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STATUTORY INSTRUMENTS

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**1992 No. 2083 (S.212)**

**TOWN AND COUNTRY PLANNING, SCOTLAND**

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

<i>Made</i>	- - - -	<i>31st August 1992</i>
<i>Laid before Parliament</i>		<i>4th September 1992</i>
<i>Coming into force</i>	- -	<i>25th September 1992</i>

The Secretary of State, in exercise of the powers conferred on him by sections 21(2)(b) and (3), 31(2), (3) and (5) as read with section 90B(6), 90B(1), (2), (3), (4) and (8) and 273(3) of the Town and Country Planning (Scotland) Act 1972(1) and all other powers enabling him in that behalf, hereby makes the following Order —

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 1992 and shall come into force on 25th September 1992.

(2) In this Order “the 1992 Order” means the Town and Country Planning (General Development Procedure) (Scotland) Order 1992(2).

**Amendments to the 1992 Order**

2. Subject to article 3, the 1992 Order shall have effect subject to the amendments set out in the Schedule to this Order.

**Savings**

3. The amendments made to the 1992 Order by this Order, as contained in the Schedule to this Order, shall have no effect in relation to any applications made before the coming into force of this Order under sections 51 or 90 of the Town and Country Planning (Scotland) Act 1972.

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(1) 1972 c. 52; section 21 was amended by the Local Government (Scotland) Act 1973 (c. 65); section 172(2), and subsections (1) to (3) of section 21 were amended by the Planning and Compensation Act 1991 (c. 34), Schedule 13, paragraph 5; section 31(2) was amended by the Local Government (Scotland) Act 1973, section 172(2) and by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 34, Part XI; section 31(5) was added by the Local Government and Planning (Scotland) Act 1982 (c. 34), Schedule 2, paragraph 9; section 90B was inserted by section 42 of the Planning and Compensation Act 1991.

(2) S.I.1992/224.

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St. Andrew's House,  
Edinburgh  
31st August 1992

*Allan Stewart*  
Parliamentary Under Secretary of State, Scottish  
Office

## SCHEDULE

Article 2

### Amendments to the 1992 Order

1. Articles 7, 22(2) and 23(1)(b) and (4) shall be omitted.
2. The following shall be substituted for article 10:—

“The register of applications for planning permission which every planning authority is required to keep under section 31(2) of the Act, shall be kept in the manner specified in Schedule 5.”.
3. For the words “articles 3 to 7” where they occur in articles 12(1) and (4), 14(1) and (2), and 22(3), there shall be substituted “articles 3 to 6”.
4. In place of articles 26 to 31 in Part 5 the following shall be substituted:—

## “PART 5

### CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

#### **Application for certificate of lawful use or development**

**26.** An application for a certificate under section 90(1) or 90A(1) of the Act<sup>(3)</sup> shall be in writing and shall, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the following information:—

- (a) the paragraph of section 90(1) or, as the case may be, section 90A(1), under which the application is made;
- (b) in the case of an application under section 90(1), the date on which the use, operations or other matter began or, in the case of operations carried out without planning permission, the date on which the operations were substantially completed;
- (c) in the case of an application under section 90(1)(a), the name of any use class specified in an order under section 19(2)(f) of the Act which the applicant considers applicable to the existing use;
- (d) in the case of an application under section 90(1)(c), sufficient details of the relevant planning permission to enable it to be identified;
- (e) in the case of an application under section 90A(1)(a), the use of the land at the date of the application (or, when the land is not in use at that date, the purpose for which it was last used) and the name of any use class specified in an order under section 19(2)(f) of the Act which the applicant considers applicable to the proposed use;
- (f) the applicant’s reasons, if any, for regarding the use, operations or other matter described in the application as lawful; and
- (g) such other information as the applicant considers to be relevant to the application.

#### **Documentation accompanying applications**

**27.—**(1) An application to which article 26 applies shall be accompanied by —

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(3) 1972 c. 52; section 90 and 90A were substituted by section 42(1) of the Planning and Compensation Act 1991.

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- (a) a plan identifying the land to which the application relates;
  - (b) such evidence verifying the information included in the application as the applicant can provide; and
  - (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
- (2) Where such an application specifies two or more uses, operations or other matters, the plan which accompanies the application shall indicate to which part of the land each such use, operation or matter relates.

### **Procedure on receipt of application**

**28.**—(1) When a planning authority receive an application to which article 26 applies and any fee required to be paid in respect of the application, they shall, as soon as reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Part I of Schedule 11.

(2) Where, after sending an acknowledgement as required by paragraph (1), the planning authority consider that the application is invalid by reason of the failure to comply with articles 26 and 27 or any other statutory requirement, they shall, as soon as practicable, notify the applicant that his application is invalid.

(3) The planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.

(4) The planning authority shall give the applicant written notice of their decision within a period of 2 months beginning with the date of receipt by the authority of the application and any fee required to be paid in respect of the application or within such extended period as may be agreed upon in writing between the applicant and the authority.

(5) For the purpose of calculating the appropriate period specified in paragraph (4), where any fee required has been paid by a cheque which is subsequently dishonoured, the time between the date when the authority send the applicant written notice of the dishonouring of the cheque and the date when the authority receive the full amount of the fee shall not be taken into account.

(6) Where an application is refused in whole or in part (including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that description), the notice of decision shall be in writing and shall—

- (a) state the authority's reasons for their decision; and
- (b) include a statement to the effect that the applicant may appeal to the Secretary of State under section 91 of the Act(4).

(7) A certificate under section 90 or 90A of the Act shall be in the form set out in Part II of Schedule 11.

(8) Article 22(3) (furnishing of information by planning authority to Secretary of State) shall apply to applications for a certificate to which article 26 applies as it applies to applications for planning permission.

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(4) 1972 c. 52; section 91 was amended by the Local Government (Scotland) Act 1973, section 172(2) and the Planning and Compensation Act 1991, Schedule 13, paragraph 26.

### **Revocation of certificate of lawful use or development**

**29.**—(1) Where a planning authority propose to revoke a certificate issued under section 90 or 90A of the Act in accordance with section 90B(7) of the Act, they shall, before they revoke the certificate, give notice of that proposal to —

- (a) the owner of the land affected;
- (b) the occupier of the land affected;
- (c) any other person who will in their opinion be affected by the revocation; and
- (d) in the case of a certificate issued by the Secretary of State under section 91 of the Act, the Secretary of State.

(2) A notice issued under paragraph (1) shall invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice and the authority shall not revoke the certificate until all such periods allowed for making representations have expired.

(3) An authority shall give written notice of any revocation under section 90B(7) of the Act to every person on whom notice of the proposed revocation was served under paragraph (1).”.

**5.** In Schedule 5—

- (a) In the side heading substitute a reference to “Article 10” in place of “Articles 10 and 28”;
- (b) In the heading delete the words “AND 51(2)”;
- (c) In place of paragraphs 4 and 5 the following shall be substituted:—

“**4.** The register kept by the planning authority shall also contain the following information in respect of every application for a certificate under section 90 or 90A of the Act submitted to the authority:—

- (a) the name and address of the applicant;
- (b) the date of the application;
- (c) the address or location of the land to which the application relates;
- (d) the description of the use, operations or other matter included in the application;
- (e) the decision (if any) of the planning authority in respect of the application and the date of such decision; and
- (f) the reference number, date and effect of any decision of the Secretary of State on an appeal in respect of the application.”.

**6.** In place of Schedule 11 the following shall be substituted:—

“SCHEDULE 11

## **PART I**

### **Town and Country Planning (Scotland) Act 1972**

Form of acknowledgement of application for Certificate of Lawful Use or Development

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Your application dated ..... was received on ..... (a).

Examination of the application and accompanying plans and documents to ascertain whether they comply with the requirements set out in articles 26 and 27 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992(a) as amended or any other statutory requirements has not been completed. If, on further examination, it is found that the application is invalid for failure to comply with such requirements (or for any other reason) a further communication will be sent to you as soon as possible.

If the authority require further information to enable them to deal with your application, they will notify you in writing.

The planning authority are required to notify you of their decision within 2 months of receipt of your application and the appropriate fee (if any), or within such extended period as may be agreed in writing between you and the planning authority.

If the planning authority decide to refuse your application, in whole or in part, you may appeal to the Secretary of State.

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a) Insert date on which application was received.

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(a) S.I. 1992/224.

## PART II

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972:  
SECTION 90 AND 90A (as substituted by section 42 of the Planning and  
Compensation Act 1991) TOWN AND COUNTRY PLANNING (GENERAL  
DEVELOPMENT PROCEDURE) (SCOTLAND) ORDER 1992: ARTICLE 28(7)  
**Certificate of Lawful Use or Development**

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The [a] \_\_\_\_\_ Council hereby certify that on [b] \_\_\_\_\_ the use\*/operations\*/matter\* described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged\*/hatched\*/coloured\* [c] \_\_\_\_\_ on the plan attached to this certificate was\*/would have been\* lawful within the meaning of section 90 of the Town and Country Planning (Scotland) Act 1972, for the following reason(s)

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Signed \_\_\_\_\_ (Council's proper officer).

On behalf of \_\_\_\_\_ Council

Date \_\_\_\_\_

\*Delete where inappropriate

**First Schedule**

[d]

**Second Schedule**

[e]

**Notes**

1. This certificate is issued solely for the purpose of section 90\*/90A\* of the Town and Country Planning (Scotland) Act 1972.

2. It certifies that the use\*/operations\*/matter\* described in the First Schedule taking place on the land specified in the Second Schedule was\*/would have been\* lawful, on the specified date and, thus, was not\*/would not have been\* liable to enforcement action under section 84 of the 1972 Act on that date.

3. This certificate applies only to the extent of the use\*/operations\*/matter\* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use\*/operations\*/matter\* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

\*4. The effect of the certificate is also qualified by the proviso in section 90A(4) of the 1972 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

\* Delete where inappropriate.

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**Insert:**

[a] name of Council

[b] date of application to the Council

[c] colour used on the plan

[d] full description of use, operations or other matter, if necessary, by reference to details in the application or submitted plans, including where appropriate a reference to the use class of any order made under section 19(2)(f) of the Town and Country Planning (Scotland) Act 1972 within which the certificated use falls

[e] address or location of the site.

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## **EXPLANATORY NOTE**

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

This Order amends the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 by making provision in respect of certificates of lawful use or development, which were introduced by the Planning and Compensation Act 1991 and which now replace determinations as to whether planning permission is required and established use certificates.

The main amendments, subject to the savings provision set out in article 3, are:

- (a) the prescription of procedural and other requirements in relation to certificates of lawful use or development (paragraph 4 of the schedule);
- (b) amendment of the 1992 Order, consequential on the repeal by the 1991 Act of the provisions in the Town and Country Planning (Scotland) Act 1972, relating to determinations as to whether planning permission is required and established use certificates.