SCOTTISH STATUTORY INSTRUMENTS

# 2011 No. 378

# TOWN AND COUNTRY PLANNING

## The Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2011

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| *Made - - - -* | *27th October 2011* |
| *Laid before the Scottish Parliament* | *31st October 2011* |
| *Coming into force - -* | *1st December 2011* |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997(**a**) and sections 18, 19, 35, 36 and 82 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(**b**) and all other powers enabling them to do so.

### Citation and commencement

**1.** These Regulations may be cited as the Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2011 and come into force on 1st December 2011.

### Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2008

**2.** The Town and Country Planning (Appeals) (Scotland) Regulations 2008(**c**) are amended in accordance with regulations 3 to 12.

### Amendment of regulation 1 (citation, commencement and application)

**3.** In regulation 1 (citation, commencement and application)—

(a) after paragraph (2) insert—

"(2A) These Regulations apply as specified in paragraph (5) to appeals made under—

(a) section 18(1) of the Listed Buildings Act (appeals against refusal of or conditional consent to applications for listed building consent or against refusal of approval required by a condition);

(b) section 18(2) of the Listed Buildings Act (appeals in default of decision on application for listed building consent or for approval required by a condition);

(**a**) 1997 c.8. Section 275A was inserted by section 52 of the Planning etc. (Scotland) Act 2006 (asp 17) ("the 2006 Act"). Sections 267 and 275 were amended by sections 19(5) and (6) and 54(16) respectively of the 2006 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(**b**) 1997 c.9. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Section 81(1) defines "prescribed". Section 82 is amended by section 30 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3).

(**c**) S.S.I. 2008/434: amended by S.S.I. 2009/220 and 2011/138.

(c) section 18(1) and (2) of the Listed Buildings Act as applied by—

(i) section 17 of that Act (applications for variation or discharge of conditions); or

(ii) section 66 of that Act (control of demolition of buildings in conservation areas);

(d) section 35 of the Listed Buildings Act (appeals against listed building enforcement notices); and

(e) section 35 of the Listed Buildings Act as applied by section 66 of that Act (appeals against enforcement notices in respect of the demolition of buildings in conservation areas),

where notice of appeal is given to the Scottish Ministers under section 19(1) or 35(2) of the Listed Buildings Act, as the case may be, on or after 1st December 2011.".

(b) for paragraph (3)(b) substitute—

"(b) apply to appeals under sections 130, 169 and 180 of the Act in accordance with regulation 13(5);"; and

(c) after paragraph (4) insert—

"(5) These Regulations apply—

(a) to a delegated appeal under section 18 of the Listed Buildings Act in accordance with regulation 15A(4);

(b) to an appeal under section 35 of the Listed Buildings Act in accordance with regulation 13(5); and

(c) to a non-delegated appeal in accordance with regulation 18.

(6) These Regulations apply in accordance with regulation 17 to applications referred to the Scottish Ministers following a direction under section 11(1) (reference of certain applications to the Scottish Ministers) of the Listed Buildings Act given on or after 1st December 2011.".

**Amendment of regulation 2 (interpretation)**

**4.** In regulation 2 (interpretation)—

(a) in the definition of "appellant" after "Act" insert "or section 19 or 35 of the Listed Buildings Act";

(b) in the definition of "appointed person" after "Act" insert "or paragraph 1 of Schedule 3 to the Listed Buildings Act";

(c) in the definition of "delegated appeal" after "Act" insert "or Schedule 3 to the Listed Buildings Act";

(d) for the definition of "inquiry session" substitute—

""inquiry session" means a local inquiry held or to be held under—

(a) section 265 of the Act;

(b) section 265 of the Act as applied by section 79(1) of the Listed Buildings Act;

(c) paragraph 6 of Schedule 4 to the Act; or

(d) paragraph 6 of Schedule 3 to the Listed Buildings Act,

into matters specified in a procedure notice given under rule 1(1) of the Inquiry Session Rules;";

(e) in the definition of "interested party"—

(i) omit "and" after paragraph (a)(ii);

(ii) in paragraph (b) after "Act" insert "or section 35 of the Listed Buildings Act"; and

(iii) after paragraph (b) insert—

"and

(c) in the case of an appeal under section 18 of the Listed Buildings Act any authority or person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application;";

(f) after the definition of "interested party" insert—

""Listed Buildings Act" means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(**a**);";

(g) in the definition of "non-delegated appeal" for "of paragraph 1(2) of Schedule 4 to the Act" substitute "paragraph 1(2) of Schedule 4 to the Act or paragraph 1(2) of Schedule 3 to the Listed Buildings Act";

(h) for the definition of "period allowed for determination of the application" substitute—

""period allowed for determination of the application" is, in the case of an appeal made under—

(a) section 47(2) of the Act, the period prescribed under regulation 3(1A) in respect of the application;

(b) section 154(1)(b) of the Act, the period prescribed under regulation 16(1A) in respect of the application;

(c) section 18(2) of the Listed Buildings Act—

(i) in respect of an application mentioned in section 18(1)(a) or (b) of the Listed Buildings Act, the relevant period prescribed under regulation 15A(2); and

(ii) in respect of an application mentioned in section 18(1)(c) of the Listed Buildings Act, the relevant period within the meaning of section 18(3)(b)(**b**) of that Act,

or such extended period as may be agreed in writing between the applicant and the planning authority under section 47(2) or 154(1)(b) of the Act or section 18(2) of the Listed Buildings Act, as the case may be;";

(i) in the definition of "recalled appeal" after "Act" insert "or paragraph 3(1) of Schedule 3 to the Listed Buildings Act"; and

(j) after the definition of "specified matters" insert—

""validation date" has the same meaning as in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(**c**).".

**Amendment of regulation 3 (notice of appeal)**

**5.** After regulation 3(1) (notice of appeal) insert—

"(1A) The period prescribed for the purposes of section 47(2) of the Act is—

(a) in the case of an application for planning permission for development within the category of national developments or major developments, the period of four months after the validation date; and

(b) in any other case, the period of two months after the validation date.".

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(**a**) 1997 c.9.

(**b**) Section 18(3)(b) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides that the relevant period for the purposes of an appeal under section 18(2) in respect of an application for approval required by a condition imposed on the grant of listed building consent is the period of two months from the date of receipt by the planning authority of the application.

(**c**) S.S.I. 2008/432 to which there are amendments not relevant to these Regulations.

**Amendment of regulation 13 (statement of appeal)**

**6.** In regulation 13 (statement of appeal)—

(a) in paragraph (1) after "Act" insert "or section 35(2) of the Listed Buildings Act";

(b) in paragraph (1A) after "Act" insert "or section 35(4)(a) of the Listed Buildings Act, as the case may be"; and

(c) after paragraph (4) insert—

"(5) The following provisions apply in relation to an appeal under sections 130, 169 and 180 of the Act and an appeal under section 35 of the Listed Buildings Act—

(a) this Part and Parts 1, 3, 7 (other than regulation 20) and 8; and

(b) the Hearing Session Rules and the Inquiry Session Rules.".

**Amendment of regulation 15 (notification to other parties)**

**7.** In regulation 15(1) (notification to other parties) after "enforcement notice" insert ", listed building enforcement notice".

**Appeals under section 18 of the Listed Buildings Act**

**8.** After regulation 15 insert—

# "PART 4A

## Appeals under section 18 of the Listed Buildings Act

**Notice of appeal**

**15A.**—(1) An appeal to the Scottish Ministers under—

(a) section 18(1) of the Listed Buildings Act (appeals against refusal of or conditional consent to applications for listed building consent or against refusal of approval required by a condition);

(b) section 18(2) of the Listed Buildings Act (appeals in default of decision on application for listed building consent or for approval required by a condition);

(c) section 18(1) and (2) of the Listed Buildings Act as applied by—

(i) section 17 of that Act (applications for variation or discharge of conditions); or

(ii) section 66 of that Act (control of demolition of buildings in conservation areas),

is to be made by giving notice in writing in accordance with this regulation.

(2) In relation to an application mentioned in section 18(1)(a) or (b) of the Listed Buildings Act the relevant period prescribed for the purposes of section 18(3)(a) of the Listed Buildings Act is the period of two months from the date of receipt of the application by the planning authority.

(3) Subject to regulation 24, the notice of appeal must be served on the Scottish Ministers within the period of three months beginning with, in the case of an appeal made by virtue of—

(a) section 18(1) of the Listed Buildings Act, the date of the decision notice; and

(b) section 18(2) of the Listed Buildings Act, the date of expiry of the period allowed for determination of the application.

(4) In relation to an appeal made under section 18 of the Listed Buildings Act—

(a) this Part and Parts 1, 3, 7 (other than regulation 20) and 8, the Hearing Session Rules and the Inquiry Session Rules apply; and

(b) the following provisions of Part 2 apply as they apply to an appeal made under section 47 of the Act—

(i) regulation 3(3) to (5);

(ii) regulation 4 other than paragraph (2)(c); and

(iii) regulations 5 and 6.

(5) An appeal under section 18 of the Listed Buildings Act is not to be entertained by the Scottish Ministers unless it is accompanied by a certificate required under regulation 15B.

**Notice to owners**

**15B.**—(1) The appellant is to give notice in the form set out in Part 1 of Schedule 3 to any person (other than the appellant) who at the beginning of the prescribed period is the owner of the building to which the appeal relates.

(2) Where the appellant is unable to give notice to every person (other than the appellant) who at the beginning of the prescribed period was the owner of the building to which the appeal relates, the appellant must publish a notice in a local newspaper circulating in the locality in which the building is situated.

(3) Notice under paragraph (2) is to—

(a) be in the form set out in Part 2 of Schedule 3; and

(b) be published before the beginning of the prescribed period.

(4) The appellant must issue a certificate stating, as appropriate—

(a) that at the beginning of the prescribed period no person (other than the appellant) was the owner of the building to which the appeal relates;

(b) that the appellant has given notice to every person (other than the appellant) who at the beginning of the prescribed period was the owner of the building to which the appeal relates; or

(c) that the appellant is unable to give notice to every such person.

(5) A certificate issued—

(a) under paragraph (4)(b) or (c) must set out the name of every person to whom notice was given and the address at and date on which such notice was given;

(b) under paragraph (4)(c) must certify that—

(i) the appellant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice; and

(ii) that a notice has been published in accordance with paragraph (2) (specifying the date and place of publication).

(6) In this regulation, "prescribed period" means the period of 21 days ending with the date on which notice of appeal is given to the Scottish Ministers under section 19(1) of the Listed Buildings Act.".

**Amendment of regulation 16 (appeals under section 154 of the Act)**

**9.** In regulation 16 (appeals under section 154 of the Act)—

(a) after paragraph (1) insert—

"(1A) In relation to an application for a certificate under section 150 or 151 of the Act the period prescribed for the purposes of section 154(1)(b) of the Act is the period of two

months beginning with the date of receipt by the planning authority of the application and any fee required to be paid in respect of the application."; and

(b) for paragraph (3) substitute—

"(3) In relation to an appeal made under section 154(1) of the Act—

(a) this Part and Parts 1, 3, 7 (other than regulation 20) and 8, the Hearing Session Rules and the Inquiry Session Rules apply; and

(b) the following provisions of Part 2 apply as they apply to an appeal made under section 47 of the Act—

(i) regulation 3(3) to (5);

(ii) regulation 4 other than paragraph (2)(c) and (d); and

(iii) regulation 6 other than paragraph (1)(d) and (e).".

**Amendment of regulation 17 (called-in applications)**

**10.** In regulation 17(1) (called-in applications) after "section 46(1) of the Act" insert "or section 11(1) of the Listed Buildings Act".

**Amendment of regulation 24 (time within which appeal must be made)**

**11.** In regulation 24 (time within which appeal must be made)—

(a) after paragraph (1) insert—

"(1A) In the case of an appeal made by virtue of section 18 of the Listed Buildings Act, where the relevant date is before 1st December 2011, the notice of appeal must be served on the Scottish Ministers within a period of six months from the relevant date.";

(b) in paragraph (2)(a) after "the Act" insert "or section 18(1) of the Listed Buildings Act"; and

(c) in paragraph (2)(b) after "the Act" insert "or section 18(2) of the Listed Buildings Act".

**Notices under regulation 15B**

**12.** After Schedule 2 insert the Schedule set out in the Schedule to these Regulations.

*AILEEN CAMPBELL*
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
27th October 2011

# SCHEDULE

Regulation 12

## "SCHEDULE 3

Regulation 15B(1) and (2)

## Notices under regulation 15B

## PART 1

### Notice for service on owner of the building

TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

Notice under regulation 15B(1) of appeal under section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Proposed works at [Note 1]

TAKE NOTICE

1. That appeal is being made to the Scottish Ministers by [Note 2]

*(i) against the decision of [Note 3] …….

*(ii) on the failure of the [Note 3] to give a decision on an application to them

2. If you wish to make representations to the Scottish Ministers about the appeal, you should make them in writing not later than [Note 4] to [Note 5].

Signed ……..

*On behalf of ……...

Date ……..

*Delete where inappropriate

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Note 1 - Insert address or location of building and brief description of the proposed works.

Note 2 - Insert name of applicant.

Note 3 - Insert name of Council.

Note 4 - Insert date. The date must not be earlier than 21 days after the date on which notice is given.

Note 5 - Insert address. The address is the same address to which the notice of appeal is sent.

# PART 2

## Notice for publication in local newspaper

TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

Notice under regulation 15B(2) of appeal under section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Proposed works at [Note 1]

TAKE NOTICE

1. That appeal is being made to the Scottish Ministers by [Note 2]

*(i) against the decision of [Note 3] …….

*(ii) on the failure of the [Note 3] to give a decision on an application to them.

2. Representations about the appeal may be made by any owner of the building. If you wish to make representations you should make them in writing not later than [Note 4] to [Note 5].

Signed ……..

*On behalf of ……...

Date ……..

*Delete where inappropriate

---

Note 1 - Insert address or location of building and brief description of the proposed works.

Note 2 - Insert name of applicant.

Note 3 - Insert name of Council.

Note 4 - Insert date. The date must not be earlier than 21 days after the date of publication of the notice.

Note 5 - Insert address. The address is the same address to which the notice of appeal is sent."

## EXPLANATORY NOTE

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

These Regulations amend the Town and Country Planning (Appeals) (Scotland) Regulations 2008 to extend the application of those Regulations to appeals under sections 18 and 35 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to the consideration of applications referred to the Scottish Ministers following a direction under section 11 of that Act.

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