
STATUTORY INSTRUMENTS

1994 No. 3294 (S.193)

TOWN AND COUNTRY PLANNING, SCOTLAND

The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No.3) Order 1994

<i>Made</i>	- - - -	<i>15th December 1994</i>
<i>Laid before Parliament</i>		<i>29th December 1994</i>
<i>Coming into force</i>	- -	<i>3rd February 1995</i>

The Secretary of State, in exercise of the powers conferred on him by sections 21 and 273 of the Town and Country Planning (Scotland) Act 1972⁽¹⁾ and of 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 Permitted Development) (Scotland) Amendment (No.3) Order 1994 and shall come into force on 3rd February 1995.

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

Amendment of interpretation article

2. In article 2 of the 1992 Order after the definition of “private way” insert—

““Procedure Order” means the Town and Country Planning (General Development Procedure) (Scotland) Order 1992⁽³⁾.”.

Permitted development

3. In article 3 of the 1992 Order—

(1) 1972 c. 52; section 21 was extended by the Local Government, Planning and Land Act 1980 (c. 65), section 148(2) and amended by the Telecommunications Act 1984 (c. 12), Schedule 4, paragraph 54(2); section 21(1) to (3) was substituted by the Planning and Compensation Act 1991 (c. 34), Schedule 13, paragraph 5; section 21(5) was amended by the Local Government (Scotland) Act 1973 (c. 65), section 172(2).

(2) S.I. 1992/223; amended by S.I. 1992/1078 and 2084, 1993/1036 and 1994/1442 and 2586 and as read with Part IV of S.I. 1994/2716.

(3) S.I. 1992/224; amended by S.I. 1992/2083, 1993/1039 and 1994/2585.

- (a) in paragraph (1) after “Subject to the provisions of this Order” insert “and regulations 60 to 63 of the Conservation (Natural Habitats, & c.) Regulations 1994(4)”;
- (b) in paragraph (5)(a) for the words “Parts 9 and 11 and class 31” substitute “Parts 9, 11 and 24 and Class 31”; and
- (c) after paragraph (5)(b) insert—
 - “; or
 - (c) any development, other than development permitted by Part 23 of Schedule 1, which requires or involves the demolition of a building but in this paragraph “building” does not include part of a building.”.

Development within the curtilage of a dwellinghouse

4.—(1) In Class 1 in Part 1 of Schedule 1 to the 1992 Order, for sub-paragraph (2)(a)(i) substitute—

“(i) in the case of a terrace house or of a dwellinghouse in a conservation area or within the curtilage of a listed building by more than 16 square metres or 10%, whichever is the greater;”.

(2) In Class 3 in Part 1 of Schedule 1 to the 1992 Order—

(a) for sub-paragraph (2)(b) substitute—

“(b) it consists of the provision, improvement or other alteration of a building or enclosure where as a result any part of such building or enclosure which is to be provided, improved or otherwise altered would be both less than 20 metres from any road which bounds the curtilage and nearer to the road than the part of the original dwellinghouse nearest to it;” and

(b) for sub-paragraph (2)(c) substitute—

“(c) it consists of the provision, improvement or other alteration of a building where the building to be provided, improved or otherwise altered would have a floor area greater than 4 square metres and any part of it would be within 5 metres of any part of the dwellinghouse;”.

Agricultural buildings and operations

5. In Class 18 in Part 6 of Schedule 1 to the 1992 Order—

(a) for sub-paragraph (4)(a)(i) substitute—

“(i) the developer shall, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building;” and

(b) for sub-paragraph (5)(a) substitute—

“(a) the area of 0.4 hectares shall comprise one piece of land except within the areas of the following planning authorities, namely Argyll and Bute District Council, Badenoch and Strathspey District Council, Caithness District Council, Inverness District Council, Lochaber District Council, Orkney Islands Council, Ross and Cromarty District Council, Shetland Islands Council, Skye and Lochalsh District Council, Sutherland District Council and Western Isles Islands Council, where the area of 0.4 hectares may be calculated by adding together the areas of separate parcels of land;”.

Forestry buildings and operations

6. In Class 22 in Part 7 of Schedule 1 to the 1992 Order, for sub-paragraph (3)(a)(i) substitute—
- “(i) the developer shall, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building;”.

Development by statutory undertakers

- 7.—(1) In Class 34 in Part 13 of Schedule 1 to the 1992 Order, in sub-paragraph (1) for the word “**occupational**” substitute the word “**operational**”.

- (2) In Class 39 in Part 13 of Schedule 1 to the 1992 Order, for sub-paragraph (3)(c) substitute—

- “(c) in the case of any development referred to in sub-paragraph (1)(e)—
- (i) the public gas supplier shall, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building;
 - (ii) the application shall be accompanied by a written description of the proposed development and the materials to be used and a plan indicating the site together with any fee required to be paid;
 - (iii) the development shall not be begun before the occurrence of one of the following:
 - (aa) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (bb) where the planning authority give the applicant notice within 28 days following the date of receiving his application of their determination that such prior approval is required, the giving of such approval;
 - (cc) the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
 - (iv) the development shall, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (aa) where prior approval is required, in accordance with the details approved;
 - (bb) where prior approval is not required, in accordance with the details submitted with the application;
 - (v) the development shall be carried out—
 - (aa) where approval has been given by the planning authority, within a period of five years from the date on which approval was given;
 - (bb) in any other case, within a period of five years from the date on which the planning authority were given the information referred to in sub-paragraph (c)(ii).”.

- (3) In Class 40 in Part 13 of Schedule 1 to the 1992 Order, for sub-paragraph (3)(d) substitute—

- “(d) in the case of any development referred to in sub-paragraph (1)(e)—
- (i) the statutory undertaker shall, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the

- authority will be required to the siting, design and external appearance of the building;
- (ii) the application shall be accompanied by a written description of the proposed development and the materials to be used and a plan indicating the site together with any fee required to be paid;
 - (iii) the development shall not be begun before the occurrence of one of the following:
 - (aa) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (bb) where the planning authority give the applicant notice within 28 days following the date of receiving his application of their determination that such prior approval is required, the giving of such approval;
 - (cc) the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
 - (iv) the development shall, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (aa) where prior approval is required, in accordance with the details approved;
 - (bb) where prior approval is not required, in accordance with the details - submitted with the application;
 - (v) the development shall be carried out—
 - (aa) where approval has been given by the planning authority, within a period of five years from the date on which approval was given;
 - (bb) in any other case, within a period of five years from the date on which the planning authority were given the information referred to in subparagraph (d)(ii).”.

Aviation Development

8. For Class 52 in Part 14 of Schedule 1 to the 1992 Order, substitute—

“Class 52. The use by a relevant airport operator of buildings within the perimeter of a relevant airport for purposes connected with air transport services or other flying activities at that airport.”.

Demolition of buildings

9. After Part 22 of Schedule 1 to the 1992 Order insert—

“PART 23

DEMOLITION OF BUILDINGS

Class 70.—(1) A building operation consisting of the demolition of a building.

- (2) Development is not permitted by this class if—

- (a) a building has been rendered unsafe or uninhabitable by the action or inaction of any person having an interest in the land on which the building stands; and

- (b) it is practicable to secure safety or health by works of repair or works for affording temporary support.
- (3) Development is permitted by this class subject to the following conditions:—
 - (a) where demolition of the building is urgently necessary in the interests of safety or health the developer shall, as soon as reasonably practicable, give the planning authority a written justification for the demolition;
 - (b) where the demolition does not fall within condition (a) and is not excluded demolition—
 - (i) the developer shall, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required to the method of the proposed development and any proposed restoration of the site;
 - (ii) the application shall be accompanied by a written description of the proposed development, a certificate stating that neighbour notification procedure has been carried out in accordance with sub-paragraph (iii) below and any fee required to be paid;
 - (iii) the applicant shall comply with the neighbour notification procedure set out in article 9 of the Procedure Order, with any necessary modifications, and the certificate referred to in sub-paragraph (ii) above shall be in the appropriate form set out in Schedule 2 to the Procedure Order with any necessary modifications;
 - (iv) the development shall not be begun before the occurrence of one of the following:—
 - (aa) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (bb) where the planning authority give the applicant notice within 28 days following the date of receiving his application of their determination that such prior approval is required, the giving of such approval;
 - (cc) the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
 - (v) the development shall, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (aa) where prior approval is required, in accordance with the details approved;
 - (bb) where prior approval is not required, in accordance with the details submitted with the application;
 - (vi) the development shall be carried out—
 - (aa) where approval has been given by the planning authority, within a period of five years from the date on which approval was given;
 - (bb) in any other case, within a period of five years from the date on which the planning authority were given the information referred to in sub-paragraph (b)(ii).

Interpretation of Part 23

For the purposes of Part 23—

“building” does not include part of a building;

“excluded demolition” means demolition—

- (a) on land which is the subject of a planning permission for the redevelopment of the land—
 - (i) granted under Part III of the Act (except under article 3 of, and this Schedule to, this Order), or
 - (ii) deemed to be granted under that Part of that Act,where the demolition is necessary in order to implement that planning permission, or
- (b) required or permitted to be carried out by or under any enactment, or
- (c) required to be carried out by any provision of an agreement made under section 50 of the Act.”.

Toll road facilities

10. After Part 23 of Schedule 1 to the 1992 Order as inserted by article 9 of this Order insert—

“PART 24

TOLL ROAD FACILITIES

Class 71.—(1) Development consisting of—

- (a) **the setting up and the maintenance, improvement or other alteration of facilities for the collection of tolls;**
 - (b) **the creation of a hard surface to be used for the parking of vehicles in connection with the use of such facilities.**
- (2) Development is not permitted by this class if—
- (a) it is not located within 100 metres (measured along the ground) of the boundary of a toll road;
 - (b) the height of any building or structure would exceed—
 - (i) 7.5 metres excluding any rooftop structure; or
 - (ii) 10 metres including any rooftop structure;
 - (c) the aggregate floor area at or above ground level of any building or group of buildings within a toll collection area, excluding the floor area of any toll collection booth, would exceed 1500 square metres.
- (3) Development is permitted by this class subject to the following conditions:—
- (a) the developer shall, before beginning the development, apply to the planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the facilities for the collection of tolls;
 - (b) the application shall be accompanied by a written description of the proposed development and the materials to be used together with plans and elevations, and any fee required to be paid;

- (c) the development shall not be begun before the occurrence of one of the following:
 -
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (ii) where the planning authority give the applicant notice within 28 days following the date of receiving his application of their determination that such prior approval is required, the giving of such approval;
 - (iii) the expiry of 28 days following the date on which the application was received by the planning authority without the planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
- (d) the development shall, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) where prior approval is required, in accordance with the details approved;
 - (ii) where prior approval is not required, in accordance with the details submitted with the application;
- (e) the development shall be carried out—
 - (i) where approval has been given by the planning authority, within a period of five years from the date on which approval was given;
 - (ii) in any other case, within a period of five years from the date on which the planning authority were given the information referred to in subparagraph (3)(b).

Interpretation of Part 24

For the purposes of Part 24—

“facilities for the collection of tolls” means such buildings, structures, or other facilities as are reasonably required for the purpose of or in connection with the collection of tolls in pursuance of a toll order;

“ground level” means the level of the surface of the ground immediately adjacent to the building or group of buildings in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it;

“rooftop structure” means any apparatus or structure which is reasonably required to be located on and attached to the roof, being an apparatus or structure which is—

- (a) so located for the provision of heating, ventilation, air conditioning, water, gas or electricity;
- (b) lift machinery; or
- (c) reasonably required for safety purposes;

“toll” means a toll which may be charged pursuant to a toll order;

“toll collection area” means an area of land where tolls are collected in pursuance of a toll order, and includes any facilities for the collection of tolls;

“toll collection booth” means any building or structure designed or adapted for the purpose of collecting tolls in pursuance of a toll order;

“toll road” means a road which is the subject of a toll order; and

“toll order” has the same meaning as in Part II of the New Roads and Street Works Act 1991(5).”.

Bad neighbour development

11. For paragraph (4) of Schedule 2 to the 1992 Order substitute—

“(4) the construction or use of buildings for any of the following purposes:—

bingo hall

building for indoor games

casino

cinema

dancehall

funfair

gymnasium (not forming part of a school, college or university)

hot food shop

licensed premises

music hall

skating rink

swimming pool

theatre, or

Turkish or other vapour or foam bath;”.

St Andrew’s House,
Edinburgh
15th December 1994

Allan Stewart
Parliamentary Under Secretary of State, Scottish
Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

The main changes are:

- (a) Classes 39 and 40 of Schedule 1 are amended to require gas and electricity undertakers to apply for a determination as to whether the prior approval of the planning authority is required for the siting, design and external appearance of a building solely for the protection of plant or machinery;
- (b) a new Part 23 is added to Schedule 1 to grant permitted development rights for the demolition of buildings which are not excluded from these controls by the Town and Country Planning (Demolition which is not Development) (Scotland) Direction 1994. Conditions are attached—
 - (i) where demolition is urgently necessary in the interests of health and safety; and
 - (ii) where demolition is not on land which has planning permission for redevelopment or is not required or permitted by or under any enactment or is not required by an agreement under section 50 of the Town and Country Planning (Scotland) Act 1972. Where the development falls within (ii) above, the developer must apply for a determination as to whether the prior approval of the planning authority is required for the method of the proposed demolition and any proposed restoration of the site;
- (c) a new Part 24 is added to Schedule 1 to grant permitted development rights for the setting up, maintenance, improvement or other alteration of facilities for the collection of tolls. Conditions are attached requiring the developer to apply for a determination as to whether the prior approval of the planning authority is required for the siting, design and external appearance of the proposed toll collection facilities.

A number of minor consequential and technical changes are also made.