



# Planning (Scotland) Act 2019

## 2019 asp 13

### PART 3

#### DEVELOPMENT MANAGEMENT

##### *Planning obligations*

#### **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”.
- (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  - (a) the words “the giving of any agreement under subsection (2) of section 75A or” are repealed,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      - (B) the words “, by virtue of subsection (2),” are repealed,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  - (c) subsection (3) is repealed,

*Status: Point in time view as at 18/11/2020.*

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- (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 ”,
  - (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—

*Status: Point in time view as at 18/11/2020.*

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- “(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.

#### **Commencement Information**

**II** S. 37 in force at 18.11.2020 by S.S.I. 2020/294, reg. 2 (with reg. 3)

**Status:**

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