



# Planning etc. (Scotland) Act 2006

## 2006 asp 17

### PART 3

#### DEVELOPMENT MANAGEMENT

##### *Meaning of development*

### 3 Meaning of “development”

(1) In section 26 of the principal Act (meaning of “development”)—

- (a) at the end of subsection (1) add “, or the operation of a marine fish farm in the circumstances specified in section 26AA ”,
- (b) after subsection (2) insert—

“(2AA) The Scottish Ministers may in a development order specify any circumstances, or description of circumstances, in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.

(2AB) The development order may make different provision for different purposes.”,

- (c) in subsection (6)—
  - (i) for the words “inland waters, transitional water or coastal water” substitute “waters which—
    - (a) are inland waters,
    - (b) not being inland waters, are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, or
    - (c) are seaward of those baselines up to a distance of 12 nautical miles,”
  - (ii) for the word “subsection” where it second occurs substitute “ section ”,

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- (iii) the definitions of “ coastal water ” and “ transitional water ” are repealed, and
- (iv) at the end add—
  - ““nautical miles” means international nautical miles of 1,852 metres”,
- (d) after that subsection insert—
  - “(6AA) Where the making of any material change in the use of equipment so placed or assembled for that purpose would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the making of any such material change was development of that land.”, and
- (e) after subsection (6B) insert—
  - “(6C) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of, or in connection with, the application of this Act to—
    - (a) any such placing or assembly as is mentioned in subsection (6) in waters described in paragraph (b) or (c) of that subsection; or
    - (b) any material change in the use of equipment placed or assembled in those waters.
  - (6D) Any order under subsection (6C) may in particular provide that a planning authority specified in the order is to be the planning authority for the purposes of such an application of this Act despite the placing or assembly being something done, or the material change of use being made, outwith the district of the authority.
  - (6E) But in the application of subsections (6C) and (6D) to a case where, by virtue of paragraph (a) of section 10(1) of the National Parks (Scotland) Act 2000 (asp 10) the planning authority is a National Park authority, the reference in subsection (6D) to the district of the authority is to be construed as a reference to the National Park.
  - (6F) And the Scottish Ministers may direct that subsections (6C) and (6D) are to apply to a case where—
    - (a) by virtue of paragraph (b) of that section 10(1), a National Park authority is to be treated as the planning authority, or
    - (b) by virtue of paragraph (c) of that section 10(1), a National Park authority is to have certain functions in relation to planning.
  - (6G) For the purposes of any such application as is provided for in—
    - (a) paragraph (a) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be” in subsection (6D) there is to be substituted “ National Park authority specified in the order is to be treated as ”,
    - (b) paragraph (b) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words

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“planning authority specified in the order is to be the planning authority” in subsection (6D) there is to be substituted “National Park authority specified in the order is to have functions in relation to planning”.

- (6H) Before making an order under subsection (6C), the Scottish Ministers—
- (a) must consult—
    - (i) every planning authority, and
    - (ii) the Scottish Environment Protection Agency, and
  - (b) may consult such other persons as they think fit.
- (6I) An order under subsection (6C) may (without prejudice to the generality of that subsection)—
- (a) modify any enactment, instrument or document,
  - (b) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) provide for the delegation of functions,
  - (d) make different provision for different purposes and different areas.
- (6J) For the purposes of the exercise by a National Park authority of any planning functions which it has by virtue of subsections (6C) and (6D) in respect of waters described in paragraph (b) or (c) of subsection (6), any reference in section 9 of the National Parks (Scotland) Act 2000 (asp 10) (general purposes and functions of National Park authority) to the National Park itself is to be construed as including a reference to those waters.”.
- (2) A development order under section 26(2AA) of that Act does not affect any operations begun before it is made.
- (3) A certificate under section 151 of that Act (certificate of lawfulness of proposed use or development) is of no effect if—
- (a) subsection (2) of section 26 of that Act is, by virtue of a development order under subsection (2AA) of that section, disapplied in respect of any operations,
  - (b) at the date the development order comes into force the certificate is in force in respect of the operations, and
  - (c) before that date no such operations have been begun.
- (4) In section 275 of that Act (regulations and orders)—
- (a) in subsection (4), for the words “and (6A)” substitute “, (6A) and (6C), 31A”, and
  - (b) in subsection (5A), after the words “26(6A)” insert “ or (6C) ”.

#### Commencement Information

- I1** S. 3 in force at 6.2.2007 for specified purposes by S.S.I. 2007/49, art. 2, Sch.
- I2** S. 3(1)(a)(c)(d)(e)(4) in force at 1.4.2007 by S.S.I. 2007/130, art. 2(2)(3), Sch.

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#### 4 Marine fish farms

(1) After section 26 of the principal Act insert—

**“26AA Marine fish farms: circumstances referred to in section 26(1)**

- (1) The circumstances to which section 26(1) refers are—
- (a) that the marine fish farm is being operated after—
    - (i) the date which is the appropriate date in respect of that fish farm, or
    - (ii) if earlier than that date, the date on which planning permission is granted, or an application for planning permission is refused, under section 31A, and
  - (b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that placing or assembly did not constitute development under this Act.
- (2) For the purposes of subsection (1)(a), the appropriate date in respect of a fish farm is whichever is the later of—
- (a) a date prescribed by the Scottish Ministers for the purposes of this subsection, and
  - (b) the date on which any authorisation which—
    - (i) relates to the operation of that fish farm, and
    - (ii) is in effect at the date of commencement of section 4 of the Planning etc. (Scotland) Act 2006 (asp 17), ceases to have effect.
- (3) In this section and in section 31A—
- “authorisation” means—
- (a) a consent for fish farming issued by the Crown Estate Commissioners,
  - (b) a licence granted under section 11 of the Orkney County Council Act 1974 (c.xxx), or
  - (c) a licence granted under section 11 of the Zetland County Council Act 1974 (c.viii),
- “equipment” has the same meaning as in section 26(6), and
- “marine fish farm” means a fish farm situated in any part of any waters referred to in paragraphs (b) and (c) of section 26(6).”.

(2) After section 31 of that Act insert—

*“Planning permission in respect of operation of marine fish farm*

**31A Planning permission in respect of operation of marine fish farm**

- (1) This section applies to planning permission for the operation of a marine fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b).
- (2) Any planning permission is to be granted by the Scottish Ministers.

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- (3) Without prejudice to the generality of subsection (2), planning permission may be granted under that subsection as respects a class of development.
- (4) Any planning permission granted by virtue of subsection (3) is to be granted by order, the class of development in question being specified in the order.
- (5) Planning permission may be granted either unconditionally or subject to conditions or limitations.
- (6) The conditions or limitations which may be imposed include conditions or limitations specified in any authorisation which is at the time of imposition in effect in relation to the fish farm.
- (7) The principal matters to be taken into account by the Scottish Ministers in coming to a decision as to whether to grant planning permission are the likely impact of the development on—
  - (a) any European site within the meaning of regulation 10 of the Conservation (Natural Habitats &, c.) Regulations 1994 (S.I. 1994/2716), and
  - (b) the environment generally.
- (8) The Scottish Ministers may by regulations make provision—
  - (a) specifying those cases where an application for planning permission must be made,
  - (b) as to the form of such an application,
  - (c) specifying documents and information which require to accompany such an application,
  - (d) as to consultation in connection with such an application, and
  - (e) as to any other matters concerning procedure on such an application.”.

#### Commencement Information

**I3** S. 4 in force at 1.4.2007 by S.S.I. 2007/130, art. 2(2)(3), Sch.

VALID FROM 12/12/2008

## 5 Hierarchy of developments for purposes of development management etc.

After section 26AA of the principal Act (inserted into that Act by section 4 of this Act) insert—

### “26A Hierarchy of developments

- (1) For the purposes of the planning Acts, a development belongs to one of the following categories—
  - (a) the first (designated under section 3A(4)(b)), to be known as “national developments”,
  - (b) the second, to be known as “major developments”, and
  - (c) the third, to be known as “local developments”.

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- (2) The Scottish Ministers are by regulations to describe classes of development other than national developments and assign each class to one or other of the categories mentioned in paragraphs (b) and (c) of subsection (1).
- (3) But the Scottish Ministers may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.
- (4) Different provision may be made under subsection (2) for different areas.
- (5) Regulations under subsection (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

VALID FROM 12/12/2008

*Initiation and completion of development*

**6 Initiation and completion of development**

- (1) After section 27 of the principal Act insert—

*“Initiation and completion of development*

**27A Notification of initiation of development**

- (1) A person who intends to carry out development for which planning permission has been given must, as soon as practicable after deciding on a date on which to initiate the development and in any event before commencing the development, give notice to the planning authority as to that date and as to such further matters as the Scottish Ministers may prescribe.
- (2) In granting planning permission for the carrying out of any development of land, a planning authority are by notice to direct the attention of the applicant to the requirements of subsection (1), setting out the terms of subsection (1) and of section 123(1) in that notice.

**27B Notification of completion of development**

- (1) A person who completes development for which planning permission has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.
- (2) If an application to a planning authority for planning permission discloses, in the opinion of the authority, that the development in question is to be carried out in phases then any such permission granted is to be granted subject to a condition, imposed under section 37(1)(a) in respect of each phase except the last (notice of the completion of which is to be given under subsection (1)), that as soon as practicable after the phase is completed the person carrying out the development is to give notice of that completion to the planning authority.

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### *Display of notice while development is carried out*

#### **27C Display of notice while development is carried out**

- (1) A person carrying out development of a prescribed class must until the development is completed display a notice containing prescribed information.
- (2) The Scottish Ministers may by regulations make provision as to—
  - (a) the form of the notice required by subsection (1), and
  - (b) where such a notice is to be displayed.”.
- (2) In section 123(1) of that Act (expressions used in connection with enforcement), after paragraph (b) insert “or
  - (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
  - (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act,”.

VALID FROM 12/12/2008

### *Applications for planning permission and certain consents*

#### **7 Applications for planning permission and certain consents**

- (1) For section 32 of the principal Act (form and content of applications for planning permission) substitute—

#### **“32 Applications for planning permission**

- (1) Regulations or a development order may make provision as to applications for planning permission made to a planning authority or the Scottish Ministers.
- (2) Provision referred to in subsection (1) includes provision as to—
  - (a) the form and manner in which an application must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application,
  - (d) evidence to be provided in support of anything in, or relating to, the application.
- (3) The regulations or development order must—
  - (a) require that an application for planning permission of such description as is specified in the regulations or order is to be accompanied by a statement (either or both and if both then either in one document or in two)—

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- (i) about the design principles and concepts applied to the development,
  - (ii) about how issues relating to access for the disabled to the development have been dealt with,
  - (b) include provision as to the form and content of any such statement as is mentioned in paragraph (a), and
  - (c) require that an application in respect of which compliance with section 35B is required is to be accompanied by a pre-application consultation report prepared in accordance with section 35C.
- (4) Different provision may be made under this section—
- (a) for different cases or classes of case,
  - (b) for different areas, and
  - (c) according to whether a development is a national development, a major development or a local development.”.
- (2) In section 182 of that Act (regulations controlling display of advertisements), after subsection (2) insert—
- “(2A) The regulations may also make provision as to—
- (a) the form and manner in which an application for consent must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application.”.
- (3) In section 9 of the listed buildings Act (making of applications for listed building consent)—
- (a) in subsection (2), the words “ shall be made in such form as the planning authority may require and ” are repealed,
  - (b) in subsection (3), for paragraph (a) there is substituted—
    - “(a) the form and manner in which such applications must be made,
    - (aa) particulars of such matters as are to be included in such applications,
    - (ab) any documents or other materials which are to accompany such applications,”, and
  - (c) after subsection (3) insert—
    - “(4) The regulations must require that an application for listed building consent of such description as is prescribed must be accompanied by a statement about how issues relating to access for the disabled to the building have been dealt with.
    - (5) The form and content of such a statement are to be such as is prescribed.”.

## **8 Variation of planning applications**

After section 32 of the principal Act insert—



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### *“Variation of application*

#### **32A Variation of application other than one referred to the Scottish Ministers**

- (1) An application for planning permission (other than an application referred to the Scottish Ministers under section 46 instead of being dealt with by the planning authority) may, with the agreement of the planning authority, be varied after it is made.
- (2) And if the planning authority consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.
- (3) Without prejudice to the generality of subsection (1), regulations or a development order may make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application may be varied; but in any event an application is not to be varied after there is an appeal as respects it under section 47.
- (4) The planning authority may, when an application is varied under this section, give such notice of the variation as they consider appropriate.
- (5) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” (other than the first such reference in subsection (1)) were a reference to the Scottish Ministers.

#### **32B Variation of application referred to the Scottish Ministers**

- (1) An application for planning permission referred to the Scottish Ministers under section 46 instead of being dealt with by the planning authority may, with the agreement of the Scottish Ministers, be varied after it is made.
- (2) And if the Scottish Ministers consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.
- (3) Without prejudice to the generality of subsection (1), regulations or a development order may make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application may be varied.
- (4) The Scottish Ministers may, when an application is varied under this section, give such notice of the variation as they consider appropriate.”.

#### **9 Development already carried out**

- (1) After section 33 of the principal Act insert—

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### **“33A Notice requiring application for planning permission for development already carried out**

Where there is a breach of planning control the planning authority may issue a notice—

- (a) requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
  - (b) describing the development in a way that is sufficient to identify it,
  - (c) specifying a date by which the application is to be made, and
  - (d) setting out the terms of section 123(1).”.
- (2) In section 123(2) of that Act (expressions used in connection with enforcement), at the end add “ as does the issuing of a notice under section 33A ”.
- (3) In section 147(1) of that Act (register of enforcement, breach of condition and stop notices), for the words “and stop notices” substitute “ , notices under section 33A, stop notices and temporary stop notices ”.
- (4) The title of section 147 becomes “**Enforcement etc.: register of notices**”.

VALID FROM 12/12/2008

### *Publicity for applications*

#### **10 Publicity for applications**

- (1) For section 34 of the principal Act substitute—

#### **“34 Notice by planning authority of certain applications made to them**

- (1) A planning authority are to give notice—
- (a) to such persons or categories of person,
  - (b) in such manner,
  - (c) for such period, and
  - (d) on such number of occasions,
- as may be prescribed in regulations or in a development order, of such applications mentioned in subsection (2) as are made to the authority.
- (2) The applications are—
- (a) for planning permission,
  - (b) for an approval required by a development order,
  - (c) for a consent, agreement or approval required by a condition imposed on a grant of planning permission, and
  - (d) for agreement under section 75A(2).
- (3) The regulations or development order may—

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- (a) make provision in relation to the applications generally or in relation to such of those applications as are of a class or classes prescribed in the regulations or order,
  - (b) make different provision for different classes so prescribed.
- (4) No such application is to be determined until after—
- (a) the expiry of a period which is to be so prescribed,
  - (b) any requirement imposed by virtue of this section has been satisfied, and
  - (c) any sum recoverable from the applicant in respect of costs incurred by the planning authority in giving notice under subsection (1) has been paid to the authority.
- (5) For the purposes of this section an applicant is to provide—
- (a) to such person or persons,
  - (b) such information with respect to the application, as may be so prescribed.
- (6) A planning authority are to provide the Scottish Ministers with such information relating to the exercise by the authority of functions under this section (whether in relation to applications generally or in relation to a particular application or class of application) as the Scottish Ministers may request from them.”.
- (2) In section 38(1) of that Act (consultation in connection with determination of applications)—
- (a) for the words “to which section 34(1) applies” substitute “ mentioned in section 34(2) ”, and
  - (b) for the words “(1)(h)” substitute “ (4)(a) ”.

## **11 Pre-application consultation**

After section 35 of the principal Act insert—

### **“35A Pre-application consultation: preliminary**

- (1) Before submitting an application for planning permission for a development of a class prescribed under this section the prospective applicant is, subject to the following provisions of this section, to comply with section 35B.
- (2) The regulations in question may, in prescribing classes of development, make different provision for different cases or classes of case and for different areas.
- (3) A prospective applicant for planning permission for a development may, by notice, require the planning authority to state whether or not, in their opinion, the development is of a class prescribed under subsection (1).
- (4) But the regulations may, in prescribing a class of development, provide that subsections (3) and (5) to (9) are not to apply—
  - (a) as respects that class, or
  - (b) as respects that class in circumstances specified in the regulations.

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- (5) Any notice under subsection (3) is to be in such form as may be prescribed in the regulations but must in any event contain the information mentioned in paragraphs (a) to (d) of section 35B(4).
- (6) A planning authority receiving such a notice may, if they do not consider that it contains sufficient information to enable them to provide the statement sought, request the prospective applicant to provide additional information specified by them.
- (7) Where such a notice is given it is the duty of the planning authority to provide the requisite statement within the period of 21 days after it is given (or within such other period as may be substituted for that period by the regulations).
- (8) The period of 21 days mentioned in subsection (7) (or any other period substituted for that period) does not include any period between a request for information being made under subsection (6) and that information being provided to the planning authority
- (9) If the authority respond by stating that in their opinion the development is not of a class prescribed under subsection (1), then provided that the application for planning permission for the development in question is submitted within 12 months after the notice was given and does not differ materially from the information regarding it contained in the notice and mentioned in paragraphs (a) to (c) of section 35B(4) the prospective applicant need not comply with section 35B.
- (10) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” or “the authority” were a reference to the Scottish Ministers.

### **35B Pre-application consultation: compliance**

- (1) The following subsections apply where compliance with this section is required by virtue of section 35A(1).
- (2) The prospective applicant is to give notice (to be known as a “proposal of application notice”) to the planning authority that an application for planning permission for the development is to be submitted.
- (3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.
- (4) A proposal of application notice is to be in such form, and have such content, as may be prescribed but must in any event contain—
  - (a) a description in general terms of the development to be carried out,
  - (b) if the site at which the development is to be carried out has a postal address, that address,
  - (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and
  - (d) details as to how the prospective applicant may be contacted and corresponded with.
- (5) Regulations may—

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- (a) require that the proposal of application notice be given to persons specified in the regulations,
- (b) specify—
  - (i) persons who are to be consulted as respects a proposed application, and
  - (ii) what form that consultation is to take.
- (6) Different provision may be made under subsection (5) for different cases or classes of case and for different areas.
- (7) The planning authority may, provided that they do so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that they require (either or both)—
  - (a) that the proposal of application notice be given to persons additional to those specified under subsection (5) (specifying in the notification who those persons are),
  - (b) that consultation additional to any required by virtue of subsection (5)(b) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).
- (8) In considering whether to give notification under subsection (7) the planning authority are to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.
- (9) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” were a reference to the Scottish Ministers.

### **35C Pre-application consultation report**

- (1) A person who, before submitting an application for planning permission for a development, is required to comply with section 35B and who proceeds to submit that application is to prepare a report (a “pre-application consultation report”) as to what has been done to effect such compliance.
- (2) A pre-application consultation report is to be in such form as may be prescribed.”.

VALID FROM 03/08/2009

## **12 Public availability of information as to how planning applications have been dealt with**

In section 36 of the principal Act (registers of applications etc.)—

- (a) in subsection (1)—
  - (i) after paragraph (a) insert—
    - “(aa) any variation, by virtue of section 32A(1), to such an application,

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- (ab) documents to which regard was had in dealing with each such application (including documents to which regard was had in considering whether to agree to such a variation),
- (ac) material considerations to which regard was had by virtue of section 37(2),
- (ad) any pre-application consultation report prepared under section 35C(1) and submitted with such an application,”
- (ii) in paragraph (b), for the words “such applications have been dealt with” substitute “each such application has been dealt with and a copy of any notice given by virtue of paragraph (d) or (e) of section 43(1) in respect of an application (or, in the case of an application in respect of which notice does not fall to be so given, a statement of the reasons on which the authority based their decision on the application) ”,
- (iii) the word “ and ” which immediately follows paragraph (b) is repealed,
- (iv) after paragraph (b) insert—
  - “(ba) applications under section 242A(2) for planning permission in respect of development in the district of that authority,” and
- (v) after paragraph (c) insert “and
  - (d) any planning obligation entered into under section 75”, and
- (b) in subsection (3)(a)—
  - (i) after the word “applications” insert “ and variations to applications ”, and
  - (ii) for the word “them” substitute “ such applications and variations and copies of documents to which regard was had in dealing with such applications and in considering whether to agree to such variations ”.

#### Commencement Information

- I4** S. 12(a)(i)(ii)(v)(b) in force at 12.12.2008 for specified purposes by S.S.I. 2008/411, **art. 2(2)(3)(a)**
- I5** S. 12(a)(iii)(iv) in force at 1.4.2007 by S.S.I. 2007/130, **art. 2(2)(3), Sch.**

### 13 Keeping and publication of lists of applications

After section 36 of the principal Act insert—

#### “36A Lists of applications

- (1) Every planning authority are, in such manner as may be prescribed by regulations or a development order, to keep a list of—

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- (a) the applications mentioned in section 36(1)(a) which are made to them (including any variations, by virtue of section 32A(1), to those applications),
  - (b) the applications mentioned in section 36(1)(ba) which are made in respect of development in their district, and
  - (c) the proposal of application notices received by them under section 35B(2).
- (2) Weekly, or at such intervals as may be so prescribed, the authority are—
- (a) to revise the list by removing from it the entries relating to—
    - (i) such applications as have been determined, and
    - (ii) such proposal of application notices as have ceased to be current, and
  - (b) in such manner as may be so prescribed (or, if and in so far as the regulations or development order may admit, in such manner as the authority consider appropriate), to publish that revised list.
- (3) The availability of the list is to be advertised by the authority in a local newspaper at such intervals as may be so prescribed.
- (4) The regulations or development order may make provision as to how any costs incurred by the authority by virtue of this section are to be recovered from the applicants.
- (5) In this section “publish”, without prejudice to that expression's generality, may include publish by electronic means (as for example by means of the internet).
- (6) For the purposes of subsection (2)(a)(ii), a notice ceases to be current when—
- (a) an application for planning permission is submitted for the development in question,
  - (b) the prospective applicant gives notice in writing under this paragraph to the planning authority that no application is to be submitted for the development in question, or
  - (c) 12 months have elapsed since the date on which the proposal of application notice was given.”.

### *Determination of applications*

VALID FROM 12/12/2008

#### **14 Pre-determination hearings**

- (1) After section 38 of the principal Act insert—

##### **“38A Pre-determination hearings**

- (1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed

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in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.

- (2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the authority consider appropriate.
  - (3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.
  - (4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a planning authority may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the authority do so elect, subsections (2) and (3) apply accordingly.”
- (2) In section 56 of the Local Government (Scotland) Act 1973 (c. 65) (arrangements for discharge of functions by local authorities), after subsection (6) there is inserted—
- “(6A) A local authority's function of determining an application for planning permission for a development of a class mentioned in section 38A(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8) shall be discharged only by the authority.”.

VALID FROM 12/12/2008

## 15 Additional grounds for declining to determine application for planning permission

Section 39 of the principal Act (power of planning authority to decline to determine application) is amended as follows—

- (a) for subsection (1) substitute—

“(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—

- (a) if—

- (i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and
- (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far



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- as material to the current application) or in any other material consideration,
- (b) if—
- (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (c) if—
- (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (d) if—
- (i) in that period of two years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
  - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or
- (e) if—
- (i) in that period of two years two similar applications have been made to the planning authority,
  - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
  - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change

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in the development plan (so far as material to the current application) or in any other material consideration.

(1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—

- (a) compliance with section 35B was required as respects the development, and
- (b) there has not been such compliance.

(1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.

(1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.

(1D) Subsection (1A) is subject to section 35A(9).”,

- (b) “ subsection (3) ” is repealed, and
- (c) the title of the section becomes “**Declining to determine an application**”.

## 16 Manner in which applications for planning permission are dealt with etc.

In section 43 of the principal Act (directions etc. as to method of dealing with applications)—

(a) in subsection (1)—

(i) after paragraph (a) insert—

“(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—

(i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and

(ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;”,

(ii) after paragraph (b) insert—

“(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars, documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any

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- which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);”, and
- (iii) in paragraph (f), for the words from “the planning authority” to “order” substitute “, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be prescribed by or under the regulations, order or directions ”,
- (b) after subsection (1) insert—
- “(1A) Any notice given by virtue of paragraph (d) or (e) of subsection (1)—
- (a) is to include a statement of—
- (i) the terms of the planning authority's decision,
- (ii) any conditions to which that decision is subject, and
- (iii) the reasons on which the authority based that decision, and
- (b) may include such other information as may be prescribed by the regulations or the order.”, and
- (c) after subsection (2) add—
- “(3) Paragraphs (a) and (f) of that subsection shall apply in relation to applications under section 75A(2) as they apply in relation to applications for planning permission.
- (4) For the purposes of the application provided for in subsection (3), the reference in paragraph (a) of subsection (1) to restricting the grant of planning permission is to be construed as a reference to restricting the giving of any agreement under subsection (2) of section 75A or the making of any determination under subsection (4) of that section.”.

#### Commencement Information

**16** S. 16(a) in force at 1.3.2007 by S.S.I. 2007/130, art. 2(1)

VALID FROM 12/12/2008

#### **17 Local developments: schemes of delegation**

After section 43 of the principal Act insert—

##### **“43A Local developments: schemes of delegation**

- (1) A planning authority are—
- (a) as soon as practicable after the coming into force of section 17 of the Planning etc. (Scotland) Act 2006 (asp 17), and thereafter—
- (i) whenever required to do so by the Scottish Ministers, or
- (ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations under this section,

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- to prepare a scheme (to be known as a “scheme of delegation”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and
- (b) to keep under review the scheme so prepared.
- (2) Other than for the purposes of subsections (8) to (16) or section 47, the determination of any person so appointed is to be treated as that of the authority.
- (3) References in subsection (1) to a development do not include references to a development of a class mentioned in section 38A(1).
- (4) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—
- (a) the form and content of, and
  - (b) the procedures for preparing and adopting,
- a scheme of delegation.
- (5) Where an application for planning permission falls to be determined by a person so appointed, sections 37(1) to (3), 38, 39, 41(1) and (2) and 42 and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (18)), as they apply to an application which falls to be determined by the planning authority.
- (6) The planning authority may, if they think fit, decide themselves to determine an application which would otherwise fall to be determined by a person so appointed.
- (7) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.
- (8) Where a person so appointed—
- (a) refuses an application for planning permission or for consent, agreement or approval,
  - (b) grants it subject to conditions, or
  - (c) has not determined it within such period as may be prescribed by regulations or a development order,
- the applicant may require the planning authority to review the case.
- (9) Where a requirement to review is made by virtue of paragraph (c) of subsection (8), the person so appointed is, for the purposes of the review, to be deemed to have decided to refuse the application.
- (10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).
- (11) Without prejudice to the generality of subsection (10), the regulations or order may—
- (a) make different provision for different cases or classes of case,

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- (b) make different provision for different stages of a case,
  - (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
  - (d) make provision in relation to time limits (including a time limit for requiring the review), and
  - (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with.
- (12) Any notice given by virtue of paragraph (e) of subsection (11)—
- (a) is to include a statement of—
    - (i) the terms in which the planning authority have decided the case reviewed, and
    - (ii) the reasons on which the authority based that decision, and
  - (b) may include such other information as may be prescribed by the regulations or the order.
- (13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to—
- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or
  - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions,
- and, subject to section 43B, as to what matters may be raised in the course of the review.
- (14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.
- (15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8).
- (16) Subject to subsection (17) and except as provided under section 239, the decision of a planning authority in a case reviewed under this section is final.
- (17) Where a requirement to review is made by virtue of paragraph (c) of subsection (8) and the planning authority have not conducted the review within such period as may be prescribed by regulations or a development order, the authority are to be deemed to have decided to refuse the application and section 47(1) is to apply accordingly.
- (18) The modification is that, in paragraph 1(6) of Schedule 3, for paragraph (b) there is substituted—
- “(b) is to be regarded for the purposes of section 43A as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under subsection (8) of that section.”.

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### **43B Matters which may be raised in a review under section 43A(8)**

- (1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate—
  - (a) that the matter could not have been raised before that time, or
  - (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
  - (a) the provisions of the development plan, or
  - (b) any other material consideration.”.

### *Powers of Scottish Ministers in relation to planning applications and decisions*

## **18 Call-in of applications by Scottish Ministers**

In section 46 of the principal Act (call-in of applications by Scottish Ministers)—

- (a) after subsection (1) insert—

“(1A) A direction under subsection (1) may be withdrawn or modified by a subsequent direction.”, and

- (b) in subsection (3), for “this section” substitute “ subsection (1) ”.

### **Commencement Information**

**I7** S. 18 in force at 1.4.2007 by S.S.I. 2007/130, art. 2(2)(3), Sch.

VALID FROM 12/12/2008

## **19 Appeals etc.**

- (1) In section 47 of the principal Act (right to appeal against planning decisions and failure to take such decisions)—
  - (a) in subsection (1), at the end add “ against the decision ”, and
  - (b) after subsection (1) insert—

“(1A) But subsection (1) does not apply in relation to any such action on the part of a planning authority as is mentioned in section 237(3A).”.

- (2) After that section insert—

### **“47A Matters which may be raised in an appeal under section 47(1)**

- (1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate—

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**Changes to legislation:** There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006, Part 3. (See end of Document for details)

- (a) that the matter could not have been raised before that time, or
  - (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
  - (a) the provisions of the development plan, or
  - (b) any other material consideration.”.
- (3) In section 237 of that Act (validity of certain plans, schemes, orders and actions)—
  - (a) in subsection (1)(f), at the end add “ or on the part of a planning authority as is mentioned in subsection (3A) ”,
  - (b) after subsection (3) insert—
    - “(3A) The action on the part of a planning authority is any decision or determination (other than a deemed decision) in a review conducted by them by virtue of section 43A(8).”, and
  - (c) at the end of subsection (4), add “ or on the part of a planning authority to take any such action as is mentioned in subsection (3A) ”.
- (4) In section 239 of that Act (proceedings for questioning the validity of certain orders, decisions and directions)—
  - (a) in subsection (1)(b), before the words “to which” insert “ , or on the part of a planning authority, ”, and
  - (b) in subsection (4), at the end add “ or on the part of a planning authority as is mentioned in subsection (3A) of that section ”.
- (5) In section 267 of that Act (procedure on certain appeals and applications)—
  - (a) in subsection (1), for the words from “proceedings” to the end substitute “ appeals and applications under this Act and as to the manner in which such appeals and applications are to be conducted ”,
  - (b) after subsection (1) insert—
    - “(1A) Without prejudice to the generality of subsection (1), the regulations may—
      - (a) make different provision for different cases or classes of case and in particular according to whether an appeal is under subsection (1) of section 47 or under subsection (2) of that section,
      - (b) as regards the manner in which an appeal or application is to be conducted, make different provision for different stages of a case,
      - (c) make provision in relation to oral or written submissions and to documents in support of such submissions, and
      - (d) make provision in relation to time limits.
    - (1B) The provision which may be made by virtue of subsections (1) and (1A) includes provision as to—
      - (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions,

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- (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions, and
  - (c) subject to section 47A, as to what matters may be raised in the course of the appeal or application.
- (1C) The provision which may be made by virtue of subsections (1) and (1A) includes provision that the manner in which an appeal or application, or any stage of an appeal or application, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under or by virtue of this Act).”,
- (c) in subsection (2)(a), the word “ such ” is repealed, and
  - (d) subsection (3) is repealed.
- (6) The title of section 267 becomes “**Appeals and applications under this Act: procedure etc.**”.

VALID FROM 12/12/2008

*Duration of planning permission and listed building consent etc.*

**20 Duration of planning permission and listed building consent etc.**

- (1) In section 58 of the principal Act (general condition limiting duration of planning permission)—
- (a) for subsections (1) to (3) substitute—
    - “(1) Subject to subsection (2), a planning permission to which this section applies, whether granted or deemed to be granted, lapses on the expiration of a period of 3 years (beginning with the date on which the permission is granted or as the case may be deemed to be granted) unless the development to which the permission relates is begun before that expiration.
    - (2) The authority concerned may, in granting any such planning permission (or as the case may be in making a direction under section 57), direct that subsection (1) is not to apply as respects the permission but that the permission is to lapse on the expiration of a period, whether longer or shorter than 3 years, specified in the direction (under this section) unless the development to which the permission relates is begun before that expiration.
    - (3) For the purposes of section 47(1)(a), (3) and (4)(a)—
      - (a) any such direction, or
      - (b) the effect of subsection (1) as that subsection applies in consequence of the authority electing not to make such a direction,
 is to be treated as a condition subject to which the application is granted.



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- (3A) A period specified under subsection (2) is to be a period—
- (a) beginning as mentioned in subsection (1), and
  - (b) which the authority concerned consider appropriate having regard to the provisions of the development plan and to any other material considerations.”, and
- (b) in subsection (4)—
- (i) for the words “Nothing in this section applies to” substitute “ This section applies to every planning permission with the exception of” ,
  - (ii) after paragraph (c) insert—
    - “(ca) any planning permission granted before the date on which section 20 of the Planning etc. (Scotland) Act 2006 came into force,” , and
  - (iii) in paragraph (g), for the words “outline planning permission” substitute “ planning permission in principle ”.
- (2) The title of section 58 becomes “**Duration of planning permission**”.
- (3) In section 16 of the listed buildings Act (limit of duration of listed building consent), for subsections (1) and (2) substitute—
- “(1) A listed building consent lapses—
- (a) on the expiration of such period (beginning with the date on which the consent is granted) as the planning authority may, for the purposes of this section, specify in the consent, or
  - (b) if no period is so specified, on the expiration of a period of 3 years (beginning with that date),
- unless the works permitted by the consent are begun before that expiration.
- (1A) Subsection (1) does not apply to a listed building consent granted before the date on which section 20 of the Planning etc. (Scotland) Act 2006 came into force.
- (2) For the purposes of sections 18(1)(a) and 19(1) and (2)(a)—
- (a) any such specification as is mentioned in subsection (1)(a), or
  - (b) the effect of subsection (1) as that subsection applies in consequence of the authority electing not to make such a specification,
- is to be treated as a condition subject to which the application is granted.”.

## **21 Planning permission in principle**

- (1) For section 59 of the principal Act substitute—

### **“59 Planning permission in principle**

- (1) “Planning permission in principle” is planning permission (granted in accordance with the provisions of regulations or a development order)—
- (a) in respect of the carrying out of building, engineering, mining or other operations in, on, over or under land, and
  - (b) subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have

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been approved by the planning authority or as the case may be the Scottish Ministers.

- (2) Application for the approval mentioned in subsection (1)(b)—
- (a) must be made before whichever is latest of the following—
    - (i) the expiration of 3 years from the date of the grant of the permission,
    - (ii) the expiration of 6 months from the date on which an earlier application for the requisite approval was refused, and
    - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed, and
  - (b) may be made for—
    - (i) different matters, and
    - (ii) different parts of the development,
 at different times.
- (3) But, in relation to any matter, only one application may be made by virtue of sub-paragraphs (ii) and (iii) of subsection (2)(a) after the expiration of the 3 year period mentioned in sub-paragraph (i) of that subsection.
- (4) Subject to subsection (5), a planning permission in principle lapses on the expiration of 2 years from the requisite approval being obtained (or, in the case of approval of different matters on different dates, from the requisite approval for the last such matter being obtained) unless the development to which the permission relates is begun before that expiration.
- (5) Where a planning permission in principle is to be granted, the authority concerned with the terms of the permission may direct that (either or both)—
- (a) subsections (2)(a)(i) and (3) are to apply as respects the permission with the substitution, for the period of 3 years referred to in each of those subsections,
  - (b) subsection (4) is to apply as respects the permission with the substitution, for the period of 2 years referred to in that subsection,
- of such other periods respectively (whether longer or shorter) as they consider appropriate.
- (6) For the purposes of section 47(1)(a), (3) and (4)(a)—
- (a) any such direction, or
  - (b) the effect of subsection (4) as that subsection applies in consequence of the authority electing not to make such a direction,
- is to be treated as a condition subject to which the application is granted.
- (7) A direction under subsection (5) may provide for the substitution of different periods for different parts of the development (or for no substitution to be made for some part of the development).
- (8) In considering whether to exercise their powers under subsections (5) and (7), the authority is to have regard to the provisions of the development plan and to any other material considerations.”.

- (2) Subsection (1) does not affect section 59 in that section's application as respects any outline planning permission granted before the date on which this section comes into force.

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**Changes to legislation:** There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006, Part 3. (See end of Document for details)

## 22 Further provision as regards duration of planning permission etc.

- (1) In section 60 of the principal Act (provisions supplementary to sections 58 and 59)—
  - (a) in subsection (1), for the words “58(1)(b)” substitute “ 58(2) and (3A)(b) ”,
  - (b) in subsection (2), the word “ reserved ” is repealed, and
  - (c) subsections (3) and (4) are repealed.
- (2) In section 61(1) of that Act (termination of planning permission by reference to time limit: completion notices), for paragraph (a) substitute—
  - “(a) a development to which a planning permission relates has been begun but not completed by the date on which the permission would have lapsed had the development not been begun.”.
- (3) In section 71(7) (orders requiring discontinuance of use or alteration or removal of buildings or works), for the words “58(1)(b)” substitute “ 58(2) and (3A)(b) ”.
- (4) In section 88(5) (circumstances in which purchase notices may be served), for the words “conditions referred to in” substitute “ provisions of ”.
- (5) In section 232(7) (right to compensation in respect of certain decisions and orders), for the words “conditions referred to in” substitute “ provisions of ”.

VALID FROM 12/12/2008

### *Planning obligations and good neighbour agreements*

## 23 Planning obligations

- (1) For section 75 of the principal Act substitute—

### **“75 Planning obligations**

- (1) A person may, in respect of land in the district of a planning authority—
  - (a) by agreement with that authority, or
  - (b) unilaterally,enter into an obligation (referred to in this section and in sections 75A to 75C as a “planning obligation”) restricting or regulating the development or use of the land, either permanently or during such period as may be specified in the instrument by which the obligation is entered into (referred to in this section and in those sections as the “relevant instrument”).
- (2) Without prejudice to the generality of subsection (1), the reference in that subsection to restricting or regulating the development or use of land includes—
  - (a) requiring operations or activities specified in the relevant instrument to be carried out in, on, under or over the land, or
  - (b) requiring the land to be used in a way so specified.
- (3) A planning obligation may—
  - (a) be unconditional or subject to conditions,
  - (b) require the payment—

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- (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 may be specified in that instrument, and
- (c) contain such incidental and consequential provisions as—
  - (i) in the case of an agreement, appear to the planning authority to be necessary or expedient for the purposes of the agreement, or
  - (ii) in the case of a unilateral obligation, appear to the person entering into the obligation to be necessary or expedient for the purposes of that obligation.
- (4) Without prejudice to the generality of subsection (3)(a), the relevant instrument may provide for the postponement of the effectiveness of the planning obligation to a date specified in the instrument (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (5) A relevant instrument to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the instrument is so recorded or registered then the planning obligation is (unless the instrument provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the planning authority—
  - (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (2) or (3)(b), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,
 in so far as the obligation comprises any other requirement.
- (6) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the relevant instrument being so recorded or registered.
- (7) If there is a breach of a requirement, in a planning obligation, to carry out any operations in, on, under or over the land to which the obligation relates, the planning authority may—
  - (a) enter the land and carry out the operations, and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (8) Before a planning authority exercise their power under subsection (7)(a) they are to give any person against whom the planning obligation is enforceable not less than twenty-one days' notice of their intention to do so.
- (9) A person wilfully obstructing someone who is acting in the exercise of a power under subsection (7)(a) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section, “owner” means a person who has right to the land to which the planning obligation relates whether or not that person has completed title; but if, in relation to the land (or, if the land is held *pro indiviso*, in relation to

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any *pro indiviso* share in the land) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.

- (11) But where a heritable creditor is in lawful possession of security subjects which comprise the land, then “owner” includes the heritable creditor.
- (12) For the purposes of subsection (5) it is immaterial whether the person who is owner of the land when the relevant instrument is recorded or registered was owner when the obligation was entered into.

### **75A Modification and discharge of planning obligations**

- (1) A planning obligation may not be modified or discharged except—
- (a) by agreement, by virtue of subsection (2), between the planning authority and a person against whom that obligation is enforceable, or
  - (b) in accordance with this section and section 75B.
- (2) A person against whom a planning obligation is enforceable may apply to the planning authority for their agreement that the obligation—
- (a) have effect subject to such modifications as may be specified in the application, or
  - (b) be discharged.
- (3) An application under subsection (2)(a) is not to specify a modification imposing an obligation on any non-applicant against whom the planning obligation is enforceable.
- (4) On an application under subsection (2), the authority may determine that the planning obligation—
- (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
- (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).

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- (9) Regulations may make provision with respect to—
- (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (5).
- (10) In relation to any application referred to the Scottish Ministers by virtue of subsections (1) to (3) of section 46, the references in subsections (4) and (5) (above) to the authority are to be construed as references to the Scottish Ministers.

### **75B Appeals**

- (1) Where a planning authority—
- (a) fail to comply with section 75A(5), or
  - (b) determine that a planning obligation is to continue to have effect without modification,
- the applicant may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
- (a) within such period, and
  - (b) in such manner,
- as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the planning obligation—
- (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
- (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and

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(b) in any other case, from the date on which notice is given under subsection (5).

(9) Regulations may make provision with respect to the form and content of any notice—

(a) served under subsection (3), or

(b) given under subsection (5).

(10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.

(11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

### **75C Planning obligations: continuing liability of former owner etc.**

(1) In so far as a planning obligation comprises an appropriate requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation (unless the relevant instrument provides that he does cease to be so bound).

(2) The relevant instrument may provide that, in so far as a planning obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation.

(3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in subsection (2) or (3)(b) of section 75 which is due for performance.

(4) A person who becomes an owner of land the development or use of which is subject to a planning obligation enforceable as is mentioned in section 75(5) is, unless the relevant instrument otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.

(5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.

(6) In this section, “owner” has the same meaning as in section 75.”.

(2) Subsections (3) and (4) of section 75 of that Act, as they apply immediately before the coming into force of subsection (1) (above), are to continue so to apply in relation to any agreement entered into under that section before that coming into force.

## **24 Good neighbour agreements**

After section 75C of the principal Act (inserted into that Act by section 23(1) of this Act) insert—

### **“75D Good neighbour agreements**

(1) A person may, by agreement with a community body, enter into an obligation governing operations or activities relating to the development or use of

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land, either permanently or during such period as may be specified in the agreement.

- (2) A body is a community body for the purposes of subsection (1) if—
  - (a) it is the community council for an area in which is situated any part of the land to which the agreement relates, or
  - (b) it has been notified by the planning authority for the area in which is situated the land to which the agreement relates that, in the opinion of the authority, it is—
    - (i) a body which falls within subsection (3), or
    - (ii) a trust which falls within subsection (4).
- (3) A body falls within this subsection if—
  - (a) its members have a substantial connection with the land to which the agreement relates, and
  - (b) the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (4) A trust falls within this subsection if—
  - (a) its trustees have a substantial connection with the land to which the agreement relates, and
  - (b) the object, or function, of the trust (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (5) An agreement entered into under subsection (1) may be referred to as a “good neighbour agreement”.
- (6) Without prejudice to the generality of subsection (1), an obligation entered into under that subsection may—
  - (a) require operations or activities specified in the agreement to be carried out in, on, under or over the land, or
  - (b) require the land to be used in a way so specified.
- (7) The obligation—
  - (a) may be unconditional or subject to conditions,
  - (b) may require the provision to the community body of information regarding the development and use of the land to which the agreement relates, and
  - (c) is not to require the payment of money.
- (8) Without prejudice to the generality of subsection (7)(a), the agreement may provide for the postponement of the effectiveness of the obligation to a date specified in the agreement (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (9) A good neighbour agreement to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the agreement is so recorded or registered then the obligation is (unless the agreement provides that only the person



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entering into that obligation is to be bound by it) enforceable at the instance of the community body—

- (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (6), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,in so far as the obligation comprises any other requirement.
- (10) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the agreement being so recorded or registered.
- (11) In this section, “owner” has the same meaning as in section 75.
- (12) For the purposes of subsection (9) it is immaterial whether the person who is owner of the land when the agreement is recorded or registered was owner when the obligation was entered into.

#### **75E Good neighbour agreements: modification and discharge of obligations**

- (1) An obligation entered into under section 75D(1) may not be modified or discharged except—
  - (a) by agreement between the community body and the person against whom the obligation is enforceable, or
  - (b) in accordance with this section and section 75F.
- (2) Where the community body and the person against whom the obligation is enforceable are unable to reach agreement regarding the modification or discharge of the obligation, either may apply to the planning authority for the area in which is situated the land to which the agreement relates.
- (3) An application under subsection (2) is one seeking the determination of the planning authority as to whether the obligation is—
  - (a) to have effect subject to such modifications as may be specified in the application, or
  - (b) to be discharged.
- (4) An application under subsection (2) is not to specify a modification imposing an obligation on any non-applicant.
- (5) On an application under subsection (2), the authority may determine that the obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (6) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (7) This subsection applies where—

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- (a) there is agreement such as is mentioned in subsection (1)(a), or
  - (b) a determination is made under subsection (5)(b) or (c),
- concerning an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (8) Where subsection (7) applies, the modification or discharge does not take effect until the date on which—
- (a) the agreement under subsection (1)(a), or
  - (b) the notice given under subsection (6),
- is so recorded or as the case may be so registered.
- (9) Regulations may make provision with respect to—
- (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (6).

#### **75F Good neighbour agreements: appeals**

- (1) Where the planning authority—
- (a) fail to comply with subsection (6) of section 75E, or
  - (b) make a determination under subsection (5) of that section,
- either of the parties referred to in subsection (1)(a) of that section may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
- (a) within such period, and
  - (b) in such manner,
- as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the obligation—
- (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.

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- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be is so registered.
- (8) Where the determination is under subsection (4)(c), the obligation is enforceable as modified—
  - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to the form and content of any notice—
  - (a) served under subsection (3), or
  - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

**75G Good neighbour agreements: continuing liability of former owner etc.**

- (1) In so far as the obligation comprises an appropriate requirement, an owner of land does not, by virtue of ceasing to be such an owner, cease to be bound by that obligation (unless the good neighbour agreement provides that he does cease to be so bound).
- (2) The agreement may provide that, in so far as the obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by the obligation.
- (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in section 75D(6) which is due for performance.
- (4) A person who becomes an owner of land the development or use of which is subject to an obligation enforceable as is mentioned in section 75D(9) is, unless the agreement otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.
- (5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.
- (6) In this section, “owner” has the same meaning as in section 75.”.

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