



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### *Meaning of development*

#### 26 Meaning of “development”.

- (1) Subject to the following provisions of this section [<sup>F1</sup>and to section 26AB], in this Act, except where the context otherwise requires, “development” means 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<sup>F2</sup>, or the operation of a marine fish farm in the circumstances specified in section 26AA].
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
  - (a) the carrying out of works for the maintenance, improvement or other alteration of any building being works which—
    - (i) affect only the interior of the building, or
    - (ii) do not materially affect the external appearance of the building,and are not works for making good war damage within the meaning of the <sup>M1</sup>War Damage Act 1943 or works begun after 7th December, 1969 for the alteration of a building by providing additional space in it underground;
  - (b) the carrying out by a [<sup>F3</sup>roads authority (as defined by section 151(1) of the Roads (Scotland) Act 1984)] on land within the boundaries of a road of any works required for the maintenance or improvement of the road [<sup>F4</sup>but , in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];

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- (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any road or other land for that purpose;
  - (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
  - (e) [<sup>F5</sup>subject to subsection (2A),] the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
  - (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;
  - (g) the demolition of any description of building specified in a direction given by the Secretary of State to planning authorities generally or to a particular planning authority.
- [<sup>F6</sup>(2AA) The Scottish Ministers may in a development order specify any circumstances, or description of circumstances, in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.
- (2AB) The development order may make different provision for different purposes.]
- [<sup>F7</sup>(2A) Development includes the carrying out of <sup>F8</sup>... drainage for agriculture or of any other water management project for that purpose [<sup>F9</sup>, but does not include the carrying out of irrigation work ].]
- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
    - (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
    - (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—
      - (i) the superficial area of the deposit is extended, or
      - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.
  - (4) For the purposes of this Act building operations include—
    - (a) demolition of buildings,
    - (b) rebuilding,
    - (c) structural alterations of or additions to buildings, and
    - (d) other operations normally undertaken by a person carrying on business as a builder.
  - (5) For the purposes of this Act mining operations include—
    - (a) the removal of material of any description—
      - (i) from a mineral-working deposit,
      - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker, or
      - (iii) from a deposit of iron, steel or other metallic slags, and
    - (b) the extraction of minerals from a disused railway embankment.

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(6) Where the placing or assembly of any [<sup>F10</sup>equipment] in any part of any [<sup>F11</sup>waters which—

- (a) are inland waters,
- (b) not being inland waters, are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, or
- (c) are seaward of those baselines up to a distance of 12 nautical miles,]

for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the [<sup>F10</sup>equipment] resulted from carrying out engineering operations over that land; and in this [<sup>F12</sup>section]—

<sup>F13</sup>  
...

[<sup>F14c</sup> “equipment” includes any tank, cage or other structure, or long-line, for use in fish farming;]

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of [<sup>F15</sup>sea urchin,] crustacean or mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

<sup>F16</sup>  
...

<sup>F13</sup>  
...

[<sup>F17</sup> “nautical miles ” means international nautical miles of 1,852 metres]

[<sup>F18</sup>(6AA) Where the making of any material change in the use of equipment so placed or assembled for that purpose would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the making of any such material change was development of that land.]

[<sup>F19</sup>(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of “equipment” and “fish farming” in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), “ modifications ” includes amendments and repeals. ]

[<sup>F20</sup>(6C) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of, or in connection with, the application of this Act to—

- (a) any such placing or assembly as is mentioned in subsection (6) in waters described in paragraph (b) or (c) of that subsection; or
- (b) any material change in the use of equipment placed or assembled in those waters.

(6D) Any order under subsection (6C) may in particular provide that a planning authority specified in the order is to be the planning authority for the purposes of such an application of this Act despite the placing or assembly being something done, or the material change of use being made, outwith the district of the authority.

(6E) But in the application of subsections (6C) and (6D) to a case where, by virtue of paragraph (a) of section 10(1) of the National Parks (Scotland) Act 2000 (asp 10) the planning authority is a National Park authority, the reference in subsection (6D) to the district of the authority is to be construed as a reference to the National Park.

(6F) And the Scottish Ministers may direct that subsections (6C) and (6D) are to apply to a case where—

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- (a) by virtue of paragraph (b) of that section 10(1), a National Park authority is to be treated as the planning authority, or
  - (b) by virtue of paragraph (c) of that section 10(1), a National Park authority is to have certain functions in relation to planning.
- (6G) For the purposes of any such application as is provided for in—
- (a) paragraph (a) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be” in subsection (6D) there is to be substituted “National Park authority specified in the order is to be treated as” ,
  - (b) paragraph (b) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be the planning authority” in subsection (6D) there is to be substituted “National Park authority specified in the order is to have functions in relation to planning” .
- (6H) Before making an order under subsection (6C), the Scottish Ministers—
- (a) must consult—
    - (i) every planning authority, and
    - (ii) the Scottish Environment Protection Agency, and
  - (b) may consult such other persons as they think fit.
- (6I) An order under subsection (6C) may (without prejudice to the generality of that subsection)—
- (a) modify any enactment, instrument or document,
  - (b) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) provide for the delegation of functions,
  - (d) make different provision for different purposes and different areas.
- (6J) For the purposes of the exercise by a National Park authority of any planning functions which it has by virtue of subsections (6C) and (6D) in respect of waters described in paragraph (b) or (c) of subsection (6), any reference in section 9 of the National Parks (Scotland) Act 2000 (asp 10) (general purposes and functions of National Park authority) to the National Park itself is to be construed as including a reference to those waters.]
- (7) Without prejudice to any regulations under this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

#### Textual Amendments

- F1** Words in s. 26(1) inserted (6.4.2011) by [Marine \(Scotland\) Act 2010 \(asp 5\)](#), ss. **63(2)**, 168(1) (with s. 162); S.S.I. 2011/58, art. 3(a)
- F2** Words in s. 26(1) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(a)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.

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- F3** Words in s. 26(2)(b) substituted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 7 para. 20(2)** (with s. 111); S.S.I. 2006/268, art. 3(d)
- F4** Words in s 26(2)(b) inserted (1.8.1999) by S.S.I. 1999/1, **reg. 47**
- F5** Words in s. 26(2)(e) inserted (30.9.2003) by Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (S.S.I. 2003/341), regs. 1, **2(a)** (with reg. 5)
- F6** S. 26(2AA)(2AB) inserted (6.2.2007 for specified purposes, 12.12.2008 for specified purposes) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(b)**, 59(2) (with s. 3(2)(3)); S.S.I. 2007/49, art. 2, sch., S.S.I. 2008/411, art. 2(2)(3)(a)
- F7** S. 26(2A) inserted (30.9.2003) by Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (S.S.I. 2003/341), regs. 1, **2(b)** (with reg. 5)
- F8** Words in s. 26(2A) omitted (31.3.2011) by virtue of The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209), reg. 1(2), **sch. 11 para. 1(a)** (with reg. 54, sch. 11 para. 5)
- F9** Words in s. 26(2A) inserted (31.3.2011) by The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209), reg. 1(2), **sch. 11 para. 1(b)** (with reg. 54, sch. 11 para. 5)
- F10** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(a)(i)**, 38(1); S.S.I. 2007/50, art. 2
- F11** Words in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(i)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F12** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(ii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F13** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(iii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F14** Words in s. 26(6) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(a)(iii)**, 38(1); S.S.I. 2007/50, art. 2
- F15** Words in s. 26(6) inserted (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), **8(2)** (with art. 14(3))
- F16** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(a)(iv)**, 38(1); S.S.I. 2007/50, art. 2
- F17** Words in s. 26(6) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(c)(iv)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F18** S. 26(6AA) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(d)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F19** S. 26(6A)(6B) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by Water Environment and Water Services (Scotland) Act 2003 (asp 3), **ss. 24(2)(b)**, 38(1); S.S.I. 2007/50, art. 2
- F20** S. 26(6C)-(6J) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 3(1)(e)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.

**Modifications etc. (not altering text)**

- C1** S. 26(1) extended (1.8.1999) by S.S.I. 1999/1, **reg. 44**
- C2** S. 26(1) applied (with modifications) (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), **14(2)** (with art. 14(3))

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### Marginal Citations

M1 1943 c. 21.

### [<sup>F21</sup> 26AA Marine fish farms: circumstances referred to in section 26(1)

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

### Textual Amendments

**F21** S. 26AA inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **4(1)**, 59(2); S.S.I. 2007/130, art. 2(2), sch.

### Modifications etc. (not altering text)

**C3** S. 26AA applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **14(2)** (with art. 14(3))

### [<sup>F22</sup> 26AB Power by order to provide marine fish farming is not “development”

- (1) The Scottish Ministers may by order provide that—

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- (a) section 26(6) does not apply as respects the placing or assembly of equipment for the purpose of fish farming in waters identified in the order (the “relevant waters”),
  - (b) section 26(6AA) does not apply as respects any material change in the use of equipment so placed or assembled for that purpose, and
  - (c) the operation of a marine fish farm in the relevant waters in the circumstances specified in section 26AA is not “development” for the purposes of this Act.
- (2) An order under subsection (1) may be made only with the agreement of the planning authority (or planning authorities) for the relevant waters; and in this subsection the “planning authority” means the planning authority specified in an order under section 26(6D).]

#### Textual Amendments

**F22** S. 26AB inserted (6.4.2011) by [Marine \(Scotland\) Act 2010 \(asp 5\)](#), ss. **63(3)**, 168(1) (with s. 162); S.S.I. 2011/58, art. 3(a)

### [<sup>F23</sup>26A Hierarchy of developments

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

#### Textual Amendments

**F23** S. 26A inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **5**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/100, art. 2, sch.

### 27 Time when development begun.

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

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- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
  - (b) if the development consists of a change in use, at the time when the new use is instituted;
  - (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
- (3) The provisions referred to in subsection (2) are sections 52(2), 53(6), 54(4), 58, 59 and 61.
- (4) In subsection (2) “material operation” means—
- (a) any work of construction in the course of the erection of a building,
  - (b) any work of demolition of a building,
  - (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building,
  - (d) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (c),
  - [<sup>F24</sup>(da) any placing or assembly of equipment as is mentioned in subsection (6) of section 26 in waters described in paragraph (b) or (c) of that subsection,]
  - (e) any operation in the course of laying out or constructing a road or part of a road, or
  - (f) any change in the use of any land which constitutes material development.
- (5) In subsection (4)(f) “material development” means any development other than—
- (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted,
  - (b) development of a class specified in paragraph 1 or 2 of Schedule 11, and
  - (c) development of any class prescribed for the purposes of this subsection.
- (6) In subsection (5) “general development order” means a development order (within the meaning of section 30(2)) made as a general order applicable (subject to such exceptions as may be specified in it) to all land in Scotland.

#### **Textual Amendments**

**F24** S. 27(4)(da) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **8(3)** (with art. 14(3))



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## *[<sup>F25</sup>Initiation and completion of development*

### **Textual Amendments**

**F25** Ss. 27A-27C and cross-headings inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 6(1), 59(2)** (with [S.S.I. 2009/222](#), **art. 2**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

### **27A Notification of initiation of development**

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

### **27B Notification of completion of development**

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

### **Modifications etc. (not altering text)**

**C4** [Ss. 27A-27C](#) savings for effects of 2006 asp 17 s. 6(1) (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), **art. 2**

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

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

- (1) A person carrying out development of a prescribed class must until the development is completed display a notice containing prescribed information.
- (2) The Scottish Ministers may by regulations make provision as to—
  - (a) the form of the notice required by subsection (1), and
  - (b) where such a notice is to be displayed.]

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#### Modifications etc. (not altering text)

- C4** Ss. 27A-27C savings for effects of 2006 asp 17 s. 6(1) (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), [art. 2](#)

### *Requirement for planning permission*

## **28 Development requiring planning permission.**

- (1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.
- [<sup>F26</sup>(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).]
- (2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.
- (3) Where by a development order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.
- (4) Where an enforcement notice has been served in respect of any development of land, planning permission is not required for the use of that land for the purpose for which (in accordance with the provisions of this Part) it could lawfully have been used if that development had not been carried out.
- (5) In determining for the purposes of subsections (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part or of previous planning control.
- (6) For the purposes of this section a use of land shall be taken to have been begun in contravention of previous planning control if it was begun in contravention of Part II of the 1947 Act or Part III of the 1972 Act.
- (7) Subsection (1) has effect subject to Schedule 2 (which contains exemptions for certain uses of land on 1st July 1948).

#### Textual Amendments

- F26** [S. 28\(1A\)](#) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), [s. 241\(8\)](#), [Sch. 2 para. 55](#) (with [s. 226](#)); [S.I. 2010/101](#), [art. 2](#) (with [art. 6](#))

## **29 Granting of planning permission: general.**

- (1) Planning permission may be granted—
- (a) by a development order,

*Status: Point in time view as at 14/11/2011.*

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- (b) by the planning authority (or, where this Part so provides, by the Secretary of State) on application to the authority in accordance with regulations or a development order,
  - (c) on the adoption or approval of a simplified planning zone scheme or alterations to such a scheme in accordance with section 49 or, as the case may be, section 53, or
  - (d) on the designation of an enterprise zone or the approval of a modified scheme under Schedule 32 to the <sup>M2</sup>Local Government Planning and Land Act 1980 in accordance with section 55 of this Act.
- (2) Planning permission may also be deemed to be granted under section 57 (development with government authorisation).
- (3) This section is without prejudice to any other provisions of this Act providing for the granting of permission.

#### Marginal Citations

M2 1980 c. 65.

### *Development orders*

#### **30 Development orders: general.**

- (1) The Secretary of State shall by regulations or by order provide for the granting of planning permission.
- (2) An order under this section (in this Act referred to as a “development order”) may itself grant planning permission for development specified in the order, or for development of any class so specified, and may be made either—
- (a) as a general order applicable, except so far as it otherwise provides, to all land, but which may make different provision with respect to different descriptions of land [<sup>F27</sup>and according to whether a development is a national development, a major development or a local development], or
  - (b) as a special order applicable only to such land or descriptions of land [<sup>F28</sup>, or to such categories of development,] as may be specified in the order.
- (3) In respect of development for which planning permission is not granted by a development order, regulations or an order may provide for the granting of planning permission by the planning authority (or, where this Part so provides, by the Secretary of State) on an application made to the planning authority in accordance with the regulations or the order.

#### Textual Amendments

**F27** Words in s. 30(2)(a) added (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(3)(a)**, 59(2); [S.S.I. 2009/219](#), art. 2, sch.

**F28** Words in s. 30(2)(b) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(3)(b)**, 59(2); [S.S.I. 2009/219](#), art. 2, sch.

*Status: Point in time view as at 14/11/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 31 Permission granted by development order.

- (1) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval of the planning authority to be obtained with respect to the design or external appearance of the buildings.
- (3) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for development of a specified class, the order may enable the Secretary of State or the planning authority to direct that the permission shall not apply either—
  - (a) in relation to development in a particular area, or
  - (b) in relation to any particular development.
- (4) Any provision of a development order by which permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.
- (5) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any enactment passed before 13th August 1947, or any regulations, orders or byelaws made at any time under any such enactment—
  - (a) shall not apply to any development specified in the order, or
  - (b) shall apply to it subject to such modifications as may be so specified.

#### Modifications etc. (not altering text)

C5 S. 31 extended (1.8.1999) by [S.S.I. 1999/1](#), [reg. 46](#)

*[<sup>F29</sup>Planning permission in respect of operation of marine fish farm*

#### Textual Amendments

F29 S. 31A and cross-heading inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 4\(2\), 59\(2\)](#); [S.S.I. 2007/130](#), [art. 2\(2\)](#), [sch.](#)

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

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

*Status: Point in time view as at 14/11/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

**Modifications etc. (not altering text)**

C6 S. 31A applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **14(2)** (with art. 14(3))

*Applications for planning permission*

**[<sup>F30</sup>32 Applications for planning permission**

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

*Status: Point in time view as at 14/11/2011.*

**Changes to legislation:** Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) require that an application for planning permission of such description as is specified in the regulations or order is to be accompanied by a statement (either or both and if both then either in one document or in two)—
    - (i) about the design principles and concepts applied to the development,
    - (ii) about how issues relating to access for the disabled to the development have been dealt with,
  - (b) include provision as to the form and content of any such statement as is mentioned in paragraph (a), and
  - (c) require that an application in respect of which compliance with section 35B is required is to be accompanied by a pre-application consultation report prepared in accordance with section 35C.
- (4) Different provision may be made under this section—
- (a) for different cases or classes of case,
  - (b) for different areas, and
  - (c) according to whether a development is a national development, a major development or a local development.]

#### Textual Amendments

**F30** S. 32 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 7(1), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

#### *f<sup>F31</sup> Variation of application*

#### Textual Amendments

**F31** Ss. 32A, 32B and cross-heading inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 8, 59(2) (with S.S.I. 2009/222, art. 3); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

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

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

*Status: Point in time view as at 14/11/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” (other than the first such reference in subsection (1)) were a reference to the Scottish Ministers.

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

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

### **33 Planning permission for development already carried out.**

- (1) On an application made to a planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
- (2) Subsection (1) applies to development carried out—
- (a) without planning permission,
  - (b) in accordance with planning permission granted for a limited period, or
  - (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted so as to have effect from—
- (a) the date on which the development was carried out, or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
- [<sup>F32</sup>(4) But subsection (3) does not apply if, before the date of the application, an enforcement notice was issued in respect of the development.]

#### **Textual Amendments**

**F32** S. 33(4) added (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. [54\(4\)](#), [59\(2\)](#); S.S.I. [2009/219](#), art. 2, sch.

### **[<sup>F33</sup>33A Notice requiring application for planning permission for development already carried out**

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



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- (a) requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
- (b) describing the development in a way that is sufficient to identify it,
- (c) specifying a date by which the application is to be made, and
- (d) setting out the terms of section 123(1).]

#### **Textual Amendments**

**F33** S. 33A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. [9\(1\)](#), [59\(2\)](#); S.S.I. 2008/411, art. [2\(2\)\(3\)\(a\)](#); S.S.I. 2009/219, art. 2, sch.

### *Publicity for applications*

#### **[<sup>F34</sup>34 Notice by planning authority of certain applications made to them**

- (1) A planning authority are to give notice—
  - (a) to such persons or categories of person,
  - (b) in such manner,
  - (c) for such period, and
  - (d) on such number of occasions,
 as may be prescribed in regulations or in a development order, of such applications mentioned in subsection (2) as are made to the authority.
- (2) The applications are—
  - (a) for planning permission,
  - (b) for an approval required by a development order,
  - (c) for a consent, agreement or approval required by a condition imposed on a grant of planning permission, and
  - (d) for agreement under section 75A(2).
- (3) The regulations or development order may—
  - (a) make provision in relation to the applications generally or in relation to such of those applications as are of a class or classes prescribed in the regulations or order,
  - (b) make different provision for different classes so prescribed.
- (4) No such application is to be determined until after—
  - (a) the expiry of a period which is to be so prescribed,
  - (b) any requirement imposed by virtue of this section has been satisfied, and
  - (c) any sum recoverable from the applicant in respect of costs incurred by the planning authority in giving notice under subsection (1) has been paid to the authority.
- (5) For the purposes of this section an applicant is to provide—
  - (a) to such person or persons,
  - (b) such information with respect to the application,
 as may be so prescribed.



*Status: Point in time view as at 14/11/2011.*

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- (6) A planning authority are to provide the Scottish Ministers with such information relating to the exercise by the authority of functions under this section (whether in relation to applications generally or in relation to a particular application or class of application) as the Scottish Ministers may request from them.]

#### Textual Amendments

**F34** S. 34 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 10(1)**, 59(2) (with [S.S.I. 2009/222](#), **art. 15**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

### 35 Notice etc. of applications to owners and agricultural tenants.

- (1) Regulations or a development order shall make provision—
- (a) as to the notice of any application for planning permission to be given to any person (other than the applicant) who at the beginning of the period of 21 days ending with the date of the application was—
    - (i) the owner of, or
    - (ii) the tenant of any agricultural [<sup>F35</sup>land] any part of which was comprised in,  
any of the land to which the application relates, and
  - (b) requiring any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,  
and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) The regulations or order may require an applicant for planning permission to certify, in such form as may be prescribed by the regulations or the order, or to provide evidence, that any requirements of the regulations or the order have been satisfied.
- (3) Regulations or an order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (5) If any person—
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—

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[<sup>F36</sup>“agricultural land” means land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);] and “owner” in relation to any land means any person who—

- (a) under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than 7 years, or
- (b) in the case of such applications as may be prescribed by regulations or by a development order, is entitled to an interest in any mineral so prescribed,

and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.

- (8) Proceedings for an offence under this section may be brought at any time within the period of 2 years following the commission of the offence.

#### Textual Amendments

- F35** Word in s. 35(1)(a)(ii) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 51\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)
- F36** Words in s. 35(7) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 51\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

#### [<sup>F37</sup>35A Pre-application consultation: preliminary

- (1) Before submitting an application for planning permission for a development of a class prescribed under this section the prospective applicant is, subject to the following provisions of this section, to comply with section 35B.
- (2) The regulations in question may, in prescribing classes of development, make different provision for different cases or classes of case and for different areas.
- (3) A prospective applicant for planning permission for a development may, by notice, require the planning authority to state whether or not, in their opinion, the development is of a class prescribed under subsection (1).
- (4) But the regulations may, in prescribing a class of development, provide that subsections (3) and (5) to (9) are not to apply—
  - (a) as respects that class, or
  - (b) as respects that class in circumstances specified in the regulations.
- (5) Any notice under subsection (3) is to be in such form as may be prescribed in the regulations but must in any event contain the information mentioned in paragraphs (a) to (d) of section 35B(4).
- (6) A planning authority receiving such a notice may, if they do not consider that it contains sufficient information to enable them to provide the statement sought, request the prospective applicant to provide additional information specified by them.

*Status: Point in time view as at 14/11/2011.*

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

#### Textual Amendments

**F37** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11**, 59(2) (with [S.S.I. 2009/101](#), [arts. 1\(1\), 2](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2009/100](#), [art. 2](#), sch.

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

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

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

#### Textual Amendments

**F37** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11, 59(2)** (with [S.S.I. 2009/101](#), arts. 1(1), 2); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/100](#), art. 2, sch.

### 35C Pre-application consultation report

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

#### Textual Amendments

**F37** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11, 59(2)** (with [S.S.I. 2009/101](#), arts. 1(1), 2); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/100](#), art. 2, sch.

### 36 Registers of applications etc.

- (1) Every planning authority shall keep, in such manner as may be prescribed by regulations or a development order, a register containing such information as may be so prescribed with respect to—

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- (a) applications for planning permission and for approval required by the regulations or order made to that authority,
  - [<sup>F38</sup>(aa) any variation, by virtue of section 32A(1), to such an application,
  - (ab) documents to which regard was had in dealing with each such application (including documents to which regard was had in considering whether to agree to such a variation),
  - (ac) material considerations to which regard was had by virtue of section 37(2),
  - (ad) any pre-application consultation report prepared under section 35C(1) and submitted with such an application,]
  - (b) the manner in which [<sup>F39</sup>each such application has been dealt with and a copy of any notice given by virtue of paragraph (d) or (e) of section 43(1) in respect of an application (or, in the case of an application in respect of which notice does not fall to be so given, a statement of the reasons on which the authority based their decision on the application)], <sup>F40</sup>...
  - [<sup>F41</sup>(ba) applications under section 242A(2) for planning permission in respect of development in the district of that authority,]
  - [<sup>F42</sup>(bb) the grant or refusal of planning permission by the Scottish Ministers under section 31A in respect of development in the district of that authority,]
  - (c) simplified planning zone schemes relating to zones in the authority's area, [<sup>F43</sup>and
  - (d) any planning obligation entered into under section 75]
- (2) The regulations or the order may make provision for the register to be kept in two or more parts, each part containing such information relating to applications mentioned in subsection (1)(a) as may be prescribed by the regulations or order.
- (3) The regulations or the order may also make provision—
- (a) for a specified part of the register to contain copies of applications [<sup>F44</sup>and variations to applications] and of any plans or drawings submitted with [<sup>F45</sup>such applications and variations and copies of documents to which regard was had in dealing with such applications and in considering whether to agree to such variations], and
  - (b) for the entry relating to any application, and everything relating to it, to be removed from that part of the register when the application (including any appeal [<sup>F46</sup>or review] arising out of it) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### Textual Amendments

- F38** S. 36(1)(aa)-(ad) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 12(a)(i), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F39** Words in s. 36(1)(b) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 12(a)(ii), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F40** Word in s. 36(1)(b) repealed (1.4.2007) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 12(a)(iii), 59(2); S.S.I. 2007/130, art. 2(2), sch.

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- F41** S. 36(1)(ba) inserted (1.4.2007) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(iv)**, 59(2); S.S.I. 2007/130, art. 2(2), sch.
- F42** S. 36(1)(bb) inserted (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), **8(4)** (with art. 14(3))
- F43** S. 36(1)(d) and word inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(v)**, 59(2); S.S.I. 2008/411, art. 2(2)(3) (a); S.S.I. 2009/219, art. 2, sch.
- F44** Words in s. 36(3)(a) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(b)(i)**, 59(2); S.S.I. 2008/411, art. 2(2)(3) (a); S.S.I. 2009/219, art. 2, sch.
- F45** Words in s. 36(3)(a) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(b)(ii)**, 59(2); S.S.I. 2008/411, art. 2(2)(3) (a); S.S.I. 2009/219, art. 2, sch.
- F46** Words in s. 36(3)(b) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(2)**

#### **Modifications etc. (not altering text)**

- C7** S. 36 applied (with modifications) (1.6.2011) by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (S.S.I. 2011/139), regs. 1, **33(17)(b)(i)**

### **[<sup>F47</sup>36A Lists of applications**

- (1) Every planning authority are, in such manner as may be prescribed by regulations or a development order, to keep a list of—
  - (a) the applications mentioned in section 36(1)(a) which are made to them (including any variations, by virtue of section 32A(1), to those applications),
  - (b) the applications mentioned in section 36(1)(ba) which are made in respect of development in their district, and
  - (c) the proposal of application notices received by them under section 35B(2).
- (2) Weekly, or at such intervals as may be so prescribed, the authority are—
  - (a) to revise the list by removing from it the entries relating to—
    - (i) such applications as have been determined, and
    - (ii) such proposal of application notices as have ceased to be current, and
  - (b) in such manner as may be so prescribed (or, if and in so far as the regulations or development order may admit, in such manner as the authority consider appropriate), to publish that revised list.
- (3) The availability of the list is to be advertised by the authority in a local newspaper at such intervals as may be so prescribed.
- (4) The regulations or development order may make provision as to how any costs incurred by the authority by virtue of this section are to be recovered from the applicants.
- (5) In this section “publish”, without prejudice to that expression's generality, may include publish by electronic means (as for example by means of the internet).
- (6) For the purposes of subsection (2)(a)(ii), a notice ceases to be current when—
  - (a) an application for planning permission is submitted for the development in question,



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- (b) the prospective applicant gives notice in writing under this paragraph to the planning authority that no application is to be submitted for the development in question, or
- (c) 12 months have elapsed since the date on which the proposal of application notice was given.]

#### Textual Amendments

**F47** S. 36A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 13, 59(2) (with S.S.I. 2009/222, art. 5); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

### *Determination of applications*

#### **37 Determination of applications: general considerations.**

- (1) Where an application is made to a planning authority for planning permission—
  - (a) subject to sections [F48 27B(2) and 59(1)(b)], they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or
  - (b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- (3) Subsection (1) has effect subject to sections 34 and 35 and to the following provisions of this Act, and to sections 59(1), 60 and 65 of the <sup>M3</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- (4) The date of the grant or refusal of—
  - (a) planning permission,
  - (b) an approval required by a development order, or
  - (c) any consent, agreement or approval required by a condition imposed on the grant of planning permission,shall be the date on which the [F49 notice of the] planning authority's decision bears to have been signed on behalf of the authority.

#### Textual Amendments

**F48** Words in s. 37(1)(a) substituted (3.8.2009) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 54(5)(a), 59(2); S.S.I. 2009/219, art. 2, sch.

**F49** Words in s. 37(4) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 54(5)(b), 59(2); S.S.I. 2009/219, art. 2, sch.

#### Marginal Citations

**M3** 1997 c. 9.

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### 38 Consultations in connection with determination of applications.

- (1) In determining any application [<sup>F50</sup>mentioned in section 34(2)], the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection [<sup>F51</sup>(4)(a)] of that section.
- (2) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 35(1)(b), regulations or a development order may—
  - (a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;
  - (b) require a planning authority—
    - (i) to take into account in determining such an application such representations, made within such period, as may be prescribed, and
    - (ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (3) Regulations or a development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) Before a planning authority grant planning permission for the use of land as a caravan site they shall, unless they are also the authority with power to issue a site licence for that land, consult the local authority with that power.
- (5) In this section “site licence” means a licence under Part 1 of the <sup>M4</sup>Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site.

#### Textual Amendments

- F50** Words in s. 38(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 10(2)(a), 59(2)** (with [S.S.I. 2009/222](#), **art. 4**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, sch.
- F51** Word in s. 38(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 10(2)(b), 59(2)** (with [S.S.I. 2009/222](#), **art. 4**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, sch.

#### Marginal Citations

- M4** 1960 c. 62.

### [<sup>F52</sup>38A Pre-determination hearings

- (1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.
- (2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the authority consider appropriate.



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- (3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.
- (4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a planning authority may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the authority do so elect, subsections (2) and (3) apply accordingly.]

#### Textual Amendments

**F52** S. 38A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 14(1), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

#### <sup>F53</sup>39 [ <sup>F53</sup>Declining to determine an application]

[<sup>F54</sup>(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—

- (a) if—
  - (i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and
  - (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (b) if—
  - (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (c) if—
  - (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (d) if—

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- (i) in that period of two years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
  - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or
- (e) if—
- (i) in that period of two years two similar applications have been made to the planning authority,
  - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
  - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in the development plan (so far as material to the current application) or in any other material consideration.
- (1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—
- (a) compliance with section 35B was required as respects the development, and
  - (b) there has not been such compliance.
- (1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.
- (1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.
- (1D) Subsection (1A) is subject to section 35A(9).]
- (2) For the purposes of this section an application for planning permission for the development of any land shall be taken to be similar to a later application only if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.
- <sup>F55</sup>(3) .....

#### Textual Amendments

- F53** S. 39 heading substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 15\(e\), 59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 6](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)
- F54** S. 39(1)-(1D) substituted for s. 39(1) (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 15\(a\), 59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 6](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)

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**F55** S. 39(3) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(b)**, 59(2) (with [S.S.I. 2009/222](#), **art. 6**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, sch.

#### 40 Assessment of environmental effects.

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.
- (2) The regulations—
  - (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any [<sup>F56</sup>EU] obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the <sup>M5</sup>European Communities Act 1972, and
  - (b) may make different provisions for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, no statutory instrument containing such regulations shall be subject to annulment by virtue of section 275(3).
- [<sup>F57</sup>4] Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.
- (5) In subsection (4), “ water environment ” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3). ]

#### Textual Amendments

- F56** Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), **arts. 2, 3, 6** (with **art. 3(2)(3), 4(2), 6(4)(5)**)
- F57** S. 40(4)(5) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(3), 38(1)**; [S.S.I. 2007/50](#), **art. 2**

#### Marginal Citations

- M5** 1972 c. 68.

#### 41 Conditional grant of planning permission.

- (1) Without prejudice to the generality of section 37(1) to (3), conditions may be imposed on the grant of planning permission under that section—
  - (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;

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- (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.
- (2) Conditions may not be imposed by a planning authority under subsection (1)(a) for regulating the development or use of any land within the area of another planning authority except with the consent of that authority.
- (3) Subject to paragraph 1(6)(a) of Schedule 3, a planning permission which is granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.
- (4) Where—
  - (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition, and
  - (b) any building or other operations are commenced after the time so specified, the commencement and carrying out of those operations do not constitute development for which that permission was granted.
- <sup>F58</sup>(5) .....
- (6) Part I of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals.

**Textual Amendments**  
**F58** S. 41(5) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, [art. 10\(2\)\(a\)](#)); S.S.I. 2009/219, art. 2, [sch.](#)

**42 Determination of applications to develop land without compliance with conditions previously attached.**

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (3) Special provision may be made with respect to such applications—
  - <sup>F59</sup>(a) .....

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- (b) by a development order as regards the procedure to be followed in connection with the application.
- (4) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.

#### Textual Amendments

**F59** S. 42(3)(a) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#); S.S.I. 2009/219, art. 2, [sch.](#)

### 43 Directions etc. as to method of dealing with applications.

- (1) Provision may be made by regulations or a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by planning authorities, and in particular—
  - (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
  - [<sup>F60</sup>(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
    - (i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
    - (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;]
  - (b) for authorising the planning authority, in such cases and subject to such conditions as may be prescribed by the regulations or the order, or by directions given by the Secretary of State under the regulations or the order, to grant planning permission for development which does not accord with the provisions of the development plan;
  - [<sup>F61</sup>(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars, documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);]
  - (c) for requiring the planning authority, before granting or refusing planning permission for any development, to consult such authorities or persons as may be prescribed by the regulations or the order or by directions given by the Secretary of State under the regulations or the order;
  - (d) for requiring the planning authority to give to any applicant for planning permission, within such time as may be prescribed by the regulations or the

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order, such notice as may be so prescribed as to the manner in which his application has been dealt with;

- (e) for requiring the planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of their decision on his application, within such time as may be so prescribed;
- (f) for requiring [<sup>F62</sup>, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be prescribed by or under the regulations, order or directions], such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.

[<sup>F63</sup>(1A) Any notice given by virtue of paragraph (d) or (e) of subsection (1)—

- (a) is to include a statement of—
  - (i) the terms of the planning authority's decision,
  - (ii) any conditions to which that decision is subject, and
  - (iii) the reasons on which the authority based that decision, and
- (b) may include such other information as may be prescribed by the regulations or the order.]

(2) Paragraphs (d) and (f) of subsection (1) shall apply in relation to applications for an approval required by regulations under this Act or a development order as they apply in relation to applications for planning permission.

[<sup>F64</sup>(3) Paragraphs (a) and (f) of that subsection shall apply in relation to applications under section 75A(2) as they apply in relation to applications for planning permission.

(4) For the purposes of the application provided for in subsection (3), the reference in paragraph (a) of subsection (1) to restricting the grant of planning permission is to be construed as a reference to restricting the giving of any agreement under subsection (2) of section 75A or the making of any determination under subsection (4) of that section.]

#### Textual Amendments

- F60** S. 43(1)(aa) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(i)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F61** S. 43(1)(bb) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(ii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F62** Words in s. 43(1)(f) substituted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(iii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F63** S. 43(1A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F64** S. 43(3)(4) added (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(c)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

[<sup>F65</sup>**43A Local developments: schemes of delegation**

(1) A planning authority are—

*Status: Point in time view as at 14/11/2011.*

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- (a) as soon as practicable after the coming into force of section 17 of the Planning etc. (Scotland) Act 2006 (asp 17), and thereafter—
    - (i) whenever required to do so by the Scottish Ministers, or
    - (ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations under this section,  
to prepare a scheme (to be known as a “scheme of delegation”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and
  - (b) to keep under review the scheme so prepared.
- (2) Other than for the purposes of subsections (8) to (16) or section 47, the determination of any person so appointed is to be treated as that of the authority.
  - (3) References in subsection (1) to a development do not include references to a development of a class mentioned in section 38A(1).
  - (4) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—
    - (a) the form and content of, and
    - (b) the procedures for preparing and adopting,  
a scheme of delegation.
  - (5) Where an application for planning permission falls to be determined by a person so appointed, sections 37(1) to (3), 38, 39, 41(1) and (2) and 42 and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (18)), as they apply to an application which falls to be determined by the planning authority.
  - (6) The planning authority may, if they think fit, decide themselves to determine an application which would otherwise fall to be determined by a person so appointed.
  - (7) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.
  - (8) Where a person so appointed—
    - (a) refuses an application for planning permission or for consent, agreement or approval,
    - (b) grants it subject to conditions, or
    - (c) has not determined it within such period as may be prescribed by regulations or a development order,  
the applicant may require the planning authority to review the case.
  - (9) Where a requirement to review is made by virtue of paragraph (c) of subsection (8), the person so appointed is, for the purposes of the review, to be deemed to have decided to refuse the application.
  - (10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).
  - (11) Without prejudice to the generality of subsection (10), the regulations or order may—
    - (a) make different provision for different cases or classes of case,



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

#### Textual Amendments

**F65** Ss. 43A, 43B inserted (12.12.2008 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 17, 59(2)** (with [S.S.I.](#)



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2009/222, art. 7(1)(b)(2)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/100, art. 2, sch., S.S.I. 2009/219, art. 2, sch.

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

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

##### **Textual Amendments**

**F65** Ss. 43A, 43B inserted (12.12.2008 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 17, 59(2) (with S.S.I. 2009/222, art. 7(1)(b)(2)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/100, art. 2, sch., S.S.I. 2009/219, art. 2, sch.

#### **44 Effect of planning permission.**

- (1) Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.
- (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
- (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

#### **<sup>F66</sup>45 Duty to draw attention to certain provisions for benefit of disabled.**

.....

##### **Textual Amendments**

**F66** S. 45 repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), sch.; S.S.I. 2009/219, art. 2, sch.

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*Secretary of State's powers in relation to planning applications and decisions*

**46 Call-in of applications by Secretary of State.**

- (1) The Secretary of State may give directions requiring any such applications as are mentioned in section 34(2) to be referred to him instead of being dealt with by planning authorities.
- [<sup>F67</sup>(1A) A direction under subsection (1) may be withdrawn or modified by a subsequent direction.]
- (2) A direction under this section—
- may be given either to a particular planning authority or to planning authorities generally, and
  - may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under [<sup>F68</sup>subsection (1)] has effect shall be referred to the Secretary of State.
- (4) <sup>F69</sup>... where an application is referred to the Secretary of State under this section—
- sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and paragraphs 2 to 6 of Schedule 3 shall apply, with any necessary modifications, as they apply to an application which falls to be determined by the planning authority, and
  - regulations or a development order may apply, with or without modifications, to an application so referred any requirements imposed by the regulations or order by virtue of section 34 or 35.
- <sup>F70</sup>(5) .....
- <sup>F70</sup>(6) .....
- (7) The decision of the Secretary of State on any application referred to him under this section shall be final.

**Textual Amendments**

- F67** S. 46(1A) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 18(a)**, 59(2) (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2007/130](#), art. 2(2), sch.
- F68** Words in s. 46(3) substituted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 18(b)**, 59(2) (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2007/130](#), art. 2(2), sch.
- F69** Words in s. 46(4) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2009/219](#), art. 2, sch.
- F70** S. 46(5)(6) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2009/219](#), art. 2, sch.

**Modifications etc. (not altering text)**

- C8** S. 46 applied (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(7)(a)**
- C9** S. 46(1)-(4) modified (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(3)(a)** (with art. 3(4)(5)(6))

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## 47 Right to appeal against planning decisions and failure to take such decisions.

- (1) Where a planning authority—
- (a) refuse an application for planning permission or grant it subject to conditions,
  - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions, or
  - (c) refuse an application for any approval of that authority required under a development order or grant it subject to conditions,

the applicant may appeal to the Secretary of State<sup>[F71]</sup> against the decision].

[<sup>F72</sup>(1A) But subsection (1) does not apply in relation to any such action on the part of a planning authority as is mentioned in section 237(3A).]

- (2) A person who has made such an application may also appeal to the Secretary of State if the planning authority have not given to the applicant—

- (a) notice of their decision on the application,
- (b) notice that they have exercised their power under section 39 to decline to determine the application, or
- (c) notice that the application has been referred to the Secretary of State in accordance with directions given under section 46,

within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

- (3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by regulations or a development order.

- (4) The time prescribed for the service of such a notice must not be less than—

- (a) 28 days from the date of the notification of the decision, or
- (b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection.

- (5) For the purposes of the application of sections 48(1) and 218(1)(b) and paragraph 2(2)(c) of Schedule 16 in relation to an appeal under subsection (2), the authority shall be deemed to have decided to refuse the application in question.

### Textual Amendments

**F71** Words in s. 47(1) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 19\(1\)\(a\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 9\(2\)\(a\)](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)

**F72** S. 47(1A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 19\(1\)\(b\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 9\(2\)\(a\)](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)

### Modifications etc. (not altering text)

**C10** S. 47 modified (1.8.1999) by [S.S.I. 1999/1](#), [reg. 45](#)

**C11** S. 47 applied (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(Transitional Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/269\)](#), [arts. 1\(1\)](#), [3\(7\)](#)

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[<sup>F73</sup>**47A Matters which may be raised in an appeal under section 47(1)**

- (1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate—
  - (a) that the matter could not have been raised before that time, or
  - (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
  - (a) the provisions of the development plan, or
  - (b) any other material consideration.]

**Textual Amendments**

**F73** S. 47A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 19\(2\), 59\(2\)](#) (with [S.S.I. 2009/222, art. 9\(1\)\(b\)](#)); [S.S.I. 2008/411, art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2009/219, art. 2, sch.](#)

**48 Determination of appeals.**

- (1) On an appeal under section 47 the Secretary of State may—
  - (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the planning authority (whether the appeal relates to that part of it or not),
 and may deal with the application as if it had been made to him in the first instance.
- <sup>F74</sup>(2) .....
- (3) If the Secretary of State proposes to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, he shall give notice of his intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about his proposals.
- <sup>F75</sup>(4) .....
- (5) <sup>F76</sup>... in relation to an appeal to the Secretary of State under section 47—
  - (a) sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3 shall apply, with any necessary modifications, as they apply in relation to an application for planning permission which falls to be determined by the planning authority, and
  - (b) regulations or a development order may apply, with or without modifications, to such an appeal any requirements imposed by the regulations or order by virtue of section 34 or 35.
- (6) The decision of the Secretary of State on such an appeal shall be final.
- (7) If, before or during the determination of such an appeal in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 37 and 41(1) and (2), any regulations made under this Act in that regard and of any development order and any directions given under such regulations or order, planning permission for that development—
  - (a) could not have been granted by the planning authority, or

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- (b) could not have been granted otherwise than subject to the conditions imposed, he may decline to determine the appeal or to proceed with the determination.
- (8) If at any time before or during the determination of an appeal under section 47 it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—
  - (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal, and
  - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.
- (9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

#### **Textual Amendments**

- F74** S. 48(2) repealed (3.8.2009) by *Planning etc. (Scotland) Act 2006 (asp 17)*, s. 59(2), **sch.** (with S.S.I. 2009/222, **art. 9(2)(b)**); S.S.I. 2009/219, art. 2, sch.
- F75** S. 48(4) repealed (3.8.2009) by *Planning etc. (Scotland) Act 2006 (asp 17)*, s. 59(2), **sch.** (with S.S.I. 2009/222, **art. 9(2)(b)**); S.S.I. 2009/219, art. 2, sch.
- F76** Words in s. 48(5) repealed (3.8.2009) by *Planning etc. (Scotland) Act 2006 (asp 17)*, s. 59(2), **sch.** (with S.S.I. 2009/222, **art. 9(2)(b)**); S.S.I. 2009/219, art. 2, sch.

### *Simplified planning zones*

#### **49 Simplified planning zones.**

- (1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.
- (2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission—
  - (a) for development specified in the scheme, or
  - (b) for development of any class so specified.
- (3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

#### **50 Making of simplified planning zone schemes.**

- (1) Every planning authority shall consider, as soon as practicable after 1st October 1987, the question for which part or parts of their district a simplified planning zone scheme is desirable, and then shall keep that question under review.
- (2) If as a result of their original consideration or of any such review a planning authority decide that it is desirable to prepare a scheme for any part of their district they shall do so; and a planning authority may at any time decide—
  - (a) to make a simplified planning zone scheme,
  - (b) to alter a scheme adopted by them, or
  - (c) with the consent of the Secretary of State, to alter a scheme approved by him.

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- (3) Schedule 5 has effect with respect to the making and alteration of simplified planning zone schemes and other related matters.

**51 Simplified planning zone schemes: conditions and limitations on planning permission.**

- (1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—
- (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted, and
  - (b) conditions or limitations requiring the consent, agreement or approval of the planning authority in relation to particular descriptions of permitted development.
- (2) Different conditions or limitations may be specified for different cases or classes of case.
- (3) Nothing in a simplified planning zone scheme shall affect the right of any person—
- (a) to do anything not amounting to development, or
  - (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme.
- (4) No limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

**52 Duration of simplified planning zone scheme.**

- (1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of 10 years beginning with that date.
- (2) When the scheme ceases to have effect planning permission under it shall also cease to have effect except in a case where the development authorised by it has been begun.

**53 Alteration of simplified planning zone scheme.**

- (1) This section applies where alterations to a simplified planning zone scheme are adopted or approved.
- (2) The adoption or approval of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land, or such part of it as is specified in the scheme, planning permission for development so specified or of any class so specified.
- (3) The adoption or approval of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.
- (4) The adoption or approval of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme

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is subject has effect to withdraw or relax the conditions, limitations or restrictions immediately.

- (5) The adoption or approval of alterations providing for—
- (a) the exclusion of land from the simplified planning zone,
  - (b) the withdrawal of planning permission, or
  - (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,
- has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption or approval.
- (6) The adoption or approval of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun.

#### **54 Exclusion of certain descriptions of land or development.**

- (1) The following descriptions of land may not be included in a simplified planning zone—
- (a) land in a conservation area;
  - (b) land in a National Scenic Area;
  - (c) land identified in the development plan for the area as part of a green belt;
  - [<sup>F77</sup>(d) land in a site of special scientific interest;
  - (e) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;]
- (2) Where land included in a simplified planning zone becomes land of a description mentioned in subsection (1), that subsection does not have effect to exclude it from the zone.
- (3) The Secretary of State may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—
- (a) in relation to an area of land specified in the order or to areas of land of a description so specified, or
  - (b) for development of a description specified in the order.
- (4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun.

#### **Textual Amendments**

**F77** S. 54(1)(d)(e) substituted for s. 54(1)(d) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004](#) (asp 6), s. 59(2), [Sch. 7 para. 12\(1\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2

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### *Enterprise zone schemes*

#### **55 Planning permission for development in enterprise zones.**

- (1) An order designating an enterprise zone under Schedule 32 to the <sup>M6</sup>Local Government, Planning and Land Act 1980 shall (without more) have effect on the date on which the order designating the zone takes effect to grant planning permission for development specified in the scheme or for development of any class so specified.
- (2) The approval of a modified scheme under paragraph 11 of that Schedule shall (without more) have effect on the date on which the modifications take effect to grant planning permission for development specified in the modified scheme or for development of any class so specified.
- (3) Planning permission so granted shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or, if none are specified, shall be unconditional.
- (4) Subject to subsection (5), where planning permission is so granted for any development or class of development the enterprise zone authority may direct that the permission shall not apply in relation to—
  - (a) a specified development,
  - (b) a specified class of development, or
  - (c) a specified class of development in a specified area within the enterprise zone.
- (5) An enterprise zone authority shall not give a direction under subsection (4) unless—
  - (a) they have submitted it to the Secretary of State, and
  - (b) he has notified them that he approves of their giving it.
- (6) If the scheme or the modified scheme specifies, in relation to any development it permits, matters which will require approval by the enterprise zone authority, the permission shall have effect accordingly.
- (7) The Secretary of State may by regulations make provision as to—
  - (a) the procedure for giving a direction under subsection (4), and
  - (b) the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subsection (6).
- (8) Such regulations may modify any provision of the planning Acts or any instrument made under them or may apply any such provision or instrument (with or without modification) in making any such provision as is mentioned in subsection (7).
- (9) Nothing in this section prevents planning permission being granted in relation to land in an enterprise zone otherwise than by virtue of this section (whether the permission is granted in pursuance of an application made under this Part<sup>F78</sup>, under section 242A] or by a development order).
- (10) Nothing in this section prejudices the right of any person to carry out development apart from this section.



*Status: Point in time view as at 14/11/2011.*

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#### Textual Amendments

- F78** Words in s. 55(9) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(2)

#### Marginal Citations

- M6** 1980 c. 65.

### 56 Effect on planning permission of modification or termination of scheme.

- (1) Modifications to an enterprise zone scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the modifications take effect.
- (2) When an area ceases to be an enterprise zone, planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

#### *Deemed planning permission*

### 57 Development with government authorisation.

- (1) Where the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority, that department may, on granting that authorisation, direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
  - (2) On granting a consent under section 36 or 37 of the <sup>M7</sup>Electricity Act 1989 in respect of any operation or change of use that constitutes development, the Secretary of State may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
- [<sup>F79</sup>(2A) On making an order under section 1 of the Transport and Works (Scotland) Act 2007 which includes provision for development, the Scottish Ministers may direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]
- [<sup>F80</sup>(2B) On—
- (a) confirming a flood protection scheme under paragraph 7(4) of schedule 2 to the Flood Risk Management (Scotland) Act 2009 (asp 6) in respect of any operation which would constitute development, or
  - (b) a local authority confirming such a scheme under paragraph 4(1) or 9(1) of that schedule,
- the Scottish Ministers must direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]

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- (3) The provisions of this Act (except Part XI) shall apply in relation to any planning permission deemed to be granted by virtue of a direction under this section as if it had been granted by the Secretary of State on an application referred to him under section 46.
- (4) For the purposes of this section development is authorised by a government department if—
- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment,
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development,
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose,
  - (d) authority is given by the department—
    - (i) for the borrowing of money for the purpose of the development, or
    - (ii) for the application for that purpose of any money not otherwise so applicable, or
  - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,
- and references in this section to the authorisation of a government department shall be construed accordingly.
- (5) In subsection (2) “ancillary development”, in relation to development consisting of the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station; and in this subsection “extension” and “generating station” have the <sup>M8</sup>same meanings as in Part I of the Electricity Act 1989.

#### Textual Amendments

**F79** S. 57(2A) inserted (28.12.2007) by Transport and Works (Scotland) Act 2007 (asp 8), ss. 15(1), 30(4); S.S.I. 2007/516, art. 2

**F80** S. 57(2B) inserted (24.12.2010) by Flood Risk Management (Scotland) Act 2009 (asp 6), ss. 65, 97(1) (with s. 91); S.S.I. 2010/401, art. 3(c)

#### Marginal Citations

**M7** 1989 c. 29.

**M8** 1989 c. 29.

### *Duration of planning permission*

#### <sup>F81</sup>58 [F81Duration of planning permission]

- [F82(1) Subject to subsection (2), a planning permission to which this section applies, whether granted or deemed to be granted, lapses on the expiration of a period of 3 years (beginning with the date on which the permission is granted or as the case may be deemed to be granted) unless the development to which the permission relates is begun before that expiration.

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- (2) The authority concerned may, in granting any such planning permission (or as the case may be in making a direction under section 57), direct that subsection (1) is not to apply as respects the permission but that the permission is to lapse on the expiration of a period, whether longer or shorter than 3 years, specified in the direction (under this section) unless the development to which the permission relates is begun before that expiration.
- (3) For the purposes of [sections 43A(8)(b) and] 47(1)(a), (3) and (4)(a)—
- (a) any such direction, or
  - (b) the effect of subsection (1) as that subsection applies in consequence of the authority electing not to make such a direction,
- is to be treated as a condition subject to which the application is granted.
- (3A) A period specified under subsection (2) is to be a period—
- (a) beginning as mentioned in subsection (1), and
  - (b) which the authority concerned consider appropriate having regard to the provisions of the development plan and to any other material considerations.]
- (4) [<sup>F83</sup>This section applies to every planning permission with the exception of]—
- (a) any planning permission granted by a development order,
  - (b) any planning permission for any development carried out before the grant of planning permission,
  - (c) any planning permission granted for a limited period,
  - [<sup>F84</sup>(ca) any planning permission granted before the date on which section 20 of the Planning etc. (Scotland) Act 2006 came into force,]
  - (d) any planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste which is granted (or deemed to be granted) subject to a condition that the development to which it relates must be begun before the expiration of a specified period after—
    - (i) the completion of other development consisting of the winning and working of minerals already being carried out by the applicant for the planning permission, or
    - (ii) the cessation of depositing of mineral waste already being carried out by the applicant for the planning permission,
  - (e) any planning permission granted by an enterprise zone scheme,
  - (f) any planning permission granted by a simplified planning zone scheme, or
  - (g) any [<sup>F85</sup>planning permission in principle], within the meaning of section 59.

#### Textual Amendments

- F81** S. 58 heading substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by *Planning etc. (Scotland) Act 2006 (asp 17)*, ss. **20(2)**, 59(2) (with S.S.I. 2009/222, **art. 10(2)(b)**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F82** S. 58(1)-(3A) substituted for (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by *Planning etc. (Scotland) Act 2006 (asp 17)*, ss. **20(1)(a)**, 59(2) (as amended (2.8.2009) by S.S.I. 2009/256, arts. 1(2), **5(2)**) (with S.S.I. 2009/222, **art. 10(2)(b)**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.

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- F83** Words in s. 58(4) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by *Planning etc. (Scotland) Act 2006 (asp 17)*, **ss. 20(1)(b)(i)**, 59(2) (with S.S.I. 2009/222, **art. 10(2)(b)**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F84** S. 58(4)(ca) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by *Planning etc. (Scotland) Act 2006 (asp 17)*, **ss. 20(1)(b)(ii)**, 59(2) (with S.S.I. 2009/222, **art. 10(2)(b)**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F85** Words in s. 58(4)(g) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by *Planning etc. (Scotland) Act 2006 (asp 17)*, **ss. 20(1)(b)(iii)**, 59(2) (with S.S.I. 2009/222, **art. 10(2)(b)**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.

## [<sup>F86</sup>59] Planning permission in principle

- (1) “Planning permission in principle” is planning permission (granted in accordance with the provisions of regulations or a development order)—
  - (a) in respect of the carrying out of building, engineering, mining or other operations in, on, over or under land, and
  - (b) subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have been approved by the planning authority or as the case may be the Scottish Ministers.
- (2) Application for the approval mentioned in subsection (1)(b)—
  - (a) must be made before whichever is latest of the following—
    - (i) the expiration of 3 years from the date of the grant of the permission,
    - (ii) the expiration of 6 months from the date on which an earlier application for the requisite approval was refused, and
    - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed, and
  - (b) may be made for—
    - (i) different matters, and
    - (ii) different parts of the development,
 at different times.
- (3) But, in relation to any matter, only one application may be made by virtue of sub-paragraphs (ii) and (iii) of subsection (2)(a) after the expiration of the 3 year period mentioned in sub-paragraph (i) of that subsection.
- (4) Subject to subsection (5), a planning permission in principle lapses on the expiration of 2 years from the requisite approval being obtained (or, in the case of approval of different matters on different dates, from the requisite approval for the last such matter being obtained) unless the development to which the permission relates is begun before that expiration.
- (5) Where a planning permission in principle is to be granted, the authority concerned with the terms of the permission may direct that (either or both)—
  - (a) subsections (2)(a)(i) and (3) are to apply as respects the permission with the substitution, for the period of 3 years referred to in each of those subsections,
  - (b) subsection (4) is to apply as respects the permission with the substitution, for the period of 2 years referred to in that subsection,
 of such other periods respectively (whether longer or shorter) as they consider appropriate.

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- (6) For the purposes of sections 43A(8)(b) and 47(1)(a), (3) and (4)(a)—
  - (a) any such direction, or
  - (b) the effect of subsection (4) as that subsection applies in consequence of the authority electing not to make such a direction,is to be treated as a condition subject to which the application is granted.
- (7) A direction under subsection (5) may provide for the substitution of different periods for different parts of the development (or for no substitution to be made for some part of the development).
- (8) In considering whether to exercise their powers under subsections (5) and (7), the authority is to have regard to the provisions of the development plan and to any other material considerations.]

**Textual Amendments**

**F86** S. 59 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 21, 59\(2\)](#) (as amended (2.8.2009) by [S.S.I. 2009/256](#), arts. 1(2), 5(2)) (with [S.S.I. 2009/222, art. 11](#)); [S.S.I. 2008/411, art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219, art. 2, sch.](#)

**60 Provisions supplementary to sections 58 and 59.**

- (1) The authority referred to in section [<sup>F87</sup>58(2) and (3A)(b)] and 59(5) is—
  - (a) the planning authority or the Secretary of State, in the case of planning permission granted by them,
  - (b) in the case of planning permission deemed to be granted under section 57(1), the department on whose direction planning permission is deemed to be granted,
  - (c) in the case of planning permission deemed to be granted under section 57(2), the Secretary of State, and
  - (d) in the case of planning permission granted on an appeal determined under paragraph 1 or 5 of Schedule 4 by a person appointed by the Secretary of State to determine the appeal, that person.
- (2) For the purposes of section 59, a <sup>F88</sup>... matter shall be treated as finally approved—
  - (a) when an application for approval is granted, <sup>F89</sup>...
  - (b) in a case where the application is made to the planning authority and on an appeal to the Secretary of State against the authority's decision on the application the Secretary of State or a person mentioned in subsection (1)(d) grants the approval, when the appeal is determined]<sup>F90</sup>, or
  - (c) in a case where the application is determined by a person appointed by virtue of a scheme of delegation and on a review of the case under section 43A(8) the planning authority grant the approval, on the date of the notice of the decision given by virtue of section 43A(11)(e)]

<sup>F91</sup>(3) .....

<sup>F91</sup>(4) .....

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### Textual Amendments

- F87** Words in s. 60(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 22\(1\)\(a\)](#), 59(2); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#) (with [S.S.I. 2009/222](#), [art. 10\(2\)\(c\)](#)); [S.S.I. 2009/219](#), [art. 2](#), sch.
- F88** Word in s. 60(2) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 22\(1\)\(b\)](#), 59(2) (with [S.S.I. 2009/222](#), [art. 10\(2\)\(c\)](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2009/219](#), [art. 2](#), sch.
- F89** Word in s. 60(2) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), [arts. 1\(3\)](#), [2\(3\)\(a\)](#)
- F90** S. 60(2)(c) and word inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), [arts. 1\(3\)](#), [2\(3\)\(b\)](#)
- F91** S. 60(3)(4) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 22\(1\)\(c\)](#), 59(2) (with [S.S.I. 2009/222](#), [art. 10\(2\)\(c\)](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2009/219](#), [art. 2](#), sch.

## 61 Termination of planning permission by reference to time limit: completion notices.

- (1) This section applies where—
  - <sup>F92</sup>(a) a development to which a planning permission relates has been begun but not completed by the date on which the permission would have lapsed had the development not been begun,]
  - (b) development has been begun in accordance with planning permission under a simplified planning zone scheme but has not been completed by the time the area ceases to be a simplified planning zone, or
  - (c) development has been begun in accordance with planning permission under an enterprise zone scheme but has not been completed by the time the area ceases to be an enterprise zone.
- (2) If the planning authority are of the opinion that the development will not be completed within a reasonable period, they may serve a notice (“a completion notice”) stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice.
- (3) The period so specified must not be less than 12 months after the notice takes effect.
- (4) A completion notice shall be served—
  - (a) on the owner of the land,
  - (b) on the occupier of the land, and
  - (c) on any other person who in the opinion of the planning authority will be affected by the notice.
- (5) The planning authority may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect.
- (6) If they do so they shall immediately give notice of the withdrawal to every person who was served with the completion notice.



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### Textual Amendments

**F92** S. 61(1)(a) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 22(2)**, 59(2) (with [S.S.I. 2009/222](#), **art. 10(2)(d)**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, sch.

## 62 Effect of completion notice.

- (1) A completion notice shall not take effect unless and until it is confirmed by the Secretary of State.
- (2) In confirming a completion notice the Secretary of State may substitute some 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.
- (3) If, within such period as may be specified in a completion notice (which must not be less than 28 days from its service) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall give him and the planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If a completion notice takes effect, the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice (whether the original period specified under section 61(2) or a longer period substituted by the Secretary of State under subsection (2)).
- (5) Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

## 63 Power of Secretary of State to serve completion notice.

- (1) If it appears to the Secretary of State that it is expedient that a completion notice should be served in respect of any land, he may himself serve such a notice under section 61.
- (2) A completion notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to completion notices apply, so far as relevant, to a completion notice served by the Secretary of State as they apply to a completion notice served by a planning authority, but with the substitution for any reference in those provisions to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

### *Variation, revocation and modification of planning permission*

## 64 Power to vary planning permission.

Notwithstanding any other provision of this Part, a planning authority may, at the request of the grantee or a person acting with his consent, vary any planning



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permission granted by them, if it appears to them that the variation sought is not material.

## 65 Power to revoke or modify planning permission.

- (1) If it appears to the planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part <sup>F93</sup> or section 242A], the authority may by order revoke or modify the permission to such extent as they consider expedient.
- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section may be exercised—
  - (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
  - (b) where the permission relates to a change of the use of any land, at any time before the change has taken place.
- (4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has previously been carried out.
- (5) Part II of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed by an order under this section revoking or modifying permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials.

### Textual Amendments

**F93** Words in s. 65(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(3)

## 66 Procedure for section 65 orders: opposed cases.

- (1) Except as provided in section 67, an order under section 65 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a planning authority submit such an order to the Secretary of State for confirmation, they shall serve notice on—
  - (a) the owner of the land affected,
  - (b) the lessee and the occupier of the land affected, and
  - (c) any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before he confirms the order, give such an opportunity both to that person and to the planning authority.

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- (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
- (6) The Secretary of State may confirm an order submitted to him under this section without modification or subject to such modifications as he considers expedient.

## **67 Procedure for section 65 orders: unopposed cases.**

- (1) This section applies where—
  - (a) the planning authority have made an order under section 65, and
  - (b) the owner, the lessee and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it.
- (2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—
  - (a) subject to subsection (4), the period within which persons affected by the order may give notice to the Secretary of State that they wish to have an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and
  - (b) subject to subsection (5), the period at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section without being confirmed by the Secretary of State.
- (3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(b).
- (4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.
- (5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).
- (6) The authority shall send a copy of any advertisement published under subsection (2) to the Secretary of State not more than 3 days after the publication.
- (7) If—
  - (a) no person claiming to be affected by the order has given notice to the Secretary of State under subsection (2)(a) within the period referred to in that subsection, and
  - (b) the Secretary of State has not directed within that period that the order be submitted to him for confirmation,the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Secretary of State as required by section 66(1).
- (8) This section does not apply to—
  - (a) an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part<sup>F94</sup>, section 242A or Part VI, or
  - (b) an order modifying any conditions to which a planning permission is subject by virtue of section 58 or 59.

*Status: Point in time view as at 14/11/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F94** Words in s. 67(8)(a) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(4)

## 68 Revocation and modification of planning permission by the Secretary of State.

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 65, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 65, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.
- (8) Part II of Schedule 3 shall have effect in relation to orders made by the Secretary of State by virtue of subsection (1) as it has effect in relation to orders made by the planning authority under section 65.

### *References to Planning Inquiry Commissions*

## 69 Power to refer certain planning questions to Planning Inquiry Commission.

- (1) The Secretary of State may constitute a Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2) in the circumstances mentioned in subsection (3).
- (2) The matters that may be referred to a Planning Inquiry Commission are—
  - (a) an application for planning permission which the Secretary of State has under section 46 directed to be referred to him instead of being dealt with by a planning authority;
  - (b) an appeal under section 47 (including that section as applied by or under any other provision of this Act);

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- (c) a proposal that a government department should give a direction under section 57(1) that planning permission shall be deemed to be granted for development by a local authority or by statutory undertakers which is required by any enactment to be authorised by that department;
  - (d) a proposal that development should be carried out by or on behalf of a government department.
- (3) Any of those matters may be referred to a Planning Inquiry Commission under this section if it appears expedient to the responsible Minister or Ministers that the question whether the proposed development should be permitted to be carried out should be the subject of a special inquiry on either or both of the following grounds—
- (a) that there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation of them cannot be made unless there is a special inquiry for the purpose;
  - (b) that the technical or scientific aspects of the proposed development are of so unfamiliar a character as to jeopardise a proper determination of that question unless there is a special inquiry for the purpose.
- (4) Schedule 6, which contains further provisions as to Planning Inquiry Commissions, and as to the meaning of “the responsible Minister or Ministers” in subsection (3) and in that Schedule, shall have effect.

## **70 Power to refer certain planning questions to Joint Planning Inquiry Commission.**

- (1) The Ministers may constitute a Joint Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2).
- (2) The matters that may be referred to a Joint Planning Inquiry Commission are the matters which may, under section 101 of the <sup>M9</sup>Town and Country Planning Act 1990 or section 69 of this Act, be referred to a Planning Inquiry Commission but which appear to the Ministers to involve considerations affecting both Scotland and England.
- (3) In subsections (1) and (2) “the Ministers” means the Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England acting jointly.
- (4) Schedule 7, which contains further provisions as to Joint Planning Inquiry Commissions, shall have effect.

### **Marginal Citations**

**M9** 1990 c. 8.

*Status: Point in time view as at 14/11/2011.*

**Changes to legislation:** *Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Other controls over development*

#### **71 Orders requiring discontinuance of use or alteration or removal of buildings or works.**

- (1) If, having regard to the development plan and to any other material considerations, it appears to a planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
  - (a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land, or
  - (b) that any buildings or works should be altered or removed,
 they may by order—
  - (i) require the discontinuance of that use, or
  - (ii) impose such conditions as may be specified in the order on the continuance of it, or
  - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,
 as the case may be.
- (2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order.
- (3) Section 65 shall apply in relation to any planning permission granted by an order under this section as it applies in relation to planning permission granted by the planning authority on an application made under this Part [<sup>F95</sup>or section 242A].
- (4) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Secretary of State under this section.
- (5) Planning permission for such development may be granted so as to have effect from—
  - (a) the date on which the development was carried out, or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
- (6) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the planning authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.
- (7) In the case of planning permission granted by an order under this section, the authority referred to in sections [<sup>F96</sup>58(2) and (3A)(b)] and 59(5) is the planning authority making the order.
- (8) The previous provisions of this section do not apply to the use of any land for development consisting of the winning or working of minerals or involving the deposit of refuse or waste materials except as provided in Schedule 8, and in that Schedule—
  - (a) Part I shall have effect for the purpose of making provision as respects land which is or has been so used, and
  - (b) Part II shall have effect as respects the registration of old mining provisions.

*Status: Point in time view as at 14/11/2011.*

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#### **Textual Amendments**

- F95** Words in s. 71(3) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(5)
- F96** Words in s. 71(7) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 22(3), 59(2) (with S.S.I. 2009/222, art. 10(2)(e)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

### **72 Confirmation by Secretary of State of section 71 orders.**

- (1) An order under section 71 shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (2) Where a planning authority submit an order to the Secretary of State for his confirmation under this section, they shall serve notice—
  - (a) on the owner of the land affected,
  - (b) on the lessee and the occupier of that land, and
  - (c) on any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before confirming the order, give such an opportunity both to that person and to the planning authority.
- (5) Where an order under section 71 has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on the owner, the lessee and occupier of the land to which the order relates.

### **73 Power of the Secretary of State to make section 71 orders.**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 71, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require the Secretary of State to give them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 71, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

#### **74 Review of mineral planning permissions.**

- (1) Schedule 9 (which makes provision as respects the review of old mineral planning permissions) and Schedule 10 (which makes provision as respects the periodic review of mineral planning permissions) shall have effect.
- (2) Without prejudice to the generality of sections 30 and 31, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 9 or 10.
- (3) In this section and those Schedules “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

#### **[<sup>F97</sup>75 Planning obligations**

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



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

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### Textual Amendments

**F97** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 23, 59(2)** (with [S.S.I. 2010/431](#), **arts. 1(1), 3**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2010/400](#), **art. 3, sch.**

### Modifications etc. (not altering text)

**C12** S. 75 applied by [S.S.I. 2010/431](#), **art. 3(1)** (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), **arts. 1, 2(2)**)

**C13** S. 75(5)(6) excluded by [S.S.I. 2010/431](#), **art. 3(2)** (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), **arts. 1, 2(2)**)

## 75A Modification and discharge of planning obligations

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

*Status: Point in time view as at 14/11/2011.*

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

#### Textual Amendments

**F97** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 23, 59(2) (with S.S.I. 2010/431, arts. 1(1), 3); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

#### Modifications etc. (not altering text)

**C14** S. 75A applied by S.S.I. 2010/431, art. 3(1) (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), arts. 1, 2(2))

## 75B Appeals

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

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

#### Textual Amendments

**F97** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 23, 59(2) (with S.S.I. 2010/431, arts. 1(1), 3); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

#### Modifications etc. (not altering text)

**C15** S. 75B applied by S.S.I. 2010/431, art. 3(1) (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), arts. 1, 2(2))

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

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

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

#### Textual Amendments

**F97** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 23, 59(2)** (with [S.S.I. 2010/431](#), arts. 1(1), **3**); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2010/400](#), art. 3, sch.

#### Modifications etc. (not altering text)

**C16** S. 75C savings for effects of 2006 asp 17 s. 23(1) (1.2.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Order 2010 \(S.S.I. 2010/431\)](#), arts. 1(1), **3**

**C17** S. 75C excluded by [S.S.I. 2010/431](#), art. 3(2) (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), arts. 1, **2(2)**)

### [<sup>F98</sup>75D Good neighbour agreements

- (1) A person may, by agreement with a community body, enter into an obligation governing operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement.
- (2) A body is a community body for the purposes of subsection (1) if—
  - (a) it is the community council for an area in which is situated any part of the land to which the agreement relates, or
  - (b) it has been notified by the planning authority for the area in which is situated the land to which the agreement relates that, in the opinion of the authority, it is—
    - (i) a body which falls within subsection (3), or
    - (ii) a trust which falls within subsection (4).
- (3) A body falls within this subsection if—
  - (a) its members have a substantial connection with the land to which the agreement relates, and
  - (b) the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (4) A trust falls within this subsection if—
  - (a) its trustees have a substantial connection with the land to which the agreement relates, and
  - (b) the object, or function, of the trust (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (5) An agreement entered into under subsection (1) may be referred to as a “good neighbour agreement”.
- (6) Without prejudice to the generality of subsection (1), an obligation entered into under that subsection may—
  - (a) require operations or activities specified in the agreement to be carried out in, on, under or over the land, or

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- (b) require the land to be used in a way so specified.
- (7) The obligation—
  - (a) may be unconditional or subject to conditions,
  - (b) may require the provision to the community body of information regarding the development and use of the land to which the agreement relates, and
  - (c) is not to require the payment of money.
- (8) Without prejudice to the generality of subsection (7)(a), the agreement may provide for the postponement of the effectiveness of the obligation to a date specified in the agreement (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (9) A good neighbour agreement to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the agreement is so recorded or registered then the obligation is (unless the agreement provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the community body—
  - (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (6), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,
 in so far as the obligation comprises any other requirement.
- (10) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the agreement being so recorded or registered.
- (11) In this section, “owner” has the same meaning as in section 75.
- (12) For the purposes of subsection (9) it is immaterial whether the person who is owner of the land when the agreement is recorded or registered was owner when the obligation was entered into.

#### Textual Amendments

**F98** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

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

- (1) An obligation entered into under section 75D(1) may not be modified or discharged except—
  - (a) by agreement between the community body and the person against whom the obligation is enforceable, or
  - (b) in accordance with this section and section 75F.
- (2) Where the community body and the person against whom the obligation is enforceable are unable to reach agreement regarding the modification or discharge of the

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- obligation, either may apply to the planning authority for the area in which is situated the land to which the agreement relates.
- (3) An application under subsection (2) is one seeking the determination of the planning authority as to whether the obligation is—
- (a) to have effect subject to such modifications as may be specified in the application, or
  - (b) to be discharged.
- (4) An application under subsection (2) is not to specify a modification imposing an obligation on any non-applicant.
- (5) On an application under subsection (2), the authority may determine that the obligation—
- (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (6) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (7) This subsection applies where—
- (a) there is agreement such as is mentioned in subsection (1)(a), or
  - (b) a determination is made under subsection (5)(b) or (c),
- concerning an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (8) Where subsection (7) applies, the modification or discharge does not take effect until the date on which—
- (a) the agreement under subsection (1)(a), or
  - (b) the notice given under subsection (6),
- is so recorded or as the case may be so registered.
- (9) Regulations may make provision with respect to—
- (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (6).

#### Textual Amendments

**F98** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

### 75F Good neighbour agreements: appeals

- (1) Where the planning authority—
- (a) fail to comply with subsection (6) of section 75E, or
  - (b) make a determination under subsection (5) of that section,



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- either of the parties referred to in subsection (1)(a) of that section may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the obligation is to continue to have effect without modification.
  - (3) Any appeal under subsection (1) is to be made by notice served—
    - (a) within such period, and
    - (b) in such manner,
 as may be prescribed.
  - (4) On an appeal under subsection (1) the Scottish Ministers may determine that the obligation—
    - (a) is to continue to have effect without modification,
    - (b) is discharged, or
    - (c) is to have effect subject to the modifications specified in the application.
  - (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
  - (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
  - (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be is so registered.
  - (8) Where the determination is under subsection (4)(c), the obligation is enforceable as modified—
    - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
    - (b) in any other case, from the date on which notice is given under subsection (5).
  - (9) Regulations may make provision with respect to the form and content of any notice—
    - (a) served under subsection (3), or
    - (b) given under subsection (5).
  - (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
  - (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

#### Textual Amendments

**F98** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

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

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

### **Textual Amendments**

**F98** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

**Status:**

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**Changes to legislation:**

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