

Draft Order laid before the Scottish Parliament under section 58(5) of the Planning etc. (Scotland) Act 2006, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2009 No.

TOWN AND COUNTRY PLANNING

**The Planning etc. (Scotland) Act 2006
(Consequential Amendments) Order 2009**

*Made - - - - 2009
Coming into force in accordance with article 1(2) and
(3)*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 58(1) and (2) of the Planning etc. (Scotland) Act 2006⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 58(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009.

(2) This article and article 5 come into force on 2nd August 2009.

(3) Articles 2 to 4 come into force on 3rd August 2009.

(4) In this Order, “the 1997 Act” means the Town and Country Planning (Scotland) Act 1997⁽²⁾.

Amendment of the Town and Country Planning (Scotland) Act 1997

2.—(1) The 1997 Act is amended in accordance with paragraphs (2) to (7).

(2) In section 36(3)(b) (register of applications) after “appeal” insert “or review”.

(3) In section 60(2) (provisions supplementary to sections 58 and 59)—

(a) the word “or” following paragraph (a) is repealed; and

(b) at the end of paragraph (b) insert—

“, or

(1) 2006 asp 17.
(2) 1997 c. 8.

- (c) in a case where the application is determined by a person appointed by virtue of a scheme of delegation and on a review of the case under section 43A(8) the planning authority grant the approval, on the date of the notice of the decision given by virtue of section 43A(11)(e)".
- (4) In section 180(3) (appeal against amenity notice) the words "and (2)" are repealed.
- (5) In section 266(1) (orders for expenses) the words from "proceedings" to the end of that subsection become paragraph (a) and at the end of that paragraph insert—
 - “, and
 - (b) proceedings arising under or by virtue of sections 46, 47, 75B, 75F, 130, 154, 169 and 180”.
- (6) In section 277(5) (interpretation)—
 - (a) in paragraph (a) after “appeal” insert “ or review”;
 - (b) after paragraph (b) insert—
 - “(ba) in relation to a decision upheld on review under section 43A(8)(a) or (b), such references shall be construed as references to the decision of the person appointed under the scheme of delegation to determine the application and not to the decision of the planning authority on review;”;
 - (c) after paragraph (c) insert—
 - “(ca) in relation to a decision given on a review under section 43A(8)(c), such references shall be construed as references to the decision so given;”;
 - (d) after paragraph (d) insert—
 - “(da) the time of a planning decision—
 - (i) in the case where there is or was a review under section 43A(8)(a) or (b), shall be taken to be or have been the time of the decision as made by the person appointed under the scheme of delegation to determine the application (whether or not that decision is or was altered on review); or
 - (ii) in the case of a decision given on a review under section 43A(8)(c), shall be taken to be or have been the time when the application is deemed to have been refused under section 43A(9).”.
- (7) In Schedule 4 (determination of certain appeals by person appointed by the Scottish Ministers), in paragraph 6(2)(a), the words “by virtue of paragraph 2(4)” are repealed.

Amendment of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- 3.—(1)** The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(3) is amended in accordance with paragraph (2).
- (2) In section 15(3)(a) (power to impose conditions)—
 - (a) for “an agreement” substitute “a planning obligation under section 75 of the principal Act”; and
 - (b) for “made and recorded under section 75 of the principal Act” substitute “entered into and the relevant instrument by which that obligation is entered into has been recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland under that section”.

Amendment of the Licensing (Scotland) Act 2005

- 4.—(1) The Licensing (Scotland) Act 2005(4) is amended in accordance with paragraph (2).
- (2) In section 50 (certificates as to planning etc.)—
- (a) in paragraph (3)(a) after “permission” insert “or planning permission in principle”; and
 - (b) in paragraph (5)(a) after “permission”, where that word first occurs, insert “, planning permission in principle”.

Amendment of the Planning etc. (Scotland) Act 2006

- 5.—(1) The Planning etc. (Scotland) Act 2006(5) is amended in accordance with paragraphs (2) and (3).
- (2) In section 20(1)(a) (duration of planning permission) in the new subsection (3) to be substituted for section 58(3) of the 1997 Act, for “section” substitute “sections 43A(8)(b) and”.
- (3) In section 21(1) (planning permission in principle) in the new subsection (6) of the new section 59 to be substituted for section 59 of the 1997 Act, for “section” substitute “sections 43A(8) (b) and”.

St Andrew’s House,
Edinburgh
2009

Authorised to sign by the Scottish Ministers

(4) 2005 asp 16.
(5) 2006 asp 17.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes supplementary, incidental or consequential changes to the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Licensing (Scotland) Act 2005 and the Planning etc. (Scotland) Act 2006 (“the 2006 Act”) for the purposes of, in consequence of or in order to give full effect to the provisions of the 2006 Act.

Article 2(2) amends section 36(3)(b) of the 1997 Act to bring the powers in section 36 into line with the new structure of the legislation introduced by the 2006 Act which make it possible for an application to be finally disposed following a review under section 43A(8) of the 1997 Act as introduced by section 17 of the 2006 Act.

Article 2(3) amends section 60(2) of the 1997 Act. Section 60(2) sets out when a “matter” is to be treated as finally approved for the purposes of section 59 of the 1997 Act. Following the introduction of local reviews under section 43A(8) by the 2006 Act it will be possible for the final approval of a matter to be obtained on review. Article 2(3) makes equivalent provision for this situation as exists for cases where the final approval is obtained on appeal.

Article 2(4) removes the redundant reference to subsection (2) of section 131 from section 180(3) of the 1997 Act. Section 131(2) is repealed by the Schedule to the 2006 Act.

Article 2(5) amends section 266(1) of the 1997 Act to ensure that the current powers to make orders as to expenses in appeal cases which do not go to an inquiry are available following the repeal by the Schedule to the 2006 Act of sections 46(5), 48(2), 131(2), 155(1) and 169(6) of the 1997 Act and the introduction into the 1997 Act, by sections 23 and 24 of the 2006 Act, of new appeal proceedings in sections 75B and 75F in relation to planning obligations and good neighbour agreements.

Section 277(5) of the 1997 Act makes detailed provision to deal with the variety of situations in which a planning decision may be made under that Act. Article 2(6) amends section 277(5) to make provision in relation to references to planning decisions for cases determined on the new review proceedings introduced by section 17 of the 2006 Act.

Article 2(7) removes the redundant reference to paragraph 2(4) of Schedule 4. This paragraph is repealed by the Schedule to the 2006 Act.

Article 3 brings section 15(3)(a) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 into line with the changes made to section 75 of the 1997 Act by section 23 of the 2006 Act. Section 75 will no longer refer only to agreement as it will allow unilateral obligations.

Article 4 amends section 50 of the Licensing (Scotland) Act 2005 to add a reference to planning permission in principle following changes made by section 21 of the 2006 Act to section 59 of the 1997 Act.

Sections 20 and 21 of the 2006 Act amend sections 58 and 59 of the 1997 Act to introduce provisions which state that a planning permission lapses after 3 years and also to give powers to enable the authority granting the permission to direct that the permission is to lapse after a longer or shorter period. Article 5 amends these sections to allow an applicant to challenge this period under a review under the new section 43A(8).