

PLANNING (SCOTLAND) ACT 2019

EXPLANATORY NOTES

OVERVIEW OF THE ACT

PART 3 – DEVELOPMENT MANAGEMENT

Duration of planning permission

Section 32: Duration of planning permission and planning permission in principle

169. Section 32 of the Act amends section 58 (duration of planning permission) and section 59 (planning permission in principle) of the 1997 Act and makes related amendments to section 41 (conditional grant of planning permission) and section 60 (provisions supplementary to sections 58 and 59) of the 1997 Act.
170. Section 58 of the 1997 Act currently specifies that, except in the cases set out in section 58(4), planning permission will lapse after a period of 3 years from the date planning permission is granted, unless the development to which the permission relates has been started before then. It allows the authority when determining the application to direct that a different period, longer or shorter than three years, applies. This section and the amendments to it also apply to where planning permission is deemed to be granted under section 57 of the 1997 Act, which applies where government authorisation is given for certain projects.
171. Section 59 of the 1997 Act specifies what constitutes planning permission in principle: broadly speaking, planning permission granted in accordance with regulations or a development order for various operations and subject to a condition that certain matters have to be approved by the planning authority before the work begins. Like section 58 of the 1997 Act, it specifies a period within which development must be started or the permission lapses. In addition, section 59 specifies a time frame for applying for approval of matters specified in conditions (AMSC).
172. This time frame for applying for AMSC sets out a default period of three years from the grant of planning permission in principle. Where it would result in the calculation of a later deadline, six months is allowed for making such an application as calculated from the date of a previous application being refused, or from the date of an appeal against such refusal itself being dismissed. Only one such application can, however, be made after the three year period. Development must be begun within two years of the date that the last required approval is granted, or else the permission lapses.
173. Section 59(5) of the 1997 Act allows directions to be made specifying, instead of both the three year period and the two year period, different periods for different phases of the development.
174. Section 32(3) of the Act amends section 58 of the 1997 Act so that the duration of planning permission is to be specified as a condition to which the planning permission is subject. In the event that the planning authority does not include such a condition, the legislation provides that such a condition is deemed to have been included. This also applies where government authorisation is given for certain projects and the

authorisation is to be treated as the grant of planning permission. As is the case presently, the default duration will be three years, but the planning authority or the Scottish Ministers, when determining a planning application, can specify a longer or shorter duration in their condition. The amendments also remove the exemption for planning permission granted for a limited time (subsection (4)(c) of section 58), which exemption prevents certain planning permissions from lapsing if development has not begun within the specified period.

175. Currently, if it is not challenged on local review or appeal at the time permission is granted, there is no mechanism for changing the duration of planning permission. Section 42 (determination of applications to develop land without compliance with conditions previously attached) of the 1997 Act allows an application to be made for a new permission for the same development but with different conditions – with a lower application fee and limiting the planning authority’s consideration to the issue of conditions – to address, for example, changes in circumstances that mean that the original conditions have unintended consequences. In future, therefore, such a ‘section 42’ application could be used to apply for a new permission with a different condition as to duration, provided the original permission had not already expired.
176. Section 32(4) of the Act amends section 59 of the 1997 Act to simplify arrangements for the duration of planning permission in principle. As with the amendment to section 58 of the 1997 Act, the total period within which development must be started will be specified as a condition. In this case the default period will be five years from the grant of planning permission in principle unless the planning authority specify a different duration; this reflects the need to apply for and obtain approval of matters specified in conditions (the detail of the proposal) before development can be started.
177. The changes made by section 32(4) of the Act also remove the default framework for applying for approval of matters specified in conditions attached to planning permission in principle that is described in paragraph 123 above. Instead, section 32(2) of the Act amends section 41 of the 1997 Act to make it clear that it will be possible for the planning authority to add conditions about the timing of applications for approval of such matters, and to set different timings for different phases of development.
178. Section 32(5) of the Act amends section 60 of the 1997 Act to add a provision making clear that conditions on duration that are imposed, or deemed to be imposed, under sections 58 or 59 can, like other conditions, be appealed to the Scottish Ministers or be subject to a review by the planning authority.

Section 33: Completion notices

179. Section 61 of the 1997 Act allows the planning authority, where they consider that development will not be completed within a reasonable period, to serve a notice (a completion notice) stating that, once the notice is confirmed, planning permission will cease to have effect at the expiration of a period specified in the notice (to be not less than 12 months from either the date specified in the notice as the date the notice takes effect or, if the notice is objected to, from the date the Scottish Ministers confirm the notice). The loss of planning permission will affect only the elements of the permission unimplemented by the end of this period. The notice is served on any owner or occupier of the land to which permission relates and any other person who in the opinion of the planning authority will be affected by the notice. Section 62(1) of the 1997 Act provides that a completion notice will not take effect unless confirmed by the Scottish Ministers. Section 62(3) of the 1997 Act provides that the completion notice must specify a period of not less than 28 days within which any person served with a completion notice can require the Scottish Ministers to give that person an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers before a notice is confirmed.
180. Section 33 of the Act amends sections 61 and 62 of the 1997 Act and introduces a new section 62A to the 1997 Act to remove the requirement for the Scottish Ministers to

confirm every completion notice, while giving recipients of a notice a right to object which would trigger the need for the Scottish Ministers to confirm the notice.

181. Section 33(2) of the Act adds new subsections (3A) and (3B) to section 61 of the 1997 Act. The first of these inserted subsections requires the completion notice to indicate that the recipient has a right to lodge an objection and specify the date on which the notice will take effect unless an objection is lodged before that date. New subsection (3B) restates a rule currently in section 62(3) of the 1997 Act that at least 28 days must elapse following the date of service of the notice before it can take effect (which also means that the objection period must be at least 28 days). Section 33(3)(a) of the Act amends section 62(1) of the 1997 Act so that a completion notice takes effect on the date specified in the notice unless a recipient of the notice makes an objection prior to that date; where an objection is so made, the notice only takes effect if confirmed by the Scottish Ministers. Section 33(3)(b) of the Act deletes subsections (2) and (3) of section 62 of the 1997 Act which dealt with, respectively, the Scottish Ministers' power to set a longer period for compliance with the notice when confirming it, and for giving any recipient of the notice the right to appear before a person appointed by the Scottish Ministers before they confirm a notice. Equivalent rules are instead now provided for in, respectively, inserted section 62A(5) and inserted section 62A(3). Section 33(3)(c) of the Act makes some minor and consequential amendments.
182. Section 33(4) of the Act introduces a new section 62A (objection to completion notice) to the 1997 Act. It in essence deals with the matters previously contained in sections 62(2) and (3) of the 1997 Act. New section 62A(1) specifies the right of a recipient to object to the planning authority about the service of the completion notice. The provisions in new sections 62A(2) and (3) of the 1997 Act on handling objections are different from existing provisions in that they, respectively, require that the planning authority give notice to the Scottish Ministers and all the recipients of the notice of the fact that objections have been made, and allow the Scottish Ministers to decide any further procedure for considering objections – e.g. whether written submissions, a hearing or an inquiry is needed. New section 62A(4) contains a new requirement for the Scottish Ministers to tell those served with the completion notice and the planning authority of their decision on whether or not to confirm the notice. New section 62A(5) restates the existing provision mentioned above that allows Scottish Ministers to set a longer period when they confirm a notice.
183. Sections 33(5) and (6) of the Act make consequential amendments to other sections of the 1997 Act as a result of the amendments to the provisions on completion notices.