



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### *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.
- (2) A direction under this section—
  - (a) may be given either to a particular planning authority or to planning authorities generally, and
  - (b) 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 this section has effect shall be referred to the Secretary of State.
- (4) Subject to subsection (5), where an application is referred to the Secretary of State under this section—
  - (a) 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
  - (b) 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.

*Status: Point in time view as at 12/06/2006.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Secretary of State's powers in relation to planning applications and decisions is up to date with all changes known to be in force on or before 22 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) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the planning authority so wish, give to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (6) Subsection (5) does not apply to an application for planning permission referred to a Planning Inquiry Commission under section 69.
- (7) The decision of the Secretary of State on any application referred to him under this section shall be final.

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

- C1** 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)**
- C2** 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))

**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.
- (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.

*Status: Point in time view as at 12/06/2006.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Secretary of State's powers in relation to planning applications and decisions is up to date with all changes known to be in force on or before 22 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) 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.

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

- C3** S. 47 modified (1.8.1999) by [S.S.I. 1999/1, reg. 45](#)  
**C4** 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)

**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.
- (2) Before determining the appeal the Secretary of State shall, if either the appellant or the planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (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.
- (4) Subsection (2) does not apply to an appeal referred to—
- (a) a Planning Inquiry Commission under section 69, or
  - (b) a Joint Planning Inquiry Commission under section 70.
- (5) Subject to subsection (2), 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
  - (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.

---

*Status: Point in time view as at 12/06/2006.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Cross Heading: Secretary of State's powers in relation to planning applications and decisions is up to date with all changes known to be in force on or before 22 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)*

---

- (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.

**Status:**

Point in time view as at 12/06/2006.

**Changes to legislation:**

Town and Country Planning (Scotland) Act 1997, Cross Heading: Secretary of State's powers in relation to planning applications and decisions is up to date with all changes known to be in force on or before 22 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.