



# Planning (Scotland) Act 2019

## 2019 asp 13

### PART 3

#### DEVELOPMENT MANAGEMENT

VALID FROM 18/05/2020

#### *Meaning of “development”*

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 26A insert—

#### **“26B Material change of use: short-term lets**

- (1) A planning authority may designate all or part of its area as a short-term let control area for the purposes of this section.
- (2) In a short-term let control area, the use of a dwellinghouse for the purpose of providing short-term lets is deemed to involve a material change of use of the dwellinghouse.
- (3) For the purposes of this section, the following tenancies do not constitute a short-term let—
  - (a) a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016,
  - (b) a tenancy of a dwellinghouse (or part of it) where all or part of the dwellinghouse is the only or principal home of the landlord or occupier.
- (4) The power under subsection (1) includes the power to vary or cancel a designation.

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- (5) The Scottish Ministers may by regulations make further provision for the purposes of this section including, in particular, provision about—
- (a) the procedure a planning authority must follow in order to make, vary or cancel a designation under subsection (1) (which may include requiring the approval of the Scottish Ministers),
  - (b) the form of a designation under subsection (1),
  - (c) what constitutes providing a short-term let for the purposes of this section, and
  - (d) any circumstances in which, or descriptions of dwellinghouse to which, this section does not apply.
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult planning authorities and such other persons as they consider appropriate.”.

### Applications

## 18 Pre-application consultation

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 35A (pre-application consultation: preliminary)—
- (a) in subsection (1A)—
    - (i) the words “to which section 42 applies” become paragraph (a),
    - (ii) after paragraph (a), insert “, or
    - (b) in circumstances specified by the Scottish Ministers in regulations under this section.”,
  - (b) in subsection (3), for “the development is of a class prescribed under subsection (1)” substitute “compliance with section 35B is required”,
  - (c) in subsection (5), after “form” insert “, and have such content”,
  - (d) in subsection (9), for “the development is not of a class prescribed under subsection (1)” substitute “compliance with section 35B is not required”.
- (3) In section 35B (pre-application consultation: compliance), in subsection (3), after “weeks” insert “, but no more than 18 months,”.
- (4) In section 35C (pre-application consultation report), in subsection (2), after “form” insert “ and include such content”.

### Commencement Information

**II** S. 18(1)(2)(4) in force at 1.12.2019 by S.S.I. 2019/385, reg. 2, sch.

PROSPECTIVE

## 19 Assessment of health effects

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

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(2) After section 40 insert—

**“40A Assessment of health effects**

The Scottish Ministers must by regulations make provision about the consideration to be given, before planning permission for a national development or a major development is granted, to the likely health effects of the proposed development.”.

**20 Regulations about procedure for certain applications**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 42 (determination of applications to develop land without compliance with conditions previously attached), for subsection (3), substitute—
- “(3) The Scottish Ministers may by regulations or a development order make special provision as regards the procedure to be followed in connection with such applications.”.

**Commencement Information**

**I2** [S. 20](#) in force at 1.12.2019 by [S.S.I. 2019/385](#), reg. 2, [sch.](#)

PROSPECTIVE

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

Section 34(4)(c) of the Town and Country Planning (Scotland) Act 1997 is repealed.

VALID FROM 01/10/2022

**22 Declining to determine an application**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 39(1) (declining to determine an application), in each of the following paragraphs, for “two” substitute “ 5 ”
- (a) paragraph (a)(i),
  - (b) paragraph (b)(i),
  - (c) paragraph (c)(i),
  - (d) paragraph (d)(i),
  - (e) paragraph (e)(i).

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VALID FROM 01/03/2020

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

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

- (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), after subsection (2), insert—
  - “(2A) Where an application under subsection (2) is for a major development, a planning authority must give notice of the application to each—
    - (a) councillor of the local authority,
    - (b) member of the Scottish Parliament,
    - (c) member of the House of Commons,
 representing the district to which the application relates.”.

*Assessment of environmental effects*

**24 Assessment of environmental effects**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 40 (assessment of environmental effects)—
  - (a) in subsection (1), after “effects” insert “, including effects on biodiversity,”,
  - (b) after subsection (4) insert—
    - “(4A) In subsection (1), “effects on biodiversity” includes the net positive effects on biodiversity that would be likely to result from the development.”.

**Commencement Information**

**I3** S. 24 in force at 1.12.2019 by [S.S.I. 2019/385](#), reg. 2, [sch.](#)

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

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 41 insert—

**“41A Conditional grant of planning permission: noise-sensitive developments**

- (1) A development that is the subject of an application for planning permission is a “noise-sensitive development” if residents or occupiers of the development

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are likely to be affected by significant noise from existing activity in the vicinity of the development (a “noise source”).

- (2) Without prejudice to the generality of section 41(1), a planning authority—
- (a) must, when considering under section 37 whether to grant planning permission for a noise-sensitive development subject to conditions, take particular account of whether the development includes sufficient measures to mitigate, minimise or manage the effect of noise between the development and any existing cultural venues or facilities (including in particular, but not limited to, live music venues), or dwellings or businesses in the vicinity of the development, and
  - (b) may not, as a condition of granting planning permission for a noise-sensitive development, impose on a noise source additional costs relating to acoustic design measures to mitigate, minimise or manage the effects of noise.”.

#### Commencement Information

**I4** S. 25 in force at 20.12.2019 by S.S.I. 2019/377, reg. 2 (with reg. 4)

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

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 41A insert—

### **“41B Conditional grant of planning permission: provision of toilet facilities within certain large developments**

- (1) Without prejudice to the generality of section 41(1), a planning authority may grant planning permission for a development that falls within subsection (2) only on condition that the development includes at least one toilet facility described in subsection (3).
- (2) A development that is the subject of an application for planning permission falls within this subsection if it is for the construction of a building, structure or other erection for use for any of the following purposes—
- (a) as a school, college or university,
  - (b) as a community centre, sports and leisure centre, or similar public building,
  - (c) as a hospital or other facility for the provision of health services,
  - (d) as a retail outlet the gross floor space of which is or exceeds 10,000 square metres,
  - (e) as a cultural centre, such as a museum, concert hall or art gallery,
  - (f) as a stadium or large auditorium,
  - (g) as a major transport terminus or interchange,

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- (h) as a motorway service facility.
- (3) The toilet facility mentioned in subsection (1) is an accessible public facility which—
  - (a) has sufficient space, being not less than 12 square metres, to allow up to two carers to assist an adult to use the toilet and the equipment mentioned in paragraph (c),
  - (b) has a centrally-placed toilet with sufficient space, being not less than 1 metre, from the wall on either side for carers to assist an adult to use the toilet,
  - (c) includes—
    - (i) a height-adjustable changing bench of a size suitable for an adult,
    - (ii) a tracking hoist able to cover the full floor area of the facility,
  - (d) is equipped with—
    - (i) a non-slip floor surface,
    - (ii) a screen or curtain,
    - (iii) a supply of hygienic disposable covering for the changing bench,
    - (iv) suitable waste disposal facilities,
    - (v) a shelf suitable for temporary placing of colostomy bags and related equipment.
- (4) The Scottish Ministers may by regulations—
  - (a) amend subsection (2) so as—
    - (i) to add, amend or remove a purpose, or
    - (ii) to describe other types of development that fall within subsection (2), (whether or not by reference to the development's use for a particular purpose) and to amend or remove such types,
  - (b) specify that the requirement in subsection (1) does not apply—
    - (i) to a particular building, structure or erection,
    - (ii) to such descriptions of buildings, structures or erections as may be prescribed, or
    - (iii) in such circumstances as may be prescribed,
  - (c) amend the description of toilet facility in subsection (3).”.

#### **Commencement Information**

**I5** S. 26 in force at 1.12.2019 for specified purposes by S.S.I. 2019/385, reg. 2, sch.

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VALID FROM 01/03/2020

### *Delegation of development decisions*

#### **27 Delegation of development decisions**

- (1) Subsection (6A) of section 56 (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 is repealed.
- (2) Subsection (2) of section 14 (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 is repealed.

PROSPECTIVE

#### **28 Schemes of delegation**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) For section 43A substitute—

##### **“43A Schemes of delegation**

- (1) A “scheme of delegation” is a scheme prepared by a planning authority by which an application falling within subsection (4) is to be determined by a person appointed by them (an “appointed person”).
- (2) A planning authority must prepare and keep under review a scheme of delegation and, without limit to that generality, must review it—
  - (a) at such intervals as are provided in regulations made under section 43AB, and
  - (b) whenever required to do so by the Scottish Ministers.
- (3) A planning authority may make changes to their scheme of delegation following a review.
- (4) The applications falling within this subsection are—
  - (a) an application for planning permission for a development within the category of local developments,
  - (b) an application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of local developments,
  - (c) an application for any approval of the planning authority required under a development order,
  - (d) an application for a certificate of lawfulness of existing use or development under section 150,
  - (e) an application for a certificate of lawfulness of proposed use or development under section 151,
  - (f) an application for advertisement consent required by virtue of regulations made under section 182.

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- (5) References in subsection (4)(a) to a development do not include references to a development of a class mentioned in section 38A(1).
- (6) A planning authority may, if they think fit, decide to determine an application which would otherwise fall to be determined by the appointed person under the scheme of delegation.
- (7) Where the planning authority make such a decision they must—
  - (a) include in the decision a statement of the reasons as to why it has been made, and
  - (b) serve a copy of the decision on the applicant.
- (8) A planning authority may not delegate the determination of applications falling within subsection (4) to an officer of the authority otherwise than in accordance with a scheme of delegation prepared under this section.

#### **43AA Schemes of delegation: effect and operation**

- (1) A determination of an appointed person is to be treated as that of the planning authority (other than for the purposes of section 43AC, section 47 and section 154).
- (2) Where an application for planning permission falls to be determined by an appointed person, sections 27A(2), 27B(2), 30(3), 32A, 37(1) to (3), 38, 39, 40, 41(1) and (2), 42, 43(1) to (2), 46, 58, 59 and 60 and Part 1 of schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (3)), as they apply to an application which falls to be determined by the planning authority.
- (3) The modification referred to in subsection (2) is that, in paragraph 1(6) of schedule 3, paragraph (b) is to be read as if there were substituted—
  - “(b) is to be regarded for the purposes of section 43AC as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under section 43AC.”.
- (4) Where an application for an approval of the planning authority required under a development order falls to be determined by an appointed person, the development order applies, with any necessary modifications, as it applies to an application which falls to be determined by the planning authority.
- (5) Where an application for a certificate under section 150 or section 151 falls to be determined by an appointed person, section 150 or, as the case may be, section 151, and section 152 apply, with any necessary modifications, as they apply to an application which falls to be determined by the planning authority.
- (6) In this section, “appointed person” is to be construed in accordance with section 43A(1).

#### **43AB Schemes of delegation: further provision and guidance**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the required form and content of a scheme of delegation, and



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- (b) the procedures for preparing, adopting, reviewing and changing such a scheme.
- (2) Without limiting the generality of subsection (1), the regulations may require the planning authority to—
  - (a) provide the Scottish Ministers with a draft of a scheme of delegation or any proposed changes,
  - (b) make such modifications as are specified by the Scottish Ministers before adopting the scheme,
  - (c) comply with such directions as are given by the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation.
- (3) A planning authority must have regard to any guidance issued by the Scottish Ministers when preparing, adopting, reviewing or changing a scheme of delegation.

#### **43AC Review of decisions of appointed person**

- (1) Where an appointed person—
  - (a) refuses an application for planning permission or grants it subject to conditions,
  - (b) refuses an application for any consent, agreement or approval of the planning authority required by a condition imposed on a grant of planning permission or grants it subject to conditions,
  - (c) refuses an application for any approval of the planning authority required under a development order or grants it subject to conditions,
  - (d) refuses an application for a certificate under section 150 or 151 (in whole or in part), or
  - (e) has not given notice of the appointed person's decision within the relevant period,the applicant may require the planning authority to review the case.
- (2) A requirement to review may not be made by virtue of paragraph (e) of subsection (1) if, within the relevant period, notice has been given to the applicant that—
  - (a) the power under section 39 to decline to determine the application has been exercised, or
  - (b) the application has been referred to the Scottish Ministers in accordance with directions given under section 46.
- (3) Where a requirement to review is made by virtue of paragraph (e) of subsection (1), the appointed person is, for the purposes of the review, to be deemed to have decided to refuse the application.
- (4) On a review, the planning authority may—
  - (a) in relation to a review of a decision required by virtue of paragraph (d) of subsection (1)—
    - (i) grant or refuse the applicant a certificate under section 150 or 151 accordingly (in whole or in part),
    - (ii) modify the certificate granted by the appointed person,

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- (iii) uphold the determination to refuse the application (or to refuse it in part),
- (b) in relation to any other review—
  - (i) uphold, reverse or vary any part of the determination (whether the review relates to that part of it or not), and
  - (ii) deal with the application as if it had not been delegated to the appointed person.
- (5) Except as provided under section 239, the decision of a planning authority in a case reviewed by virtue of this section is final.
- (6) In this section, “appointed person” is to be construed in accordance with section 43A(1).
- (7) For the purposes of this section, the “relevant period” is—
  - (a) such period as may be prescribed by regulations or a development order, or
  - (b) such other period as may be agreed in writing between the applicant and the planning authority (or the appointed person on their behalf) in respect of the application (whether before or after it is made).

#### **43AD Review of decisions of appointed person: further provision**

- (1) The Scottish Ministers may by regulations or a development order make provision as to the form and procedures of any review conducted by virtue of section 43AC.
- (2) Without limiting the generality of subsection (1), the regulations or order may—
  - (a) make different provision for different cases or types of case,
  - (b) make different provision for different stages of a case,
  - (c) provide that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority,
  - (d) make provision in relation to oral or written submissions and to documents in support of such submissions (and also about the consequences of any failure to make such submissions),
  - (e) subject to section 43B, make provision about what matters may be raised in the course of the review,
  - (f) make provision in relation to time limits (including a time limit for requiring the review),
  - (g) require the planning authority to give notice to the person who has required the review about how the review has been dealt with.
- (3) Any notice given by virtue of subsection (2)(g)—
  - (a) must include a statement of—
    - (i) the terms in which the planning authority have decided the case, and
    - (ii) the reasons on which the authority based that decision, and

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- (b) may include such other information as is prescribed by the regulations or the order.”.
- (3) In section 47 (right to appeal against planning decisions and failure to take such decisions)—
- (a) in subsection (2), after paragraph (a) insert—
- “(aa) notice of their decision on a review required by virtue of paragraph (e) of section 43AC(1),”
- (b) after subsection (2) insert—
- “(2A) Subsection (2)(a) does not apply where the applicant may require a review under section 43AC(1)(e).”.
- (4) In section 154 (appeals against refusal or failure to give decision on application for certificates under section 150 and 151)—
- (a) in subsection (1)—
- (i) the “or” at the end of paragraph (a) is repealed,
- (ii) after paragraph (b) insert “or
- (c) the planning authority do not give notice to the applicant of their decision on a review required by virtue of paragraph (e) of section 43AC(1) within such period as is prescribed by regulations or a development order or within such extended period as may at any time be agreed in writing by the applicant and the authority,”
- (b) after subsection (1) insert—
- “(1A) But—
- (a) an appeal may not be made under subsection (1)(a) in relation to any such action on the part of the planning authority as is mentioned in section 237(3A),
- (b) an appeal may not be made under subsection (1)(b) where the applicant may require a review under section 43AC(1)(e).”
- (c) in subsection (3)(b), after “(1)(b)” insert “ or (c) ”.

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

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 46 insert—

#### **“46A Call-in of applications by Scottish Ministers: further provision**

- (1) The Scottish Ministers must lay before the Scottish Parliament and publish, in such manner as they consider appropriate, a statement setting out the circumstances in which they consider it appropriate to give directions as mentioned in section 46(1).

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- (2) The Scottish Ministers may from time to time publish a revised or replacement statement under subsection (1).”.

#### Commencement Information

**I6** S. 29 in force at 1.12.2019 by S.S.I. 2019/385, reg. 2, sch.

VALID FROM 01/03/2020

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

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 37 (determination of applications: general considerations), after subsection (2) insert—
- “(2A) The notice of the planning authority's decision on an application must include a statement as to whether the authority consider that the application is for a development that is in accordance with the development plan for the time being applicable to the area to which the application relates together with an explanation of why the authority have reached that view.”.

PROSPECTIVE

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

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 47 (right to appeal against planning decisions and failure to take such decisions)—
- (a) in subsection (2), in the closing words, for the words from “such” where it first occurs to the end substitute “ the relevant period. ”,
- (b) in subsection (4)(b), for the words from “period” where it first occurs to the end substitute “ relevant period ”,
- (c) after subsection (5) insert—
- “(6) For the purposes of subsection (2), the “relevant period” is—
- (a) such period as may be prescribed by regulations or a development order, or
- (b) such other period as may be agreed in writing between the applicant and the authority in respect of the application (whether before or after it is made).”.

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### *Duration of planning permission*

## **32 Duration of planning permission**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 41 (conditional grant of planning permission), in subsection (1), after paragraph (b) insert—
  - “(c) for identifying (whether by means of a specified time period or otherwise) when the applicant may be required to—
    - (i) make an application for a consent, agreement or approval, or
    - (ii) carry out some other action in connection with the permission or development.”.
- (3) In section 58 (duration of planning permission)—
  - (a) for subsections (1) to (3) substitute—
    - “(1) Where a planning permission to which this section applies is granted or deemed to be granted, it must be granted or, as the case may be, is to be deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of—
      - (a) 3 years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted, or
      - (b) such other period (whether longer or shorter) as the authority concerned may specify when granting the permission or, as the case may be, in making a direction under section 57.
    - (2) If planning permission is granted or is deemed to be granted without the condition required by subsection (1), the permission is deemed to be subject to the condition that the development to which it relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted.
    - (3) If development has not begun at the expiration of the period mentioned in paragraph (a) or (b) of subsection (1) or, as the case may be, subsection (2), the planning permission lapses.”.
  - (b) in subsection (3A)—
    - (i) in the opening words, for “(2)”, substitute “ (1)(b) ”,
    - (ii) for paragraph (a) substitute—
      - “(a) beginning with the date on which the planning permission is granted or deemed to be granted, and”.
  - (c) in subsection (4), paragraphs (c) and (ca) are repealed.
- (4) In section 59 (planning permission in principle), for subsections (2) to (8), substitute—

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“(2A) Where planning permission in principle is granted, it must be granted subject to the condition that the development to which it relates must be begun not later than the expiration of—

- (a) 5 years beginning with the date on which the permission is granted, or
- (b) such other period (whether longer or shorter) as the authority concerned may specify when granting the permission.

(2B) If planning permission in principle is granted without the condition required by subsection (2A), the permission is deemed to be subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the date of the grant.

(2C) If development has not begun at the expiration of the period mentioned in paragraph (a) or (b) of subsection (2A) or, as the case may be, subsection (2B), the planning permission in principle lapses.

(2D) A period specified under subsection (2A)(b) is to be a period—

- (a) beginning with the date on which the planning permission in principle is granted, and
- (b) which the authority concerned consider appropriate having regard to the provisions of the development plan and to any other material considerations.”.

(5) In section 60 (provisions supplementary to sections 58 and 59), for subsection (2) substitute—

“(2A) Where a planning authority grants planning permission, the fact that any of the conditions of the permission are required by the provisions of section 58 or 59 to be imposed, or are deemed by those sections to be imposed, does not prevent the conditions being the subject of a review under section 43AC or an appeal under section 47.”.

### **33 Completion notices**

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 61 (termination of planning permission by reference to time limit: completion notices), after subsection (3) insert—

“(3A) A completion notice must also—

- (a) state that a person on whom it is served may lodge an objection,
- (b) specify the date on which the notice will take effect if no objection is lodged before that date.

(3B) The date so specified must be a date at least 28 days after the date on which the notice is served.”.

(3) In section 62 (effect of completion notice)—

- (a) in subsection (1), for the words from “shall” to the end substitute “takes effect—
  - (a) on the date specified in it, unless before that date an objection is lodged under section 62A(1),

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- (b) where an objection is lodged under section 62A(1), only if and when the notice is confirmed by the Scottish Ministers.”,
  - (b) subsections (2) and (3) are repealed,
  - (c) in subsection (4)—
    - (i) for “Secretary of State” substitute “ Scottish Ministers ”,
    - (ii) for “subsection (2)” substitute “ section 62A(5) ”.
- (4) After section 62, insert—

**“62A Objection to completion notice**

- (1) A person on whom a completion notice is served may, prior to the date specified in it, lodge an objection to the notice with the planning authority which served it.
  - (2) Where an objection is lodged under subsection (1), the planning authority must give notice of the objection to—
    - (a) every person who was served with the completion notice, and
    - (b) the Scottish Ministers.
  - (3) Before confirming a completion notice, the Scottish Ministers must allow the following people the opportunity to make representations to a person appointed for the purpose by the Scottish Ministers—
    - (a) the person who lodged the objection, and
    - (b) the planning authority.
  - (4) The Scottish Ministers must give notice of their decision as to whether or not to confirm the completion notice to—
    - (a) every person who was served with the completion notice, and
    - (b) the planning authority.
  - (5) In confirming a completion notice, the Scottish Ministers may substitute a longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.”.
- (5) In section 182 (regulations controlling display of advertisements), in subsection (3) (a), for “62” substitute “ 62A ”.
- (6) In section 237 (validity of certain decisions), in subsection (3)(c), for “62” substitute “ 62A ”.

VALID FROM 18/11/2020

*Planning obligations*

**34 Planning obligations: financial agreements**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 75 (planning obligations)—



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- (a) in subsection (1), for the words from “an obligation” to the end substitute “a planning obligation.”,
  - (b) after subsection (1), insert—
    - “(1A) For the purpose of this section and sections 75A to 75C, a planning obligation is an obligation which does any of the following—
      - (a) restricts or regulates the development or use of land,
      - (b) requires the payment—
        - (i) of a specified amount or an amount determined in accordance with the relevant instrument, or
        - (ii) of periodical sums either indefinitely or for such period as is specified in the relevant instrument.”,
  - (c) in subsection (2), for “subsection (1), the reference in that subsection” substitute “ paragraph (a) of subsection (1A), the reference in that paragraph ”,
  - (d) in subsection (3)—
    - (i) after paragraph (a), insert—
      - “(aa) impose a restriction or requirement either permanently or during such period as is specified in the relevant instrument.”,
    - (ii) paragraph (b) is repealed,
  - (e) in subsection (5)(a), for “(2) or (3)(b)” substitute “ (1A)(b) or (2) ”,
  - (f) after subsection 12, insert—
    - “(13) In this section and in sections 75A to 75C, “relevant instrument” means the instrument by which a planning obligation is entered into.”.
- (3) In section 75C (planning obligations: continuing liability of former owner etc.), in subsection (3), for “(2) or (3)(b)” substitute “ (1A)(b) or (2) ”.

PROSPECTIVE

### 35 Planning obligations: publication

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 75 (planning obligations), after subsection (4), insert—
  - “(4A) A planning authority are to publish a relevant instrument in such a manner as they consider sufficient to ensure that it is brought to the attention of residents of the area or district to which the relevant planning obligation relates.”.
- (3) In section 75A (modification and discharge of planning obligations), after subsection (5) insert—
  - “(5A) A planning authority are to publish—
    - (a) an agreement under subsection (1)(a), and
    - (b) a notice of a determination under subsection (4),



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in such a manner as they consider sufficient to ensure that it is brought to the attention of residents of the area or district to which the relevant planning obligation relates.”.

PROSPECTIVE

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 36 (registers of applications etc.), after subsection (4), insert—
  - “(5) As soon as reasonably practicable after the end of each financial year, a planning authority are to prepare and publish a report detailing—
    - (a) the number of planning obligations that are—
      - (i) entered into in that year,
      - (ii) entered into in a previous year and not yet expired,
      - (iii) entered into in a previous year and not yet complied with,
    - (b) the development to which each planning obligation relates, and
    - (c) the name of the person that has entered into the planning obligation.
- (6) In this section a financial year is the period of 12 months beginning with 1 April.”.

### **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 ”,

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- (ii) in paragraph (a), for the words from the start to “be” substitute “ be modified as ”,
  - (c) subsection (3) is repealed,
  - (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)—

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- (a) in subsection (4)(c), for “the modifications specified in the application” substitute “ modifications ”,
- (b) after subsection (4), insert—
  - “(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.

VALID FROM 01/10/2022

*Declining to determine an application: further provision*

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

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 39 insert—

**“39A Declining to determine an application: further provision**

The Scottish Ministers must publish guidance outlining what constitutes a “similar application” and a “significant change” for the purposes of section 39.”.

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PROSPECTIVE

### *Development orders*

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

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After section 77 insert—

##### **“77A Compensation for withdrawal of planning permission granted by development order**

(1) The Scottish Ministers may by regulations make provision about the payment of compensation by a planning authority in cases where—

- (a) planning permission granted by a development order is withdrawn (whether by the revocation or amendment of the order or by the issue of directions under powers conferred by the order), and
- (b) on an application made under Part III or section 242A, planning permission for development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by that order.

(2) Regulations under subsection (1) may, in particular, make provision—

- (a) about the circumstances in which compensation is payable,
- (b) about what compensation is payable in respect of,
- (c) about how the amount of compensation is to be calculated,
- (d) about how a claim for compensation must be made in order to be valid (including the form and content of a claim, and the period within which it must be made),
- (e) applying, or disapplying, any of the provisions of this Part, with or without modifications.”.

(3) Section 77 (compensation for refusal or conditional grant of planning permission formerly granted by development order) is repealed.

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