



# Planning (Scotland) Act 2019

## 2019 asp 13

### PART 3

#### DEVELOPMENT MANAGEMENT

##### *Planning obligations*

#### **34 Planning obligations: financial agreements**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 75 (planning obligations)—
  - (a) in subsection (1), for the words from “an obligation” to the end substitute “a planning obligation.”,
  - (b) after subsection (1), insert—

“(1A) For the purpose of this section and sections 75A to 75C, a planning obligation is an obligation which does any of the following—

    - (a) restricts or regulates the development or use of land,
    - (b) requires the payment—
      - (i) of a specified amount or an amount determined in accordance with the relevant instrument, or
      - (ii) of periodical sums either indefinitely or for such period as is specified in the relevant instrument.”,
  - (c) in subsection (2), for “subsection (1), the reference in that subsection” substitute “paragraph (a) of subsection (1A), the reference in that paragraph”,
  - (d) in subsection (3)—
    - (i) after paragraph (a), insert—

“(aa) impose a restriction or requirement either permanently or during such period as is specified in the relevant instrument.”,
    - (ii) paragraph (b) is repealed,
  - (e) in subsection (5)(a), for “(2) or (3)(b)” substitute “(1A)(b) or (2)”,
  - (f) after subsection 12, insert—

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“(13) In this section and in sections 75A to 75C, “relevant instrument” means the instrument by which a planning obligation is entered into.”.

- (3) In section 75C (planning obligations: continuing liability of former owner etc.), in subsection (3), for “(2) or (3)(b)” substitute “(1A)(b) or (2)”.

### **35 Planning obligations: publication**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

- (2) In section 75 (planning obligations), after subsection (4), insert—

“(4A) A planning authority are to publish a relevant instrument in such a manner as they consider sufficient to ensure that it is brought to the attention of residents of the area or district to which the relevant planning obligation relates.”.

- (3) In section 75A (modification and discharge of planning obligations), after subsection (5) insert—

“(5A) A planning authority are to publish—

- (a) an agreement under subsection (1)(a), and
- (b) a notice of a determination under subsection (4),

in such a manner as they consider sufficient to ensure that it is brought to the attention of residents of the area or district to which the relevant planning obligation relates.”.

### **36 Planning obligations: annual report**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

- (2) In section 36 (registers of applications etc.), after subsection (4), insert—

“(5) As soon as reasonably practicable after the end of each financial year, a planning authority are to prepare and publish a report detailing—

- (a) the number of planning obligations that are—
  - (i) entered into in that year,
  - (ii) entered into in a previous year and not yet expired,
  - (iii) entered into in a previous year and not yet complied with,
- (b) the development to which each planning obligation relates, and
- (c) the name of the person that has entered into the planning obligation.

- (6) In this section a financial year is the period of 12 months beginning with 1 April.”.

### **37 Planning obligations: modification or discharge**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

- (2) In section 34 (notice by planning authority of certain applications made to them), in subsection (2)(d), for “agreement” substitute “modification or discharge of a planning obligation”.

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*Status: This is the original version (as it was originally enacted).*

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- (3) In section 43 (directions etc. as to method of dealing with applications), in subsection (4)—
- (a) the words “the giving of any agreement under subsection (2) of section 75A or” are repealed,
  - (b) for “subsection (4) of that section” substitute “section 75A(4)”.
- (4) In section 75A (modification and discharge of planning obligations)—
- (a) in subsection (1)—
    - (i) in paragraph (a)—
      - (A) after “agreement” insert “in writing”,
      - (B) the words “, by virtue of subsection (2),” are repealed,
      - (C) for “a person” substitute “the person or persons”,
    - (ii) in paragraph (b), for “and” substitute “or”,
  - (b) in subsection (2)—
    - (i) for the words “their agreement that the obligation” substitute “the obligation to”,
    - (ii) in paragraph (a), for the words from the start to “be” substitute “be modified as”,
  - (c) subsection (3) is repealed,
  - (d) in subsection (4)(c), for “the modifications specified in the application” substitute “modifications”,
  - (e) after subsection (4), insert—
    - “(4A) Where the authority propose to make a determination under subsection (4)—
      - (a) discharging the planning obligation despite that not being sought in the application, or
      - (b) modifying the planning obligation in a way that is not sought in the application,they must obtain the applicant’s consent before making the determination.
    - (4B) Where the authority propose to make a determination under subsection (4) modifying the planning obligation so as to put or increase a burden on any non-applicant, they must obtain that person’s consent before making the determination.
    - (4C) Where an application under subsection (2) relates to more than one planning obligation, the authority may make a separate determination in relation to each planning obligation.”,
  - (f) in subsection (5)—
    - (i) the words “the applicant” become paragraph (a),
    - (ii) after paragraph (a), insert “, and
      - (b) any non-applicant against whom the planning obligation is enforceable,”,
    - (iii) the words “within such period as is prescribed.” become the closing words,
  - (g) in subsection (6), after “where” insert “an agreement under subsection (1)(a) or”,

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- (h) in subsection (7), after “applies” insert “—
    - (a) in a case relating to an agreement under subsection (1)(a), the agreement does not take effect until the date on which it is recorded in the Register of Sasines or registered in the Land Register, and
    - (b) in a case relating to a determination under subsection (4)(b) or (c),”
  - (i) in subsection (9)—
    - (i) in paragraph (b), after “publication of” insert “or giving of”,
    - (ii) after paragraph (b), insert—
      - “(ba) the giving of notice of proposed determinations to which subsection (4A) applies,”
    - (iii) in paragraph (c), after “application” insert “or proposed determination”
  - (j) in subsection (10), after “(4)” insert “, (4A), (4B), (4C)”.
- (5) In section 75B (appeals)—
- (a) in subsection (4)(c), for “the modifications specified in the application” substitute “modifications”,
  - (b) after subsection (4), insert—
    - “(4A) Where the Scottish Ministers propose to make a determination under subsection (4)—
      - (a) discharging the planning obligation despite that not being sought in the application, or
      - (b) modifying the planning obligation in a way that is not sought in the application,
 they must obtain the applicant’s consent before making the determination.
    - (4B) Where the Scottish Ministers propose to make a determination under subsection (4) modifying the planning obligation so as to put or increase a burden on any non-applicant, they must obtain that person’s consent before making the determination.
    - (4C) Where an application under subsection (2) relates to more than one planning obligation, the Scottish Ministers may make a separate determination in relation to each planning obligation.”
  - (c) in subsection (5)—
    - (i) the words “the applicant” become paragraph (a),
    - (ii) after paragraph (a), insert “, and
      - (b) any non-applicant against whom the planning obligation is enforceable,”
    - (iii) the words “within such period as is prescribed.” become the closing words.