

# PLANNING ETC. (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### Part 3 – Development Management

##### *Section 3 – Meaning of “development”*

44. **Subsection (1)(a)** introduces a new category of “development” into the 1997 Act, namely the operation of an existing marine fish farm in the circumstances specified in new section 26AA (introduced by section 4 of the Act).
45. **Subsection (1)(b)** inserts new provisions after the existing section 26(2) of the 1997 Act and gives the Scottish Ministers the power to specify in a development order the circumstances in which section 26(2)(a) of the 1997 Act will not apply to operations which have the effect of increasing the gross floor space of a building. Previously, under subsection (2)(a)(i) of section 26 of the 1997 Act, works which only affected the interior of a building were not considered to fall within the meaning of “development” and therefore did not require a development order. An example of operations that may have the effect of increasing the gross floor space is the installation of a mezzanine floor in a building.
46. **Subsection (1)(c)** expands the definition of “development” in section 26(6) of the 1997 Act to include fish farming within 12 nautical miles from the baselines from which the territorial sea is measured. This subsection also includes a definition of a nautical mile. Fish farming in inland waters is already subject to planning control under the 1997 Act, and those provisions are retained. The effect of the provision is that fish farms coming within the definition of development will require planning permission under the 1997 Act.
47. **Subsection (1)(d)** makes any material change of use of equipment used for marine fish farms development within the meaning of section 26 of the 1997 Act.
48. **Subsection (1)(e)** introduces new subsections (6C) to (6J) into section 26 of the 1997 Act. Subsections (6C) to (6G) allow the Scottish Ministers to make orders regarding the placing or assembly of equipment for the purpose of fish farming, or any material change of use, in waters described in section 26(6)(b) or (c) of the 1997 Act. They also make provision for the Scottish Ministers to allocate responsibility in the order to a particular planning authority or National Park authority.
49. Subsection (6H) requires that the Scottish Ministers consult SEPA and every planning authority and enables consultation with such other persons as they think fit before making any order under subsection (6C). Subsection (6I) clarifies the scope of the power to make an order under subsection (6C).
50. Subsection (6J) clarifies that any reference to the National Park in section 9 of the National Parks (Scotland) Act 2000, where the planning functions are extended to National Park Authorities by sections 26(6C) and 26(6D) of the 1997 Act, includes those waters described in paragraphs (b) and (c) of section 26(6) of the 1997 Act.

51. **Subsection (2)** explains that a development order made under section 26(2AA), which specifies circumstances relative to operations which have the effect of increasing the gross floor space of a building, does not retrospectively affect any operations begun before that order is made.
52. Under **subsection (3)** an existing certificate shall be of no effect if a development order is made under subsection (2AA) which specifies that the operations now fall within the meaning of development as they affect the interior of the building and will increase the gross floor space. Providing that no operations have begun before the date the development order comes into force, the certificate will be of no effect.
53. **Subsection (4)** amends section 275 of the 1997 Act relating to the Scottish Ministers' powers to make regulations and orders.

#### **Section 4 Marine fish farms**

54. **Subsection (1)** introduces a new section 26AA into the 1997 Act.
55. **Section 26AA(1)** provides for the circumstances to which section 26(1) refer. At subsection (1)(a) these are that the marine fish farm is being operated after the “appropriate date” or, if before that date, the date when planning permission is granted or refused under section 31A, and at subsection (1)(b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that action did not constitute development under the planning Acts.
56. **Section 26AA(2)** clarifies that the “appropriate date” for a fish farm with reference to section 26AA(1)(a) is whichever is the later of: a date prescribed by Scottish Ministers and a date on which any authorisation ceases to have effect. Such an authorisation relates to the operation of a fish farm and is in effect on the date of commencement of section 4 of this Act.
57. **Section 26AA(3)** provides definitions of “authorisation”, “equipment” and “marine fish farm” in sections 26AA and 31A of the 1997 Act.
58. **Subsection (2)** introduces a new section 31A into the 1997 Act.
59. **New section 31A(1)** applies only to planning permission for the operation of a fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b) of the 1997 Act. Subsection (2) provides that planning permission is to be granted by the Scottish Ministers, and subsection (3) provides that permission granted under subsection (2) may be granted as respects a class of development.
60. Subsection (4) requires that any grant of planning permission as respects a class of development is to be by order, and that when granting any permission by order, the class of development to be granted is to be specified in the order. Subsection (5) provides that any permission granted under this section may be unconditional or subject to conditions or limitations. Subsection (6) provides that the conditions or limitations which may be imposed on any permission include those specified in the development consent or works licence in force at the time of imposition.
61. Subsection (7) provides that in coming to a decision on whether to grant such a permission, the principal matters to be considered by Ministers are the likely impact of the development on any European site as defined and the environment generally. Subsection (8) provides Ministers with regulation making powers with regard to applications for planning permission under section 31A.

#### **Section 5 – Hierarchy of developments for purposes of development management etc.**

62. This section inserts new section 26A into the 1997 Act. Subsection (1) sets out the three categories to which all developments will be allocated. Subsections (2) and (4) give

the Scottish Ministers powers to make regulations to describe the classes of major and local development. National developments are those designated as such in the National Planning Framework. Subsection (3) enables the Scottish Ministers to direct that a particular local development is assigned to the class of major developments Subsection (5) requires that regulations under subsection (2) are to be subject to affirmative procedure.

### ***Section 6 – Initiation and completion of development***

63. **Subsection (1)** inserts new section 27A, “Notification of initiation of development”, into the 1997 Act. The provisions require the developer to inform the planning authority when development is to be commenced. The planning authority are to issue a notice to the applicant informing them of the requirement. Section 27A also allows for Ministers to prescribe further information to be contained in the notice.
64. **Subsection (1)** also inserts new section 27B “Notification of completion of development”, into the 1997 Act. This subsection contains provisions requiring the planning authority to be informed by the developer when development has been completed. Where the development is to be carried out in phases, the planning authority are to impose a condition on the planning permission requiring the developer to inform the planning authority of the completion of each phase.
65. **Subsection (1)** also inserts new section 27C “Display of notice while development is carried out” into the 1997 Act. This section requires a developer carrying out certain types of development to display a notice containing certain information regarding the development. The types of development for which a notice is required and the information to be displayed will be prescribed in secondary legislation. Ministers may also set out in regulations the form of the notice and where it is to be displayed.
66. **Subsection (2)** makes commencement of development without informing the planning authority of initiation of development a breach of planning control. It also makes carrying out development without displaying a notice in accordance with section 27C a breach of planning control.

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

67. **Subsection (1)** replaces the existing section 32 of the 1997 Act to enable the Scottish Ministers to prescribe in regulations or a development order both the form and the content in which a planning application must be made and submitted to planning authorities. Regulations or a development order made under this section may make different provision for different cases and levels of development or for different planning authority areas. These must require that certain descriptions of applications be accompanied by a statement about the design principles and concepts that have been applied to the development and how issues relating to access to the development have been dealt with. These may be separate statements or combined, and if combined could be contained in either one document or in two. The secondary legislation can also specify the form and content of such a statement. Where specified in secondary legislation an application must also be accompanied by a pre-application consultation report, as explained in relation to section 11 in these notes.
68. **Subsection (2)** extends section 182 of the 1997 Act by inserting a new subsection (2A) into the provisions relating to regulations controlling the display of advertisements to specify the form and manner in which an advertisement application must be made.
69. **Subsection (3)** amends section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the listed buildings Act”) which stipulates how applications shall be made to planning authorities. Section 9(3)(a) of the listed buildings Act is replaced so that the provision to allow the planning authority power to specify the form and manner in which an application for planning permission must be made is consistent with the provision in **subsection (1)**, affecting the 1997 Act.

70. **Subsection (3)** also inserts new subsections (4) and (5) into section 9 of the listed buildings Act to ensure consistency with the new section 32 of the 1997 Act as set out in subsection (1), so that certain applications for listed building consent are also required to be accompanied by a statement detailing how issues relating to access to the development for the disabled have been dealt with. The form and content of the statement will also be as prescribed in regulations.

### ***Section 8 – Variation of planning applications***

71. **Section 8** inserts two new sections after section 32 of the 1997 Act. **New section 32A** sets out the circumstances under which a planning application may be varied with the agreement of the planning authority after it has been made. Subsection (2) provides that a planning authority may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development. Subsection (3) enables the Scottish Ministers to make regulations or a development order setting out the circumstances in which an application may be varied. Subsection (3) also states that an application must not be varied if it is the subject of an appeal under section 47 of the 1997 Act.
72. Subsection (4) gives the planning authority powers to give notice of the variation to a planning application.
73. Subsection (5) allows the provisions in new section 32A to apply to planning applications made directly to the Scottish Ministers under the “urgent development” procedures introduced on the removal of Crown immunity from planning control.
74. **New section 32B** sets out the circumstances under which a planning application may be varied after it has been referred to Scottish Ministers, subject to their agreement. Subsection (2) provides that the Scottish Ministers may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development. Subsection (3) allows the regulations or development order to make provision for the timing and the procedures for applications to be varied.
75. Subsection (4) gives the Scottish Ministers powers to give notice of a variation to an application.

### ***Section 9 – Development already carried out***

76. This section inserts a **new section 33A** in the 1997 Act. This gives the planning authority the power to issue a notice requiring the owner of the land where planning permission has not been granted but development has already been carried out to make an application for planning permission. The existing section 33 of the 1997 Act only provides that planning permission for development already carried out may be granted. Issuing the notice constitutes enforcement action under section 123(2) of the 1997 Act.

### ***Section 10 – Publicity for applications***

77. **Subsection (1)** replaces existing section 34 of the 1997 Act. This section gives the Scottish Ministers the power to set out in regulations or development order to whom, how and for how long a planning authority should give notice of an application. It sets out the types of applications for which the planning authority must give notice. It also makes provision for criteria which must be satisfied before the application can be determined. The Scottish Ministers have the power to require the planning authority to provide information on how they have carried out their functions under section 34.
78. **Subsection (2)** sets out minor changes to section 38 of the 1997 Act, to reflect the changes under new section 34.

### ***Section 11 – Pre-application consultation***

79. This section introduces **new sections 35A, 35B and 35C** into the 1997 Act. The existing section 35 already gives the Scottish Ministers the power to make regulations or a development order on the procedures and the form and content of notices of application for planning permission.
80. **New section 35A** places a duty on a prospective applicant for planning permission for certain prescribed classes of development to comply with the pre-application procedures set out in new section 35B before submitting an application for planning permission. The classes of development are to be prescribed by regulations or a development order, and different classes can be prescribed for different areas.
81. New section 35A(3) enables applicants by notice to require the planning authority to determine whether or not their proposed development falls within a prescribed class. The planning authority can request that the applicant provides additional information if they feel insufficient information has been submitted. If the planning authority respond stating that they consider the proposed development does not fall within the classes requiring a pre-application consultation then, providing the application for planning permission is submitted within 12 months of the notice and it does not differ materially from the information given in the notice, pre-application consultation would not be required.
82. New section 35A(7) places a duty on the planning authority to respond to an applicant’s “proposal of application notice” within 21 days or as otherwise prescribed in regulations or a development order.
83. New section 35A(10) allows the provisions in new section 35A to apply to planning applications made directly to the Scottish Ministers under the “urgent development” procedures introduced on the removal of Crown immunity from planning control.
84. **New section 35B** sets out the details for the pre-application consultation process. This will be initiated by the prospective applicant submitting a “proposal of application notice” to the planning authority. New section 35B(3) requires there to be a 12 week period between submission of the notice and the application. New section 35B(4) sets out the minimum content of the “proposal of application notice”. The contents, persons to be consulted and the form of the consultation are to be set out further in regulations or a development order made under section 35B(5). If the planning authority consider that additional consultation to that prescribed in such regulations or development order should be undertaken, they must inform the applicant within 21 days of receipt of the notice. If they fail to respond within the 21 days they can be assumed to have considered that no additional consultation is required. New section 35B(9) allows the provisions in new section 35B to apply to planning applications made directly to the Scottish Ministers under the “urgent development” procedures introduced on the removal of Crown immunity from planning control.
85. **New section 35C** requires the submission of a “pre-application consultation report” with the application for planning permission, the form of this report being prescribed in regulations or a development order.

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

86. Section 36(1) of the 1997 Act requires planning authorities to keep a register containing information on applications for planning permission, their approval of applications, the manner in which the applications have been dealt with and information on planning zone schemes within that authority’s area. The Scottish Ministers have the power to set out in regulations or a development order the content and manner of the register.
87. The changes made by **section 12** are intended to ensure that planning authorities provide a full record of the relevant factors considered in determining each application,

including all documents relating to the application and considered in the decision making process, the reasons for the decision, and the material considerations to which regard was had when making the decision. They are also required to make available an explanation of the manner in which the application has been dealt with and provide a copy of the notice informing the applicant of the authority's decision. Section 12 also requires planning registers to include information on planning applications made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.

### ***Section 13 – Keeping and publication of lists of applications***

88. This section inserts a **new section 36A** into the 1997 Act. Subsection (1) places a duty on every planning authority to keep a list of applications and proposal of application notices for pre-application consultations. It also requires them to include on the list planning applications made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.
89. The duty is extended in subsection (2) to require the planning authority to revise/update the list weekly. The Scottish Ministers may substitute a different period by means of regulations. The subsection also gives the Scottish Ministers the power to make regulations or a development order to set out how the list should be published.
90. Subsections (3) and (5) require the planning authority to advertise the availability of the list in a local newspaper and gives the Scottish Ministers power to prescribe the frequency with which the list is to be published. Provision is also made for publishing by electronic means.
91. Subsection (4) allows the planning authority, as set out in regulations or a development order, to recover any costs incurred as a result of preparing, publishing and advertising the availability of the list of applications.
92. Subsection (6) defines when a proposal for application notice ceases to be current and can therefore be removed from the list, as set out in the new subsection (2)(a)(ii).

### ***Section 14 – Pre-determination hearings***

93. **Subsection (1)** inserts a **new section 38A** into the 1997 Act. **New section 38A(1)** provides that regulations or a development order may set out which developments are subject to pre-determination hearings. These hearings give the applicant and anyone else referred to in the regulations an opportunity to appear before and be heard by a committee of the planning authority.
94. **New section 38A(2) and (3)** allows the planning authority to determine the procedures for such a hearing, and who else may attend. **New section 38A(4)** allows the authority to hold hearings in circumstances other than those set out in new section 38A(1).
95. **Subsection (2)** amends the **Local Government (Scotland) Act 1973 (c.65)**, specifically section 56 (arrangements for discharge of functions by local authorities). It requires that planning applications in a class specified under section 38A(1) are to be decided by the authority, i.e. the full council, and not by an official or committee of the authority. This is another requirement of the new enhanced scrutiny procedures along with pre-determination hearings, pre-application consultation and notification of applications to Ministers.

### ***Section 15 – Additional grounds for declining to determine application for planning permission***

96. **Subsection (a)** amends section 39 of the 1997 Act by substituting new subsections (1) to (1D) for the existing subsection (1).

97. **The new subsection (1)** sets out the circumstances in which a planning authority may decline to determine an application for planning permission.
- Paragraph (a) applies where the Scottish Ministers have refused a similar application in the previous two years and there has been no significant change to the development plan or any other material considerations.
  - Paragraph (b) applies where the planning authority has refused more than one similar application in the previous two years and there has been neither an appeal to Ministers nor any significant change to the development plan or other material considerations since the more recent of these refusals.
  - Paragraph (c) applies where the planning authority has refused more than one similar application in the previous two years, there has been an appeal to Ministers but no such appeal has yet been determined, and there has been no significant change to the development plan or other material considerations since the more recent of these refusals.
  - Paragraph (d) applies where there has been no refusal by the planning authority but an appeal following non-determination of an application has been made in the previous two years in respect of two or more similar applications, and those appeals remain undetermined and no significant change to the development plan or other material considerations have occurred since the more recent of the appeals was made.
  - Paragraph (e) applies where two similar applications have been received in the previous two years. Where the planning authority has refused one application and an appeal that has been made on another similar application has still to be determined, the planning authority may decline to determine a further application if there has been no significant change to the development plan or other material considerations since the more recent of the refusal or the appeal.
98. **The new subsections (1A) to (1D)** place a duty on the planning authority or the Scottish Ministers to refuse an application for planning permission if the applicant has failed to comply with the pre-application consultation requirements introduced by new section 35B. The authority or the Scottish Ministers are required to inform the applicant of the reason for refusing it but may request additional information from the applicant before doing so. As the Act allows for pre-application requirements to apply to applications which are made directly to the Scottish Ministers under the new “urgent development” procedures introduced on the removal of Crown immunity from planning control, the duties in these new subsections can also apply to the Scottish Ministers.

***Section 16 – Manner in which applications for planning permission are dealt with etc.***

99. **Section 16(a)(i)** inserts the new paragraph (aa) into section 43(1) of the 1997 Act. This gives the Scottish Ministers the power to direct that the planning authority are to consider attaching conditions when granting a planning application for a development or for a development of a particular class. The direction would also require the planning authority to satisfy the Scottish Ministers that they have taken the necessary steps to comply with the direction before they grant planning permission. The new provisions enable the Scottish Ministers to set out in the direction conditions for specified development or classes of development, rather than having to call it in.
100. **Section 16(a)(ii)** inserts the new paragraph (bb) into section 43(1) of the 1997 Act. This will allow regulations or a development order to be made, enabling the planning authority to require supporting documents or evidence which will enable them to deal with an application.
101. **Section 16(b)** inserts a new subsection (1A) into the existing section 43 the 1997 Act. Section 43(1)(d) and (e) give the Scottish Ministers the power to make regulations or a

development order which require the planning authority to give notice to the applicant following its consideration of an application for consent, agreement or approval of an application for planning permission. The new subsection (1A) sets out the contents of the notice issued to an applicant and places a requirement within primary legislation for a planning authority to give reasons on which it has made its decision.

102. **Section 16(c)** adds new subsections (3) and (4) to section 43 of the 1997 Act. These subsections apply the provisions of section 43(1) to applications for modification or discharge of planning obligations made under section 75A(2) with necessary modifications.

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

103. This section inserts **new sections 43A and 43B** into the 1997 Act. Section 43A(1) requires each planning authority to prepare a scheme of delegation, describing how applications relating to local developments are to be determined by appointed persons (such as officials) instead of elected members. Section 43A(3) indicates that the scheme of delegation required by section 43A(1) does not apply to cases specified under section 38A(1) as requiring pre-determination hearings. As part of the new enhanced scrutiny procedures, such cases are to be decided by the full council.
104. Section 43A(4) allows regulations to set out the procedures for preparing and adopting schemes of delegation, and their form and content. Section 43A(5) applies the relevant parts of sections 37 to 39, 41, 42 and Part 1 of Schedule 3 to the 1997 Act to planning applications dealt with by the appointed person. Section 43A(6) allows the authority to determine any delegated application themselves, and section 43A(7) requires them to produce a statement of reasons for doing so, which must be copied to the applicant.
105. Section 43A(8) to (17) covers the procedure under which the applicant can require a review of a delegated decision where an application was refused or granted subject to conditions, or where the appointed person failed to determine an application within the prescribed time period. The form and procedure of such a review may be set out in regulations or a development order under section 43A(10). The regulations will also set out the time limits for requiring a review and the terms in which the case has been reviewed and the reasons for the decision. There is no right of appeal to the Scottish Ministers (other than in relation to a failure to determine the application). The applicant has a right to apply to the Court of Session under section 239 of the 1997 Act.
106. Section 43A(18) substitutes paragraph 1(6)(b) of Schedule 3 to the 1997 Act. This applies to planning applications dealt with by the appointed person as set out in section 43A(8).
107. **New section 43B** sets out the circumstances under which the applicant may be allowed to raise a matter which was not part of the application determined by the appointed person, when the planning authority conduct a review under section 43A(8).

### ***Section 18 – Call-in of applications by the Scottish Ministers***

108. This section makes minor changes to section 46 of the 1997 Act which gives the Scottish Ministers the power to make directions to call in applications. The directions may apply to one or more planning authorities and may relate to an individual application or a class of applications as described in the directions. This section inserts a subsection (1A) giving the Scottish Ministers the power to either withdraw directions or modify existing directions by making further directions. Subsection (3) is amended consequentially to make explicit reference to subsection (1).

### ***Section 19 – Appeals etc.***

109. **Subsection (1)** amends section 47 of the 1997 Act to clarify that an appeal under subsection (1) is to be against the decision of a planning authority to refuse an

application or grant it subject to conditions. It also adds a new subsection (1A) to exclude from subsection (1) actions taken by an authority in a review of a delegated decision under section 43A(8). This change combined with the changes made by subsections (3) and (4) give a party aggrieved by the decision on a review of a delegated decision the right to appeal to the Court of Session rather than to the Scottish Ministers.

110. **Subsection (2)** inserts a new section 47A into the 1997 Act. This sets out the circumstances under which the applicant may be allowed to raise a matter which was not part of the application determined by the planning authority, when making an appeal under section 47(1).
111. **Subsection (3)** amends section 237 of the 1997 Act (validity of certain plans, schemes, orders and actions) in relation to the delegation of decisions by planning authorities under new section 43A.
112. **Subsection (4)** amends section 239 of the 1997 Act (proceedings for questioning the validity of certain orders, decisions and directions) in relation to the delegation of decisions by planning authorities under new section 43A.
113. **Subsection (5)** amends section 267 of the 1997 Act (procedure on certain appeals and applications) to extend the scope of regulations to cover appeals and applications under the 1997 Act irrespective of whether the Scottish Ministers are required to afford any person an opportunity of appearing before and being heard by a person appointed by Ministers. It inserts new subsections (1A), (1B) and (1C) which clarify further the content of the regulations. These provisions replace subsection (3) which is repealed.

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

114. **Subsections (1) and (2)** amend section 58 of the 1997 Act (which is re-entitled “Duration of planning permission”). In section 58, subsections (1) to (3) are substituted by new subsections (1) to (3A). Under the new subsections a planning permission lapses after three years unless the development is begun within that time. The planning authority may under new subsection (2) direct that a different time limit shall apply. In subsection (4) new paragraph (ca) makes it clear that the new version of section 58 does not apply to permissions granted prior to the coming into force of section 20.
115. **Subsection (3)** makes similar amendments to section 16 of the listed buildings Act.

### ***Section 21 – Planning permission in principle***

116. **Section 21** replaces the existing section 59 of the 1997 Act with a **new section 59**, “Planning permission in principle”. New subsection (1) defines “planning permission in principle”, and new subsections (2) and (3) set out time limits within which an application must be made for the approval of any matters set out in conditions imposed under subsection (1)(b).
117. An application for approval must be made within 3 years of the date when the “planning permission in principle” was granted or within 6 months of when a previous application of approval has been refused or an appeal against a refusal has been dismissed, whichever is the latest date. Approval does not necessarily have to be given for the whole application at the same time. The planning authority may direct that a longer or shorter period than 3 years is to apply.
118. Subsections (4) provides that planning permission in principle lapses on the expiry of a period of two years after the date (or the last date) on which approval mentioned in subsection (1)(b) is given unless development has begun before that date. The planning authority may direct that a longer or shorter period should apply. Subsection (6) states that a direction under subsection (4) is to be treated as a condition for the purposes of section 47 of the 1997 Act. Subsection (7) allows a direction under subsection (5) to provide that different periods may apply to different parts of the development. Subsection (8) requires the planning authority to have regard to any provisions set out in

its development plan or other material considerations if it chooses to adjust time limits set out under subsections (5) and (7).

119. Subsection (2)> ensures that the provisions in the new section 59, introduced by section 21 of the Act, do not apply to outline planning permissions granted under the current section 59 of the 1997 Act prior to section 21 of the Act coming into force. The existing statutory arrangements will continue to apply to such outline planning permissions.

### ***Section 22 – Further provisions as regards duration of planning permission etc.***

120. **Section 22** amends various sections of the 1997 Act to bring them into line with the revised wording of sections 58 and 59 of the 1997 Act resulting from sections 20 and 21 of this Act.

### ***Section 23 – Planning obligations***

121. **Subsection (1)** replaces section 75 of the 1997 Act – planning agreements – with new sections 75, 75A, 75B and 75C.
122. In **new section 75 – Planning obligations** – subsection (1) provides that a person may enter into a planning obligation, either by agreement with a planning authority or unilaterally. The obligation in respect of land in the authority’s district restricts or regulates the development or use of the land, either permanently or during a specified period. Typical examples could relate to the provision of road improvements, community facilities or extensions to schools relating to the development, either directly by the developer or through funding to the local authority.
123. Subsection (2) confirms that obligations can require operations or activities to be carried out, or require the land to be used in the specified way.
124. Subsection (3) states that an obligation may be subject to conditions, require the payment of a specified amount or periodic sums, and contain such other provisions as the planning authority or the person entering into the obligation believe to be necessary or expedient.
125. Subsection (4) states that an obligation can have effect on a specified date or a date determined by reference to an event.
126. Subsection (5) states that an obligation is enforceable by the planning authority against the owner of the land or (in the case of obligations other than those mentioned in subsection (2) or (3)(b)) any other person having use of the land, if it is recorded in the Register of Sasines or registered in the Land Register of Scotland. To be so recorded or registered the owner of the land must be a party to the obligation. In terms of subsection (12) it does not matter if the owner of the land at the time of recording or registration was owner at the time when the obligation was entered into. Subsection (6) prevents enforcement of a planning obligation under subsection (5) where a third party acquires right to the land prior to the obligation being recorded or registered.
127. Subsection (7) gives the planning authority powers to enter land, carry out operations and recover costs where there is a breach of a requirement in an obligation to carry out any operation. Subsection (8) requires the authority to give 21 days notice of their intention to do so.
128. Subsection (9) states that anyone wilfully obstructing someone who is acting in the exercise of the power of entry under subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 (at present £500).
129. Subsections (10) and (11) define owner in relation to planning obligations.
130. **New section 75A – Modification and discharge of planning obligations** – sets out the circumstances in which an obligation can be modified or discharged. Subsection

*These notes relate to the Planning etc. (Scotland) Act 2006  
(asp 17) which received Royal Assent on 20 December 2006*

(2) states that a person may apply to a planning authority for their agreement that an obligation should be modified or discharged. Subsection (1)(a) requires agreement to modification or discharge of a planning obligation to be pursuant upon an application made under subsection (2).

131. Subsection (4) gives the authority powers to continue, discharge or modify an obligation, and subsection (5) requires the authority to give notice of their determination to the applicant.
132. Subsections (6) to (8) set out that, where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland, the modification or discharge is effective from the date of recording or registration of the notice that the obligation is to be discharged or modified.
133. Subsection (9) allows regulations to provide for the form and content of an application under subsection 75A(2), the publication of notice of any such application, procedures for considering representations and the form and content of any notice given under subsection 75A(5).
134. **New section 75B – Appeals** – provides a right of appeal to the Scottish Ministers where a planning authority fail to comply with subsection 75A(5) (their duty to give notice of their determination of an application to modify or discharge an obligation) or determine that an obligation is to continue without modification.
135. Subsection (3) states that an appeal may be made within such period and by a notice served as prescribed in regulations. Subsection (4) allows the Scottish Ministers to continue, discharge or modify an obligation, and subsection (5) requires Ministers to give notice of their determination to the applicant.
136. Subsections (6) to (8) set out that when this determination takes effect where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland this is the date of recording or registration as the case may be.
137. Subsection (9) allows regulations to provide for the form and content of a notice served under subsection 75B(3), or given under subsection 75B(5).
138. Subsection (10) provides that the determination of an appeal under this section by Scottish Ministers is final save to the extent that there is a right to apply to the Court of Session under section 239 of the 1997 Act.
139. **New section 75C – Planning obligations: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by a planning obligation when ceasing to be the owner of that land. Under subsection (4), unless the obligation states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but in terms of subsection (5) that person may recover any expenditure incurred from the former owner.
140. **Subsection (2)** provides that subsections (3) and (4) of the existing section 75 of the 1997 Act will continue to apply to agreements entered into before the coming into force of section 23(1) of this Act.

#### **Section 24 – Good neighbour agreements**

141. **Section 24** inserts new sections into the 1997 Act to govern the operation of good neighbour agreements.
142. **New section 75D – Good neighbour agreements** – allows a person to enter into a good neighbour agreement with a community body. Subsections (2) to (4) define which bodies may be community bodies for the purposes of a good neighbour agreement. Subsection (6) further describes the requirements that can be specified in an agreement and subsection (7) describes conditions that may be attached to the agreement. Subsection (9) makes provision for good neighbour agreements to be recorded in the

Register of Sasines or registered in the Land Register for Scotland. Where an agreement has been recorded/registered then the obligation is enforceable against the owner, tenant or other person entering into the agreement. Subsection (10) provides that any new owner of the land will be bound by the agreement unless it has been acquired in advance of the agreement being registered/recorded.

143. **New section 75E – Good neighbour agreements: modification and discharge of obligations** – sets out the circumstances under which an obligation under a good neighbour agreement can be modified or discharged and the process by which either party may apply to the planning authority for its determination if they are unable to reach agreement on the modifications or discharge. Subsection (4) confirms that any application for modification should not impose an obligation on any non-applicant. Subsections (5) to (8) set out the effect of the planning authority's determination, the requirement to give notice of their determination and when any modification or discharge is to take effect. Subsection (9) give the Scottish Ministers the power to make regulations with respect to applications for determination.
144. **New section 75F – Good neighbour agreements: appeals** – sets out the circumstances under which either party may serve a notice on the Scottish Ministers, appealing against the planning authority's determination or failure to make a determination within the period prescribed under section 75E(6). The Scottish Ministers have the power to make regulations on the form, content and notice periods for appeals. The determination of an appeal to the Scottish Ministers may be appealed to the Court of Session in accordance with the terms of section 239 of the 1997 Act.
145. **New section 75G – Good neighbour agreements: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by an obligation contained in a good neighbour agreement when ceasing to be the owner of that land. Under subsection (4), unless the good neighbour agreement states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but may recover any expenditure incurred from the former owner.