

# PLANNING (SCOTLAND) ACT 2019

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

#### PART 3 – DEVELOPMENT MANAGEMENT

#### Meaning of “development”

##### *Section 17: Meaning of “development”: use of dwellinghouse for short term holiday lets*

133. Section 26 of the 1997 Act defines “development” as “the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of any buildings or other land”, followed by various exemptions, inclusions and clarifications. Section 28 of the 1997 Act states that (subject to exemptions) “planning permission is required for the carrying out of any development of land”.
134. Section 17 inserts a new section 26B into the 1997 Act. This allows a planning authority to designate all or part of their area as a ‘short-term let control area’. In designated areas, the use of a dwellinghouse for providing short-term lets would be a material change of use of the dwellinghouse and would require planning permission. Subsection (4) provides that the planning authority can vary or cancel a designation as a short-term letting control area.
135. Section 26B(3) establishes that a private residential tenancy in terms of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 does not constitute a short-term let, nor does a tenancy of a dwellinghouse or part of it where the dwellinghouse is the only or principal home of the landlord or occupier.
136. Subsection (5) provides regulation-making powers for the Scottish Ministers to make further provision regarding the procedure for making, varying or cancelling a short-term letting control area, which may include the approval of Scottish Ministers, and the form of a designation as a short-term letting control area. Regulations may also set out what constitutes providing a short-term let and any circumstances in which, or descriptions of dwellinghouse to which section 26B does not apply. Under subsection (6) the Scottish Ministers are required to consult with planning authorities and such other persons as they consider appropriate before making any regulations under section 26B.

#### Applications

##### *Section 18: Pre-application consultation*

137. Section 18 of the Act amends sections 35A, 35B and 35C of the 1997 Act on pre-application consultation (PAC).
138. Section 35A (pre-application consultation: preliminary) of the 1997 Act requires that, before submitting an application for planning permission for a prescribed class of development, the prospective applicant has to comply with section 35B (pre-application

consultation: compliance). Section 35A of the 1997 Act goes on to specify a screening procedure whereby a prospective applicant can ask the planning authority for their opinion on whether the proposal falls within a class of development requiring pre-application consultation (PAC).

139. Section 35B of the 1997 Act requires the prospective applicant to give a notice (a proposal of application notice) to the planning authority that an application for planning permission to which PAC applies will be made. Such an application cannot be submitted within 12 weeks from the giving of this notice. Section 35B goes on to make provision about the content of the notice, who is to be consulted and how the consultation is to be carried out.
140. Section 35C (pre-application consultation report) of the 1997 Act requires that if an application is to be submitted, a report must be prepared of what was done to comply with the PAC requirements. This section also allows for the form of such a report to be prescribed.
141. Section 35A(1A) of the 1997 Act contains an exception to the requirement for PAC in relation to applications for planning permission under section 42 of the Act. Section 18(2)(a) of the Act amends section 35A(1A) of the 1997 Act to add a new paragraph (b) allowing the Scottish Ministers to make regulations specifying circumstances in which an application for planning permission does not require PAC. This power will be in addition to the existing power under section 35A which allows Ministers to prescribe classes of development to which PAC requirements apply.
142. Sections 35A(3) and (9) of the 1997 Act relate to the screening process for prospective applicants on the need for PAC. At the moment, these provisions are framed on the basis of the existing rules about when PAC applies. Sections 18(2)(b) and (d) of the Act update that reference, in light of the fact that whether or not the development is of a prescribed class will now no longer be the only factor in determining whether PAC is required. The replacement form of words allows the screening opinion to consider both the current test for PAC (whether the proposal relates to a prescribed class of development to which PAC applies) and also the new test (whether it is covered by any prescribed circumstances where PAC does not apply).
143. Section 18(2)(c) of the Act also amends section 35A(5) of the 1997 Act so that regulations may prescribe the content, and not just the form, of a notice requesting screening.
144. Section 18(3) of the Act amends section 35B(3) of the 1997 Act so that an application for planning permission must be submitted within a maximum of 18 months of the date of submission of the proposal of application notice. This runs concurrently with the existing minimum period, which provides that the application cannot be submitted until at least 12 weeks after the giving of this notice.
145. Section 18(4) of the Act amends section 35C(2) of the 1997 Act so that regulations can prescribe not only the form but also the content of a PAC report.

### ***Section 19: Assessment of health effects***

146. Section 19 of the Act introduces a new section 40A into the 1997 Act, which requires the Scottish Ministers to make regulations about the consideration to be given to the likely health effects of any national or major development, before planning permission is granted. Under paragraph 9 of schedule 2 of the Act, the regulations are to be subject to affirmative procedure.

### ***Section 20: Regulations about procedure for certain applications***

147. Section 20 of the Act replaces subsection (3) of section 42 (determination of applications to develop land without compliance with conditions previously attached) of the 1997 Act – see paragraph 172 below. Subsection (3) currently allows special

provision to be made in a development order about the procedure to be followed in an application under section 42 of the 1997 Act. The revised text allows for such provision to also be made in regulations.

***Section 21: Removal of requirement to recover costs before determining certain applications***

148. Section 34(4)(c) of the 1997 Act requires an applicant to pay the planning authority a fee to cover the costs incurred in giving notice to interested parties of the application before the authority can issue a decision on that application. Section 21 of the Act repeals this requirement as the intention is to change the approach to recovering such costs upfront through the application fee. Currently the advertising costs are not collected at point of application, but before decision notice is issued which may lead to applicants refusing to pay such costs if they know the application is to be refused.

***Section 22: Declining to determine an application***

149. Section 39 of the 1997 Act sets out the discretionary powers for planning authorities to refuse to accept planning applications (decline to determine), where permission was previously refused for a ‘similar application’, i.e. where the development and the land are the same or substantially the same. Different criteria apply depending whether there has been an appeal or local review, but in each case the authority may decline to determine an application if the criteria were met within the previous two years. Section 14A of the Act amends this to be five years in each case. Section 38 of the Act inserts a new section 39A requiring the Scottish Ministers to publish guidance on what constitutes a “similar application” and a “significant change” for the purposes of declining to determine an application.

**Notice by planning authority of certain applications made to them**

***Section 23: Notice by planning authority of certain applications made to them***

150. Section 23 of the Act amends section 34 of the 1997 Act to require that a planning authority must give notice of any application for planning permission for a major development to each local councillor, MSP and MP representing the district to which the application relates.

**Assessment of environmental effects**

***Section 24: Assessment of environmental effects***

151. Section 40 of the 1997 Act gives the Scottish Ministers powers to make regulations about the assessment of environmental effects of any development before planning permission is granted. Section 24 of the Act amends section 40 so that “environmental effects” explicitly includes effects on biodiversity, including the net positive effects on biodiversity likely to result from the development.

**Conditional grant of planning permission: noise-sensitive developments**

***Section 25: Conditional grant of planning permission: noise-sensitive developments***

152. Section 25 inserts a new section 41A into the 1997 Act intended to implement the “agent of change” principle to protect existing activities that create significant noise. Subsection (1) defines a “noise-sensitive development” and a “noise source”. Subsection (2)(a) provides that where an application is made for planning permission for a noise sensitive development the planning authority must take particular account of whether the development includes sufficient measures to deal with the effect of noise between the development and existing dwellings or businesses, with particular

emphasis on live music venues and other cultural venues. Subsection (2)(b) states that the authority may not set conditions on the grant of such planning permission that impose additional costs on a noise source, relating to acoustic design measures to manage the effects of noise.

### **Conditional grant of planning permission: provision of toilet facilities within certain large developments**

#### ***Section 26: Conditional grant of planning permission: provision of toilet facilities within certain large developments***

153. Section 26 inserts a new section 41B into the 1997 Act. This requires that a planning authority may only grant planning permission for certain types of development on condition that it includes at least one toilet facility meeting specified standards. The section is intended to provide that “Changing Places” toilets suitable for adults with complex disabilities are included in the development of large public buildings. The list of developments to be covered is set out in subsection (2), and the specification for the required facility is in subsection (3). Subsection (4) provides that the Scottish Ministers may amend these by regulations, in order to ensure the requirements are appropriate and keep up with changing standards. Under section 275(7BA) of the 1997 Act, such regulations are subject to the affirmative procedure.

### **Delegation of development decisions**

#### ***Section 27: Delegation of development decisions***

154. Section 27 of the Act repeals section 56(6A) (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 (“the 1973 Act”) and section 14(2) (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”). Section 56 of the 1973 Act deals with the delegation of functions within local authorities. Section 14 of the 2006 Act introduced subsection (6A) to section 56 of the 1973 Act which specifies that: “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.”
155. Section 38A(1) of the 1997 Act provides that a pre-determination hearing before a committee of the authority must be offered to the applicant (and prescribed parties) in relation to an application for planning permission for a prescribed class of development. Therefore, the local authority currently cannot delegate to a committee or to officials the decision on whether or not to grant planning permission in a case where a pre-determination hearing has to be offered.
156. Section 27 of the Act removes the requirement for such applications to go to full council for decision, and leaves the authority free to delegate the decision on such applications as it sees fit. For example, since the pre-determination hearing is before a committee of the authority, it might be considered appropriate for that committee to make the decision on the application.

#### ***Section 28: Schemes of delegation***

157. Section 28 of the Act substitutes new sections 43A, 43AA, 43AB, 43AC and 43AD for section 43A of the 1997 Act. Section 43A of the 1997 Act currently requires each planning authority to prepare a scheme of delegation for the determination by an appointed person of various applications. The applications in question are applications for planning permission in relation to local development, and applications for consent, agreement or approval where that is required by conditions attached to such planning permission. An appointed person is distinct from an elected member of the authority and is usually an officer of the authority. Where applications are so delegated, rather

than a right of appeal to the Scottish Ministers, the applicant has a right to a review by the planning authority of the appointed person's decision, or failure to make a decision, on the application. The main effect of the new provisions is to extend such schemes of delegation to other types of application under the 1997 Act; they also expand the content of the current section 43A to set it out more clearly.

158. New sections 43A(1) – (3) restate the basic specification of a scheme of delegation and the requirements to review and update the scheme which are currently in existing section 43A(1) of the 1997 Act. As all planning authorities already have schemes of delegation, the current requirement for each planning authority to prepare one as soon as possible after the provision comes into force has been removed.
159. New section 43A(4) sets out the applications to which a scheme of delegation applies. As well as covering those applications which are currently covered (paragraphs (a) and (b)), new section 43A(4) extends the range of applications to which such schemes apply. It adds applications for approval required by a development order (paragraph (c)), applications for certificates of lawful use or development (CLUD) (paragraphs (d) and (e)) and applications for advertisement consent (paragraph (f)). New section 43(5) restates the current section 43A(3) which prevents the delegation to an appointed person of applications for planning permission for which a pre-determination hearing before committee is required (section 38A(1) of the 1997 Act). New section 43A(6) restates current section 43A(6) which allows a planning authority to remove an application from the scheme of delegation and determine it themselves; and new section 43A(7) restates current section 43A(7) which requires them to produce a statement of reasons for doing so, which must be copied to the applicant. New section 43A(8) contains a new provision which clarifies that applications covered by a scheme of delegation under the 1997 Act cannot be delegated to an officer of the planning authority through section 56 of the Local Government (Scotland) Act 1973.
160. New section 43AA(1) restates the current provisions of section 43A(2) of the 1997 Act. This provides that the determination of any person appointed is to be treated as the determination of the planning authority, except for the purposes of triggering a right of review under section 43AC or a right of appeal to the Scottish Ministers under section 47 or section 154 of the 1997 Act. The inclusion of a reference to section 154 of the 1997 Act (which deals with CLUD appeals) is new, and is added alongside the reference to section 47 which deals with planning permission appeals. New section 43AA(1) means that although the applicant can require a review of the decision of the appointed person, they cannot appeal to the Scottish Ministers against such a decision. New section 43AA(2) restates the current section 43A(5), which lists provisions of the 1997 Act that place requirements on the planning authority when dealing with a planning application and applies them to an appointed person in delegated cases. New sections 43AA(4) and (5) are new provisions which similarly apply a development order and relevant parts of the 1997 Act to the appointed person when dealing with delegated applications for, respectively, the consent, agreement or approval required by a development order and with CLUDs.
161. New section 43AB(1) restates the current requirements of section 43A(4) of the 1997 Act, which allows the Scottish Ministers to make regulations setting out the form and content of schemes of delegation and the procedures for their preparation and adoption (with this being extended by new section 43AB(1) to also cover changes to schemes). New section 43AB(2) is a new provision which makes it clear that the regulations may require the planning authority to provide the Scottish Ministers with a draft of a scheme of delegation and may also require the authority to make such modifications as specified by the Scottish Ministers before adopting the scheme. It also allows regulations to require compliance with directions issued by the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation. New section 43AB(3) contains a new requirement for planning authorities to have regard to any guidance issued by the Scottish Ministers when authorities are preparing, adopting, reviewing or changing a scheme of delegation.

162. New sections 43AC and 43AD for the most part simply restate the current requirements of sections 43A(8) to 43A(17) of the 1997 Act. Those sections cover the procedure under which the applicant can require the planning authority to review a delegated decision – either where an application was refused or granted subject to conditions, or where the appointed person failed to determine the application within the prescribed time period. The exception to this (as at present) is that an applicant cannot require the planning authority to hold a review on the basis of the application not being determined timeously if the formal power in section 39 of the 1997 Act to decline to determine an application in certain circumstances has been exercised, or if the Scottish Ministers have called-in the application under section 46 of the 1997 Act. The form and procedure of such a review may be set out in regulations or a development order.
163. Subsections (1) and (4) of new section 43AC, on, respectively, the right to review and determining a review, reflect the wider range of applications to which the schemes of delegation and review procedures now apply under new section 43A(4). New section 43AC(1)(e), together with 43AC(7), provide that a review may be requested if notice of the decision has not been given within “the relevant period”, which may be as prescribed or such other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a “fast track” service attracting a higher fee. New section 43AC(4) sets out the determinations available to a planning authority in dealing with a review. New section 43AC(5) restates section 43A(16) which stipulates that planning authority decisions on reviews are final, subject only to section 239 of the 1997 Act (proceedings for questioning the validity of other orders, decisions and directions).
164. New section 43AD makes provision as to what the Scottish Ministers may specify in regulations or a development order with regard to the form and procedures of any review by the planning authority. This largely replicates existing sections 43A(10) to (14) of the 1997 Act.
165. Section 28(3) of the Act replaces the existing provisions in section 43A(17) of the 1997 Act. Those sections both deal with an applicant’s right of appeal to the Scottish Ministers in cases where a planning authority fail to determine a local review which was requested by an applicant on the grounds that the appointed person had failed to determine a delegated application. Currently, where the planning authority fail to determine a local review in such cases, the application is deemed to have been refused and the applicant can then appeal to the Scottish Ministers under section 47(1) of the 1997 Act against that deemed refusal. Section 28(3) of the Act amends section 47(2) of the 1997 Act (which deals with appeals to the Scottish Ministers where the planning authority have failed to determine an application) to grant a right of appeal in a case where a local review requested on the grounds of non-determination is itself not determined timeously. However, paragraph (b) (which inserts section 47(2A) into the 1997 Act) makes it clear that a right of appeal does not arise under section 47(2) (a) where it is only the appointed person who has not determined the application timeously. In such a case the applicant should instead use the right of review under new section 43AC(1)(e). Section 28(4) of the Act makes equivalent provision in relation to appeals against a planning authority’s failure to determine a review that is requested on the grounds of non-determination of a delegated CLUD decision. Schedule 2 of the Act contains various minor and consequential amendments and repeals in connection with these amendments to schemes of delegation and local reviews.

### **Call-in of applications by Scottish Ministers: further provision**

#### ***Section 29: Call-in of applications by Scottish Ministers: further provision***

166. Section 29 inserts a new section 46A into the 1997 Act. This requires the Scottish Ministers to lay before the Scottish Parliament and publish a statement setting out the circumstances in which they consider it appropriate to give directions under

section 46(1) requiring planning applications to be referred (“called-in”) to be determined by Ministers rather than the planning authority. The statement may be revised or replaced from time to time.

## **Determination of applications: statement to accompany notification**

### ***Section 30: Determination of applications: statement to accompany notification***

167. Section 30 amends section 37 of the 1997 Act. It inserts a new subsection (2A) which requires the planning authority to include in the decision notice for a planning application a statement as to whether they consider the development to be in accordance with the development plan, and their reasons for reaching that view.

## **Agreements relating to period before which an appeal may be made**

### ***Section 31: Agreements relating to period before which an appeal may be made***

168. Section 31 amends section 47 of the 1997 Act (right to appeal against planning decisions and failure to take such decisions). This currently provides that an applicant may appeal if an application has not been determined within a period prescribed in regulations, or an extended period agreed between the applicant and the planning authority. The amendments alter this to provide that an appeal may be brought if notice of the decision has not been given with “the relevant period”, which may be as prescribed or such other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a “fast track” service attracting a higher fee.

## **Duration of planning permission**

### ***Section 32: Duration of planning permission and planning permission in principle***

169. Section 32 of the Act amends section 58 (duration of planning permission) and section 59 (planning permission in principle) of the 1997 Act and makes related amendments to section 41 (conditional grant of planning permission) and section 60 (provisions supplementary to sections 58 and 59) of the 1997 Act.
170. Section 58 of the 1997 Act currently specifies that, except in the cases set out in section 58(4), planning permission will lapse after a period of 3 years from the date planning permission is granted, unless the development to which the permission relates has been started before then. It allows the authority when determining the application to direct that a different period, longer or shorter than three years, applies. This section and the amendments to it also apply to where planning permission is deemed to be granted under section 57 of the 1997 Act, which applies where government authorisation is given for certain projects.
171. Section 59 of the 1997 Act specifies what constitutes planning permission in principle: broadly speaking, planning permission granted in accordance with regulations or a development order for various operations and subject to a condition that certain matters have to be approved by the planning authority before the work begins. Like section 58 of the 1997 Act, it specifies a period within which development must be started or the permission lapses. In addition, section 59 specifies a time frame for applying for approval of matters specified in conditions (AMSC).
172. This time frame for applying for AMSC sets out a default period of three years from the grant of planning permission in principle. Where it would result in the calculation of a later deadline, six months is allowed for making such an application as calculated from the date of a previous application being refused, or from the date of an appeal against such refusal itself being dismissed. Only one such application can, however, be made after the three year period. Development must be begun within two years of the date that the last required approval is granted, or else the permission lapses.

173. Section 59(5) of the 1997 Act allows directions to be made specifying, instead of both the three year period and the two year period, different periods for different phases of the development.
174. Section 32(3) of the Act amends section 58 of the 1997 Act so that the duration of planning permission is to be specified as a condition to which the planning permission is subject. In the event that the planning authority does not include such a condition, the legislation provides that such a condition is deemed to have been included. This also applies where government authorisation is given for certain projects and the authorisation is to be treated as the grant of planning permission. As is the case presently, the default duration will be three years, but the planning authority or the Scottish Ministers, when determining a planning application, can specify a longer or shorter duration in their condition. The amendments also remove the exemption for planning permission granted for a limited time (subsection (4)(c) of section 58), which exemption prevents certain planning permissions from lapsing if development has not begun within the specified period.
175. Currently, if it is not challenged on local review or appeal at the time permission is granted, there is no mechanism for changing the duration of planning permission. Section 42 (determination of applications to develop land without compliance with conditions previously attached) of the 1997 Act allows an application to be made for a new permission for the same development but with different conditions – with a lower application fee and limiting the planning authority’s consideration to the issue of conditions – to address, for example, changes in circumstances that mean that the original conditions have unintended consequences. In future, therefore, such a ‘section 42’ application could be used to apply for a new permission with a different condition as to duration, provided the original permission had not already expired.
176. Section 32(4) of the Act amends section 59 of the 1997 Act to simplify arrangements for the duration of planning permission in principle. As with the amendment to section 58 of the 1997 Act, the total period within which development must be started will be specified as a condition. In this case the default period will be five years from the grant of planning permission in principle unless the planning authority specify a different duration; this reflects the need to apply for and obtain approval of matters specified in conditions (the detail of the proposal) before development can be started.
177. The changes made by section 32(4) of the Act also remove the default framework for applying for approval of matters specified in conditions attached to planning permission in principle that is described in paragraph 123 above. Instead, section 32(2) of the Act amends section 41 of the 1997 Act to make it clear that it will be possible for the planning authority to add conditions about the timing of applications for approval of such matters, and to set different timings for different phases of development.
178. Section 32(5) of the Act amends section 60 of the 1997 Act to add a provision making clear that conditions on duration that are imposed, or deemed to be imposed, under sections 58 or 59 can, like other conditions, be appealed to the Scottish Ministers or be subject to a review by the planning authority.

### ***Section 33: Completion notices***

179. Section 61 of the 1997 Act allows the planning authority, where they consider that development will not be completed within a reasonable period, to serve a notice (a completion notice) stating that, once the notice is confirmed, planning permission will cease to have effect at the expiration of a period specified in the notice (to be not less than 12 months from either the date specified in the notice as the date the notice takes effect or, if the notice is objected to, from the date the Scottish Ministers confirm the notice). The loss of planning permission will affect only the elements of the permission unimplemented by the end of this period. The notice is served on any owner or occupier of the land to which permission relates and any other person who in the opinion of the planning authority will be affected by the notice. Section 62(1) of the 1997 Act provides



that a completion notice will not take effect unless confirmed by the Scottish Ministers. Section 62(3) of the 1997 Act provides that the completion notice must specify a period of not less than 28 days within which any person served with a completion notice can require the Scottish Ministers to give that person an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers before a notice is confirmed.

180. Section 33 of the Act amends sections 61 and 62 of the 1997 Act and introduces a new section 62A to the 1997 Act to remove the requirement for the Scottish Ministers to confirm every completion notice, while giving recipients of a notice a right to object which would trigger the need for the Scottish Ministers to confirm the notice.
181. Section 33(2) of the Act adds new subsections (3A) and (3B) to section 61 of the 1997 Act. The first of these inserted subsections requires the completion notice to indicate that the recipient has a right to lodge an objection and specify the date on which the notice will take effect unless an objection is lodged before that date. New subsection (3B) restates a rule currently in section 62(3) of the 1997 Act that at least 28 days must elapse following the date of service of the notice before it can take effect (which also means that the objection period must be at least 28 days). Section 33(3)(a) of the Act amends section 62(1) of the 1997 Act so that a completion notice takes effect on the date specified in the notice unless a recipient of the notice makes an objection prior to that date; where an objection is so made, the notice only takes effect if confirmed by the Scottish Ministers. Section 33(3)(b) of the Act deletes subsections (2) and (3) of section 62 of the 1997 Act which dealt with, respectively, the Scottish Ministers' power to set a longer period for compliance with the notice when confirming it, and for giving any recipient of the notice the right to appear before a person appointed by the Scottish Ministers before they confirm a notice. Equivalent rules are instead now provided for in, respectively, inserted section 62A(5) and inserted section 62A(3). Section 33(3)(c) of the Act makes some minor and consequential amendments.
182. Section 33(4) of the Act introduces a new section 62A (objection to completion notice) to the 1997 Act. It in essence deals with the matters previously contained in sections 62(2) and (3) of the 1997 Act. New section 62A(1) specifies the right of a recipient to object to the planning authority about the service of the completion notice. The provisions in new sections 62A(2) and (3) of the 1997 Act on handling objections are different from existing provisions in that they, respectively, require that the planning authority give notice to the Scottish Ministers and all the recipients of the notice of the fact that objections have been made, and allow the Scottish Ministers to decide any further procedure for considering objections – e.g. whether written submissions, a hearing or an inquiry is needed. New section 62A(4) contains a new requirement for the Scottish Ministers to tell those served with the completion notice and the planning authority of their decision on whether or not to confirm the notice. New section 62A(5) restates the existing provision mentioned above that allows Scottish Ministers to set a longer period when they confirm a notice.
183. Sections 33(5) and (6) of the Act make consequential amendments to other sections of the 1997 Act as a result of the amendments to the provisions on completion notices.

## **Planning obligations**

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

184. Section 34 of the Act amends section 75 of the 1997 Act to modify the description of a planning obligation.
185. Subsection (2) broadens the scope of what a planning obligation can comprise.
186. Subsection (2)(b) inserts a new subsection (1A) into section 75 of the 1997 Act which defines a planning obligation so that it can be an obligation which restricts or regulates the use of land, and can also be an obligation which requires the payment of a specified

amount or periodical sums. This is not a brand new provision, but represents a reframing of the existing provisions; new subsection (1A) replaces text removed by subsection (2) (a) of the Act.

187. Subsection (2)(d)(i) inserts paragraph (aa) into section 75(3) of the 1997 Act and so retains the current flexibility which allows planning obligations to be imposed either permanently or during such a period as is specified in the relevant instrument.
188. The remaining provisions of section 34 of the Act reflect the restructuring of the section.
189. The effect of these changes is to alter the definition of a planning obligation so as to include the restriction or regulation of the development or the use of land, **and** the requirement for the payment of a specified amount or periodical sums. The existing section 75 allows for such payments, but only as part of an obligation which also restricted or regulated the development or use of land.

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

190. Section 35(2) inserts a new subsection (4A) into section 75 of the 1997 Act, which requires the planning authority to publish a planning obligation in such a manner as they consider sufficient to ensure it is brought to the attention of residents of the area or district to which it relates. Section 35(3) inserts a new subsection (5A) into section 75A of the 1997 Act, requiring similar publication of any agreement or determination modifying or discharging a planning obligation.

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

191. Section 36(2) introduces new subsections (5) and (6) into section 36 of the 1997 Act (registers of applications etc.). These require a planning authority to publish an annual report on planning obligations that have either been entered into in that year, or were entered into in a previous year and have not yet expired or have not been complied with. The report must include the development to which each planning obligation relates and the name of the person who has entered into the obligation.

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

192. Section 37 of the Act amends the provisions of sections 75A and 75B of the 1997 Act which relate to the modification or discharge of a planning obligation. Section 75A of the 1997 Act currently provides that a person against whom a planning obligation is enforceable may apply to the planning authority to have the obligation modified or discharged. The planning authority may determine that the obligation is to continue without modification, is to be discharged, or is to have effect subject to the modifications specified in the application. Section 75B of the 1997 Act provides that the applicant may appeal to the Scottish Ministers if the planning authority determine that the obligation is to continue without modification, or fail to give notice of their determination of the case within the time specified. The Scottish Ministers have the same options for determining the appeal as the planning authority have for determining the original application.
193. Section 37(4)(a) of the Act amends section 75A to provide that a modification or discharge of a planning obligation may be made either by means of an application under section 75A or following an appeal to the Scottish Ministers, or by a simple agreement between the planning authority and the person or persons against whom the obligation is enforceable. The remainder of section 75A applies only to a modification or discharge made by a formal application under subsection (2).
194. Section 37(4)(c) of the Act repeals section 75A(3) of the 1997 Act and so removes the restriction that modifications cannot impose an obligation on a non-applicant. This is, however, made subject to protections included by section 37(4)(e) of the Act, for a modification or discharge made following an application under subsection (2).

Specifically, new subsection (4B) of section 75A of the 1997 Act requires the consent of any non-applicant to the imposition of any increased burden on them. Section 37(4)(f) of the Act ensures that non-applicants against whom the planning obligation is enforceable will be notified of the decision.

195. Section 37(4)(e) of the Act also inserts new subsections (4A) to (4C) into section 75A of the 1997 Act. Together with the amendment to subsection (4)(c) (made by section 37(4)(d) of the Act), new subsection (4A) enables the planning authority to propose an alternative modification that was not expressed in the applicant's original application. However, the planning authority cannot make such a change without the applicant's consent. Similarly, if the planning authority consider it appropriate to discharge the planning obligation but the applicant did not request that, the planning authority cannot discharge it without the applicant's consent. In terms of new subsection (4C), if an application seeks to modify more than one planning obligation, the planning authority can decide on each obligation separately.
196. Section 37(5) of the Act makes comparable changes to section 75B (appeals) of the 1997 Act to reflect the changes to section 75A. In particular, subsections (5)(a) and (b) amend section 75B(4) of the 1997 Act and insert new subsections (4A) to (4C), so that the Scottish Ministers also have the full range of options available to them: granting the application, rejecting it, or proposing an alternative outcome (subject, in that instance, to the agreement of the applicant). Changes made by subsection (5)(c) of the Act expand the notification requirements to provide for any non-applicant against whom the obligation is enforceable to be notified of the outcome.
197. Sections 37(2), (3) and (4)(g) and (h) make minor or consequential modifications as a result of the changes set out above.

### **Declining to determine an application: further provision**

#### ***Section 38: Declining to determine an application: further provision***

198. Section 38 introduces a new section 39A into the 1997 Act, which provides that the Scottish Ministers must publish guidance outlining what constitutes a "similar application" and a "significant change" for the purposes of section 39 of the 1997 Act.

### **Development orders**

#### ***Section 39: Withdrawal of planning permission granted by development order***

199. Section 30(2) of the 1997 Act enables planning permission to be granted by a development order in relation to land specified in the order. This power is now rarely if ever used but a number of old "special development orders" made under previous versions of the legislation are still in effect.
200. Part IV of the 1997 Act deals with compensation for the effects of certain orders, notices etc. Section 77 currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn or modified. This includes the circumstances where a development order is revoked (section 77(1)(a)). If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the order, then compensation is payable by the planning authority if that planning permission is refused (or granted subject to different conditions than those included in the development order). In such cases section 76 applies as it does where a planning permission (not granted by a development order) is revoked or modified.
201. Section 39 of the Act repeals section 77 of the 1997 Act and introduces instead a power for the Scottish Ministers to make regulations concerning the compensation that may be payable on revocation of an order. The effect of this provision is to enable the Scottish Ministers to use regulations to :

*These notes relate to the Planning (Scotland) Act 2019  
(asp 13) which received Royal Assent on 25 July 2019*

- set out the circumstances in which compensation may be payable;
  - set out what the compensation is to cover;
  - set out the manner in which the level of compensation is to be calculated;
  - require a claim for such compensation to be made within a certain period and specify how such a claim should be made and the information which should be included;
  - apply or disapply any of the provisions of Part IV of the 1997 Act with or without modifications.
202. Provisions in schedule 2 repeal various references to section 77 elsewhere in the 1997 Act.