applies, and except where a contrary intention appears, a person making an application, or giving or serving a notice using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to the application or notice, as the case may be, which are capable of being carried out electronically;
- (b) that the address for that purpose is the address incorporated into, or otherwise logically associated with, the application; and
- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in writing that the person wishes to revoke the agreement, and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

## SCHEDULE 7

Article 18

### Amendment of The Town and Country Planning (General Development Procedure) (Scotland) (Order) 1992

1. In paragraph (2) of article 2 (interpretation)—

- (a) after the definition of “district fishery board”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(29);”;
- (b) for the definition of “local advertisement”, substitute—

““local advertisement means—

  - (a) the publication of a notice in a local newspaper circulating in the locality in which the land to which the application relates is situated; and
  - (b) where the planning authority maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;”.

2. At the end of article 2, insert—

“(4) In this Order and in relation to the use of electronic communications or electronic storage for any purpose of this Order which is capable of being carried out electronically—

- (a) the expression “address” includes any number or address used for the purpose of such communications or storage, except that where this Order imposes any obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to documents, forms, maps, plans, drawings, certificates or other documents, includes references to such documents or copies of them in electronic form.

(5) Paragraphs (6) to (10) apply where an electronic communication is used by a person for the following purposes—

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(29) 2000 c. 7.

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- (a) fulfilling any requirement in this Order to give or send any application, notice or other document to any other person; or
- (b) lodging an application, certificate or other document under article 14(3) with an authority mentioned in that article,

and in those paragraphs, “the recipient” means the person mentioned in sub-paragraph (a) of this paragraph, or the authority mentioned in sub-paragraph (b), as the case may be.

(6) The requirement shall be deemed to be fulfilled where the notice, form, plan or other document is transmitted by the electronic communication 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.

(7) In paragraph (6) “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(8) Where the electronic communication is received by a recipient—

- (a) 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; or
- (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(30)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(9) A requirement in this Order that any application, notice, form or other document should be in writing is fulfilled where the document meets the criteria in paragraph (6) and “written” and cognate expressions are to be construed accordingly.

(10) In a case to which this paragraph applies, and except where a contrary intention appears, a person making an application, or giving or serving a notice or document using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to an application, notice, or document, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, notice or document; and
- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in accordance with article 2A that the person wishes to revoke the agreement.”.

### 3. After article 2 insert—

#### **“Withdrawal of consent to use electronic communications**

**2A.** Where a person is no longer willing to accept the use of electronic communications for any purpose of this Order which is capable of being carried out electronically, that person shall give notice in writing—

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(30) 1971 c. 80.

- (a) withdrawing any address notified to the Scottish Ministers or to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

4. In article 23 (appeals), at the end insert—

“(7) The Scottish Ministers may provide, or arrange provision of, a website for use for such purposes as they think fit which—

- (a) relate to appeals under section 47 of the 1997 Act; and
- (b) are capable of being carried out electronically.

(8) Where a person gives notice of the appeal to the Scottish Ministers using electronic communications, the person shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant’s notice of appeal; and
- (c) that the appellant’s deemed agreement under this paragraph shall subsist until the appellant gives notice in accordance with article 2A that the appellant wishes to revoke the agreement.”.

5. In Schedule 5 to the Order (register of applications) at the end insert—

“7. Where the register kept by a planning authority under this article is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.”.

## SCHEDULE 8

Article 19

### Amendment of The Town and Country Planning Enforcement of Control (No 2) (Scotland) Regulations 1992

1. In paragraph (1) of regulation 2 (interpretation) after the definition of “conservation area enforcement notice”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(31);”.

2. After regulation 2, insert—

“2A.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation

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(31) 2000 c. 7.

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shall not be fulfilled unless the person on whom it is imposed provides a postal address; and

- (b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (6) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement shall be deemed to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient—

- (a) 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; or
- (b) at any time during a day which is not working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(32), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(6) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

**2B.** Where an appellant or, as the case may be, the appellant and the planning authority, so informs the Scottish Ministers using electronic communications, the appellant shall be deemed to have agreed—

- (a) to the use of such communications for all purposes of these Regulations relating to the appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant’s notice of appeal; and
- (c) that the appellant’s deemed agreement under this paragraph shall subsist until the appellant gives notice in accordance with regulation 2C that the appellant wishes to revoke the agreement,

and the references in paragraphs (1) and (2) of this regulation to an appeal being disposed of on the basis of written submissions shall not be deemed to preclude the use of electronic communications in accordance with this paragraph and regulation 2A.

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(32) 1971 c. 80.

### **Withdrawal of consent to use of electronic communications**

**2C.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose, or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

## SCHEDULE 9

Article 20(1)

### Amendment of The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure)(Scotland) Rules 1997

1. In paragraph (1) of rule 3 (interpretation)—
  - (a) after the definition of “document”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(33);”; and
  - (b) in the definition of “appeals questionnaire” after “Rules” insert—

“, and for this purpose a form is deemed to be supplied where the Scottish Ministers have published it on a website and have notified the planning authority of—

    - (i) publication of the form on the website;
    - (ii) the address of the website; and
    - (iii) the place on the website where the form may be accessed, and how it may be accessed;”.
2. After rule 3, insert—

**“3A.—(1)** In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being effected electronically—

  - (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Rules impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
  - (b) references to statements, representations, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement, notice or other document to any other person (“the recipient”).

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(33) 2000 c. 7.



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(3) The requirement shall be deemed to be fulfilled where the statement, notice or other document transmitted by means of the electronic communication is–

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient–

- (a) 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; or
- (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(34)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(6) A requirement in these Rules that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(7) Where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement or document, any such requirement may be complied with by sending one copy only of the statement or other document in question.

(8) In a case to which this paragraph applies, and except where a contrary intention appears, a person making a representation, statement or giving or serving a notice or document using electronic communications shall be deemed to have agreed–

- (a) to the use of such communications for all purposes relating to an application, notice, or document, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, notice or document; and
- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in accordance with rule 24A that the person wishes to revoke the agreement.”.

3. In rule 14 (date and notification of inquiry)–

(a) after paragraph 3 insert–

“(3A) A written notice shall be deemed to have been given by the Scottish Ministers for the purposes of paragraph (3) where they and any person mentioned in that paragraph have agreed that notice of the matters mentioned in that paragraph may instead be accessed by that person via a website, and–

- (a) the notice is a notice to which that agreement applies;
- (b) the Scottish Ministers have published that notice on the website;

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(34) 1971 c. 80.



- (c) not less than 4 weeks before the date fixed by the Scottish Ministers for the holding of the inquiry, the person is notified of—
      - (i) the publication of the notice on a website;
      - (ii) the address of the website; and
      - (iii) the place on the website where the notice may be accessed, and how it may be accessed.”; and
    - (b) in paragraph (4), for the word “paragraph (3)” substitute “paragraphs (3) and (3A)”.
- 4. In rule 12 (service of statements of case etc.)—
  - (a) at the end of paragraph (2) insert—

“(including, in any case in which the planning authority rely on paragraph (2A), the details mentioned in that paragraph)”;
  - (b) after paragraph (2) insert—

“(2A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where the person is notified, in a manner for the time being agreed between that person and a planning authority for that purpose, of—

    - (a) publication on a website of the documents mentioned in that paragraph;
    - (b) the address of the website; and
    - (c) the place on the website where the documents may be accessed, and how they may be accessed.”.
- 5. In rule 22 (notification of a decision)—
  - (a) after paragraph (1) insert—

“(1A) Notification in writing of a decision and reasons shall be deemed to have been given to a person for the purposes of this rule where—

    - (a) the Scottish Ministers and the person have agreed that decisions and reasons required under this rule to be given in writing may instead be accessed by that person via a website;
    - (b) the decision and reasons are a decision and reasons to which that agreement applies;
    - (c) the Scottish Ministers have published the decision and reasons on a website;
    - (d) the person is notified, in a manner for the time being agreed between that person and the Scottish Ministers, of—
      - (i) the publication of the decision and reasons on a website;
      - (ii) the address of the website;
      - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.”;
  - (b) after paragraph (2) insert—

“(2A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where that person is notified of—

    - (i) the publication of the decision and reasons on a website;
    - (ii) the address of the website; and
    - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.”.
- 6. For rule 24 (service of notices by post), substitute—

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**“Service of notices etc.**

**24.** Notices or documents required or authorised to be sent or supplied under these Rules may be sent or supplied—

- (a) by post; or
- (b) by using electronic communications to send or supply the notice or documents, as the case may be, to a person at such address as may for the time being be specified by that person for that purpose.”.

7. After rule 24 insert—

**“Withdrawal of consent to use of electronic communications**

**24A.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Rules, is capable of being carried out using such communications, that person shall give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

SCHEDULE 10

Article 20(2)

Amendment of The Town and Country Planning  
Appeals (Inquiries Procedure) Scotland) Rules 1997

1. In paragraph (1) of rule 3 (interpretation)—

(a) after the definition of “document”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(35);”;

(b) in the definition of “appeals questionnaire” after “Rules” insert—

“, and for this purpose a form is deemed to be supplied where the Scottish Ministers have published it on a website and have notified the planning authority of—

- (i) publication of the form on the website;
- (ii) the address of the website; and
- (iii) the place on the website where the form may be accessed, and how it may be accessed;”.

2. After rule 3, insert—

**“3A.—(1)** In these Rules, and in relation to the use of electronic communications for any purpose of these Rules which is capable of being effected electronically—

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(35) 2000 c. 7.

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- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Rules impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to statements, notices, forms, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement shall be deemed to be fulfilled where the statement, notice, form or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient—

- (a) at any time before the end of the day which is a working day, it shall be deemed to have been received on that day; or
- (b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(36)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(6) A requirement in these Rules that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(7) Where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Rules to give or send any statement or document, any such requirement may be complied with by sending one copy only of the statement or other document in question.

(8) In a case to which this paragraph applies, and except where a contrary intention appears, a person making a statement, representation, or giving or serving a notice or document using electronic communications shall be deemed to have agreed—

- (a) to the use of such communications for all purposes relating to a statement, notice, or document, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the statement, notice or document; and

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(36) 1971 c. 80.

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- (c) that the person’s deemed agreement under this paragraph shall subsist until the person gives notice in accordance with rule 24A that the person wishes to revoke the agreement.”.
- 3. In rule 12 (precognitions) after paragraph (7) insert–
  - “(7A) For the purposes of the previous paragraph an opportunity to inspect shall be deemed to have been afforded to a person where the person is notified, in a manner agreed between that person and the planning authority for that purpose, of –
    - (a) publication on a website of the documents mentioned in that paragraph;
    - (b) the address of the website;
    - (c) the place on the website where the documents may be accessed, and how they may be accessed.”.
- 4. In rule 13 (service of statements of case etc.)–
  - (a) at the end of paragraph (2) insert–
    - “(including, in any case in which the planning authority rely on paragraph (2A), the details mentioned in that paragraph).”.
  - (b) after paragraph (2) insert–
    - “(2A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where the person is notified, in a manner for the time being agreed between that person and the planning authority for that purpose, of–
      - (a) publication on a website of the documents mentioned in that paragraph;
      - (b) the address of the website; and
      - (c) the place on the website where the documents may be accessed, and how they may be accessed.”.
- 5. In rule 15 (date and notification of inquiry)–
  - (a) after paragraph 3 insert–
    - “(3A) A written notice shall be deemed to have been given by the Scottish Ministers for the purposes of paragraph (3) where they and any person mentioned in that paragraph have agreed that notice of the matters mentioned in that paragraph may instead be accessed by that person via a website, and–
      - (a) the notice is a notice to which that agreement applies;
      - (b) the Scottish Ministers have published that notice on the website;
      - (c) not less than 4 weeks before the date fixed by the Scottish Ministers for the holding of the inquiry, the person is notified of–
        - (i) the publication of the notice on a website;
        - (ii) the address of the website; and
        - (iii) the place on the website where the notice may be accessed, and how it may be accessed.”; and
    - (b) in paragraph (4), for “paragraph (3)” substitute “paragraphs (3) and (3A)”.
- 6. In rule 22 (notification of a decision)–
  - (a) after paragraph (1) insert–
    - “(1A) Notification in writing of a decision and reasons shall be deemed to have been given to a person for the purposes of this rule where–

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- (a) the Scottish Ministers and the person have agreed that decisions and reasons required under this rule to be given in writing may instead be accessed by that person via a website;
  - (b) the decision and reasons are a decision and reasons to which that agreement applies;
  - (c) the Scottish Ministers have published the decision and reasons on a website;
  - (d) the person is notified, in a manner for the time being agreed between that person and the Scottish Ministers, of–
    - (i) the publication of the decision and reasons on a website;
    - (ii) the address of the website;
    - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.”;
- (b) after paragraph (3) insert–
- “(3A) For the purposes of the previous paragraph an opportunity shall be deemed to have been afforded to a person where that person is notified of–
- (i) the publication of the decision and reasons on a website;
  - (ii) the address of the website;
  - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.”.

7. For rule 24 (notices by post), substitute–

**“Service of notices etc.**

**24.** Notices of documents required or authorised to be sent or supplied under these Rules may be sent or supplied–

- (a) by post; or
- (b) by using electronic communications to send or supply the notice or document, as the case may be, to a person at such address as may for the time being be specified by that person for that purpose.”.

8. After rule 24 insert–

**“Withdrawal of consent to use of electronic communications**

**24A.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Rules, is capable of being carried out using such communications, that person shall give notice in writing–

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”.

## SCHEDULE 11

Article 21

## Amendment of The Environmental Impact Assessment (Scotland) Regulations 1999

1. In paragraph (1) of regulation 2 (interpretation), after the definition of “EIA development”, insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(37);”.

2. After regulation 2, insert—

“2A.—(1) In Part II of these Regulations, and in relation to the use of electronic communications for any purpose in Part II of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to applications, statements, notices, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement shall be deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are –

- (a) serving any notice under regulation 13;
- (b) any requirement under Chapter 9 of these Regulations;
- (c) any requirement under regulation 40 including submitting information to an EEA State; and
- (d) any requirement under regulation 41 including submitting representations.

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient—

- (a) 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;
- (b) at any time during a day which is not working day, it shall be deemed to have been received on the next working day,

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(37) 2000 c. 7.

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and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(38), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement or document, any such requirement may be complied with by sending one copy only of the statement or other document in question.

**2B.** Where an applicant or appellant, as the case may be, so informs the Scottish Ministers or, as the case may be, the planning authority, using electronic communications, the applicant or appellant shall be deemed to have agreed–

- (a) to the use of such communications for all purposes of these Regulations relating to a request for a screening opinion, application, notice or appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the request, application, notice or appeal; and
- (c) that the applicant or appellant’s deemed agreement under this paragraph shall subsist until the applicant or appellant gives notice in accordance with article (2C) that the applicant or appellant wishes to revoke the agreement.

#### **Withdrawal of consent to use of electronic communications**

**2C.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person shall give notice in writing–

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.”

**3.** In regulation 13 (publicity for environmental statements), in paragraph (3)(c)(ii), after “names and”, insert “postal”.

**4.** In regulation 21 (duties to inform the public and the Scottish Ministers of final decisions), after paragraph (3) insert–

“(4) Notification in writing of a decision shall be deemed to have been given to a person for the purposes of this regulation where–

- (a) the planning authority or the Scottish Ministers, as the case may be, and the person have agreed that a decision and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;

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- (b) the decision is a decision and reasons to which that agreement applies;
  - (c) the planning authority have published the decision on a website; and
  - (d) the person is notified, in a manner for the time being agreed between that person and the planning authority, of—
    - (i) the publication of the decision and reasons on a website;
    - (ii) the address of the website; and
    - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.”.
5. In regulation 38 (public inspection of documents), after paragraph (1) insert—
- “(1A) Where the register kept by a planning authority under this regulation is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.”.
6. For regulation 42, substitute—
- “42. Subject to paragraph (2) above, any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 271 (service of notices).”.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 8 of the Electronic Communications Act 2000 empowers the Scottish Ministers, with the consent of the Secretary of State (defined in section 9 of that Act) by order to modify any enactment or subordinate legislation for the purpose of authorising or facilitating the use of electronic communications. This Order modifies legislation relating to planning.

Articles 3 to 6 modify certain provisions of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”).

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.

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 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 effected. 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 (see section 79(1)).

Article 6 inserts definitions relating to electronic communication into section 277 (interpretation) of the 1997 Act. Consequential upon the insertion of a new definition of “address”, article 5 makes minor amendments to sections 125(3) and 272(2) of the 1997 Act, to ensure that requirements in those sections to give an address can be fulfilled only by giving a postal, and not an electronic,



address. Article 6 also makes provision as to when electronic communications are deemed to have been received.

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 those Schedules to a planning authority in relation to minerals.

Articles 9 to 11 modify certain provisions of the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”).

Article 9 makes parallel provision, in relation to section 35 of that Act, to that made by article 3 in relation to section 130 of the 1997 Act.

Article 10 makes amendments to section 79 of the Listed Buildings Act, consequential upon the amendments to section 271 of the 1997 Act. In particular it disapplies the use of electronic communications for service of certain notices, where criminal sanctions attach to failure to comply with those notices.

Article 11 makes amendments to section 81 (the interpretation section) of the Listed Buildings Act which are parallel to those made by article 6 in relation to the equivalent section in the 1990 Act.

Articles 12 to 21 give effect to the Schedules to this Order.

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.

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.

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 those Regulations, subject to specified conditions.

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 the Regulations, again subject to specified conditions.

Schedule 5 amends the Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990, to authorise the use of electronic communications for giving statements or notices under those Regulations, subject to specified conditions.

Schedule 6 amends to the Town and Country Planning (General Permitted Development) (Scotland) Order 1997, to authorise the use of electronic communications for the purpose of certain applications under that Order, subject to specified conditions.

Schedule 7 makes provision amending the Town and Country Planning (Scotland) (General Development Procedure) (Scotland) Order 1997, so as 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.

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 in each case to specified conditions.

Schedules 9 and 10 amend rules governing the procedure for the conduct of certain inquiries under the 1997 Act. 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 each case, the amendments

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facilitate the use of electronic communications for service of notices and other documents, subject to conditions; authorise the supply of certain forms electronically by the Scottish Ministers; facilitate the use of websites for publication of certain documents and notices, again subject to certain specified conditions; authorise the use of electronic communications for notification of certain decisions, where the person to whom notification is to be given has consented; and, where electronic communications are used for certain purposes, relax the requirements for multiple copies of documents to be supplied.

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 subject to specified conditions under those Regulations; and to facilitate the use of websites by the Scottish Ministers or planning authorities and, where electronic communications are used for certain purposes, relax the requirements for multiple copies of documents to be supplied.