



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART III

GENERAL PLANNING CONTROL

Meaning of development and requirement of planning permission

19 Meaning of "development" and "new development"

- (1) In this Act, except where the context otherwise requires, "development", subject to the following provisions of this section, 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.
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land, that is to say—
 - (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building and (in either case) are not works for making good war damage or works begun after 7th December, 1969 for the alteration of a building by providing additional space therein below ground;
 - (b) the carrying out by a local highway authority of any works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road;
 - (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 street 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;

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- (e) 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 thereof for any other purpose of the same class.
- (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 thereof which is so used;
 - (b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site.
- (4) Without prejudice to any regulations made under the provisions of 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.
- (5) In this Act "new development" means any development other than development of a class specified in Part I or Part II of Schedule 6 to this Act; and the provisions of Part III of that Schedule shall have effect for the purposes of Parts I and II thereof.

20 Development requiring planning permission

- (1) Subject to the provisions of this section, planning permission is required for the carrying out of any development of land.
- (2) Where on 1st July 1948 (in this Act referred to as " the appointed day ") land was being temporarily used for a purpose other than the purpose for which it was normally used, planning permission is not required for the resumption of the use of the land for the last-mentioned purpose before 8th December 1969.
- (3) Where on the appointed day land was normally used for one purpose and was also used on occasions, whether at regular intervals or not, for another purpose, planning permission is not required—
- (a) in respect of the use of the land for that other purpose on similar occasions before 8th December 1969; or
 - (b) in respect of the use of the land for that other purpose on similar occasions on or after that date if the land has been used for that other purpose on at least one similar occasion since the appointed day and before the beginning of 1969.
- (4) Where land was unoccupied on the appointed day, but had before that day been occupied at some time on or after 7th January 1937, planning permission is not required in respect of any use of the land begun before 8th December 1969 for the purpose for which the land was last used before the appointed day.
- (5) 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 the

use of the land for the purpose for which it was normally used before the permission was granted.

- (6) In determining, for the purposes of subsection (5) of this section, what were the purposes for which land was normally used before the grant of planning permission, no account shall be taken of any use of the land begun in contravention of the provisions of this Part of this Act or in contravention of previous planning control.
- (7) Notwithstanding anything in subsections (2) to (4) of this section, the use of land as a caravan site shall not, by virtue of any of those subsections, be treated as a use for which planning permission is not required, unless the land was so used on one occasion at least during the period of two years ending with 9th March 1960.
- (8) 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 the normal use of that land, unless the last-mentioned use was begun in contravention of the provisions of this Part of this Act or in contravention of previous planning control.
- (9) 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 of this Act) it could lawfully have been used if that development had not been carried out.
- (10) 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 the provisions of Part II of the Act of 1947.

Development orders

21 Development orders

- (1) The Secretary of State shall by order (in this Act referred to as a "development order") provide for the granting of planning permission.
- (2) A development order may either—
 - (a) itself grant planning permission for development specified in the order, or for development of any class so specified; or
 - (b) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority (or, in the cases hereinafter provided, by the Secretary of State) on an application in that behalf made to the local planning authority in accordance with the provisions of the order.
- (3) A development order may be made either as a general order applicable (subject to such exceptions as may be specified therein) to all land, or as a special order applicable only to such land as may be so specified.
- (4) 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.
- (5) Without prejudice to the generality of subsection (4) of this section—
 - (a) where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval

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of the local planning authority to be obtained with respect to the design or external appearance of the buildings:

- (b) 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 local planning authority to direct that the permission shall not apply either in relation to development in a particular area or in relation to any particular development.
- (6) Any provision of a development order whereby 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.
- (7) 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, shall not apply to any development specified in the order, or shall apply thereto subject to such modifications as may be so specified.

Applications for planning permission

22 Form and content of applications

Any application to a local planning authority for planning permission shall be made in such manner as may be prescribed by regulations under this Act, and shall include such particulars, and be verified by such evidence, as may be required by the regulations or by directions given by the local planning authority thereunder.

23 Publication of notices of applications

- (1) Provision may be made by a development order for designating the classes of development to which this section applies, and this section shall apply accordingly to any class of development which is for the time being so designated.
- (2) An application for planning permission for development of any class to which this section applies shall not be entertained by the local planning authority unless it is accompanied—
- (a) by a copy of a notice of the application, in such form as may be prescribed by a development order, and by such evidence as may be so prescribed that the notice has been published in a local newspaper circulating in the locality in which the land to which the application relates is situated ; and
 - (b) by one or other of the following certificates, signed by or on behalf of the applicant, that is to say—
 - (i) a certificate stating that he has complied with subsection (3) of this section and when he did so ; or
 - (ii) a certificate stating that he has been unable to comply with it because he has not such rights of access or other rights in respect of the land as would enable him to do so, but that he has taken such reasonable

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steps as are open to him (specifying them) to acquire those rights and has been unable to acquire them.

- (3) In order to comply with this subsection a person must—
 - (a) post on the land a notice, in such form as may be prescribed by a development order, stating that the application for planning permission is to be made; and
 - (b) leave the notice in position for not less than seven days in a period of not more than one month immediately preceding the making of the application to the local planning authority.
- (4) The said notice must be posted by affixing it firmly to some object on the land, and must be sited and displayed in such a way as to be easily visible and legible by members of the public without going on the land.
- (5) The applicant shall not be treated as unable to comply with subsection (3) of this section if the notice is, without any fault or intention of his, removed, obscured or defaced before the seven days referred to in subsection (3)(b) of this section have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement; and, if he has cause to rely on this subsection, his certificate under subsection (2)(b) of this section shall state the relevant circumstances.
- (6) The notice mentioned in subsection (2)(a) or required by subsection (3) of this section shall (in addition to any other matters required to be contained therein) name a place within the locality where a copy of the application for planning permission, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during such period as may be specified in the notice, not being a period of less than twenty-one days beginning with the date on which the notice is published or first posted, as the case may be.
- (7) An application for planning permission for development of any class to which this section applies shall not be determined by the local planning authority before the end of the period of twenty-one days beginning with the date of the application.
- (8) If any person issues a certificate which purports to comply with the requirements of subsection (2)(b) of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (9) Any certificate issued for the purpose of this section shall be in such form as may be prescribed by a development order.

24 Notification of applications to owners and agricultural tenants

- (1) Without prejudice to section 23 of this Act, a local planning authority shall not entertain any application for planning permission unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say—
 - (a) a certificate stating that, in respect of every part of the land to which the application relates, the applicant is the proprietor of the dominium utile or is the lessee under a lease thereof;
 - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than the applicant) who, at the beginning

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- of the period of twenty-one days ending with the date of the application, were owners of any of the land to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice;
- (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in the last preceding paragraph as are specified in the certificate (setting out their names, the addresses at which notice of the application was given to them respectively, and the date of the service of each such notice), that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
- (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) of this subsection, that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) of this subsection and that he has been unable to do so.
- (2) Any such certificate as is mentioned in paragraph (c) or paragraph (d) of subsection (1) of this section shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (being a date not earlier than the beginning of the period mentioned in paragraph (b) of that subsection) been published in a local newspaper circulating in the locality in which the land in question is situated.
- (3) In addition to any other matters required to be contained in a certificate issued for the purposes of this section, every such certificate shall contain one or other of the following statements, that is to say—
- (a) a statement that none of the land to which the application relates constitutes or forms part of an agricultural holding;
- (b) a statement that the applicant has given the requisite notice of the application to every person (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, and setting out the name of each such person, the address at which notice of the application was given to him, and the date of service of that notice.
- (4) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b), (c) or (d) of this section, or by a certificate containing a statement in accordance with subsection (3)(b) of this section, the local planning authority shall not determine the application before the end of the period of twenty-one days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as therein mentioned, whichever is the later.
- (5) If any person issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

- (6) Any certificate issued for the purposes of this section shall be in such form as may be prescribed by a development order; and any reference in any provision of this section to the requisite notice, where a form of notice is prescribed by a development order for the purposes of that provision, is a reference to a notice in that form.
- (7) In this section "owner" in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than ten years, and "agricultural holding" has the same meaning as in the Agricultural Holdings (Scotland) Act 1949.

25 Publicity for applications affecting conservation areas

- (1) This section applies where an application for planning permission for any development of land is made to a local planning authority and either—
 - (a) the development would, in the opinion of the authority, affect the character or appearance of a conservation area; or
 - (b) the development is of a kind specified by the Secretary of State for the purposes of this section and in respect of land in or adjacent to a conservation area.
- (2) The local planning authority shall—
 - (a) publish in a local newspaper circulating in the locality in which the land is situated; and
 - (b) for not less than seven days display on or near the land, a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of twenty-one days beginning with the date of publication of the notice under paragraph (a) of this subsection.
- (3) The application shall not be determined by the local planning authority before both the following periods have elapsed, namely—
 - (a) the period of twenty-one days referred to in subsection (2) of this section; and
 - (b) the period of twenty-one days beginning with the date on which the notice required by that subsection to be displayed was first displayed.

Determination by local planning authorities of applications for planning permission

26 Determination of applications

- (1) Subject to the provisions of sections 23 to 25 of this Act, and to the following provisions of this Act, where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and—
 - (a) subject to sections 33, 39, 68 and 75 to 78 of this Act, may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
 - (b) may refuse planning permission.

- (2) In determining any application for planning permission for development of a class to which section 23 of this Act applies, the local planning authority shall take into account any representations relating to that application which are received by them before the end of the period of twenty-one days beginning with the date of the application.
- (3) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b), (c) or (d) of section 24 of this Act, or by a certificate containing a statement in accordance with subsection (3)(b) of that section, the local planning authority—
- (a) in determining the application, shall take into account any representations relating thereto which are made to them, before the end of the period mentioned in subsection (4) of that section, by any person who satisfies them that he is an owner of any land to which the application relates or that he is the tenant of an agricultural holding any part of which is comprised in that land ; and
 - (b) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with the preceding paragraph.
- (4) In determining any application for planning permission to which section 25 of this Act applies, the local planning authority shall take into account any representations relating to the application which are received by them before the periods mentioned in subsection (3) of that section have elapsed.
- (5) Before a local planning authority grant planning permission for the use of land as a caravan site, they shall, unless they are also the authority having power to issue a site licence for that land, consult the local authority having that power.
- (6) In this section " site licence " means a licence under Part I of the Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site and " owner" and " agricultural holding" have the same meanings as in section 24 of this Act.

27 Conditional grant of planning permission

- (1) Without prejudice to the generality of section 26(1) of this Act, conditions may be imposed on the grant of planning permission thereunder—
- (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 local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission ;
 - (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:

Provided that conditions may not be imposed by a local planning authority under paragraph (a) of this subsection for regulating the development or use of any land within the area of another local planning authority except with the consent of that authority.

- (2) Any planning permission granted subject to such a condition as is mentioned in subsection (1)(b) of this section is in this Act referred to as " planning permission granted for a limited period " .
- (3) 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 (not being a condition attached to the planning permission by or under section 38 or 39 of this Act); 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.

28 Directions etc. as to method of dealing with applications

- (1) Subject to the provisions of section 26(2) to (5) of this Act, provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by local planning authorities, and in particular—
- (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the local 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;
 - (b) for authorising the local planning authority, in such cases and subject to such conditions as may be prescribed by the order, or by directions given by the Secretary of State thereunder, to grant planning permission for development which does not accord with the provisions of the development plan;
 - (c) for requiring the local planning authority, before granting or refusing planning permission for any development, to consult with such authorities or persons as may be prescribed by the order or by directions given by the Secretary of State thereunder;
 - (d) for requiring the local planning authority to give to any applicant for planning permission, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
 - (e) for requiring the local planning authority to give to the Secretary of State, and to such other persons as may be prescribed by or under the order, 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.
- (2) The Secretary of State may give directions to local planning authorities with respect to the matters which they are to take into consideration in determining an application to which section 25 of this Act applies and with respect to the consultations which such authorities are to undertake before determining any such application.
- (3) Different directions may under this section be given to different local planning authorities; and any such directions may require an authority—

- (a) before determining an application to consult such persons or bodies of persons as the Secretary of State may specify, being persons or bodies appearing to him to be competent to give advice in relation to the development or description of development to which the directions have reference;
- (b) to supply to any person or body, whom they are required by the directions to consult, specified documents or information enabling that person or body to form an opinion on which to base advice;
- (c) to establish committees, consisting either of members of the authority or of other persons, or of both, to advise the authority in relation to the determination of any application referred to in subsection (2) of this section.

29 Permission to retain buildings or works or continue use of land

- (1) An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether the buildings or works were constructed or carried out, or the use instituted, without planning permission or in accordance with planning permission granted for a limited period.
- (2) Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1) of this section; and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly:

Provided that this subsection shall not affect the construction of section 23, 25, 26(2) or (4), or 57, of sections 64 to 83 or of Part VII of this Act.

- (3) Any planning permission granted in accordance with subsection (2) of this section may be granted so as to take effect from the date on which the buildings or works were constructed or carried out, or the use was instituted, or (in the case of buildings or works constructed or carried out or a use instituted in accordance with planning permission granted for a limited period) so as to take effect from the end of that period, as the case may be.

30 Provisions as to effect of planning permission

- (1) Without prejudice to the provisions of this Part of this Act 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 therein.
- (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; and 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.

31 Information regarding, and registers of, applications and decisions

- (1) A development order may make provision for requiring applicants for planning permission for development or for any class of development prescribed by or under

the order to furnish at such time and to such persons as may be so prescribed such information with respect to the application as may be so prescribed.

- (2) Every local planning authority shall keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect to applications for planning permission made to that authority, including information as to the manner in which such applications have been dealt with.
- (3) A development order may make provision for the register to be kept in two or more parts, each part containing such information relating to applications for planning permission made to the authority as may be prescribed by the order, and may also make provision—
 - (a) for a specified part of the register to contain copies of applications and of any plans or drawings submitted therewith; and
 - (b) for the entry relating to any application, and everything relating thereto, to be removed from that part of the register when the application (including any appeal arising out of it) has been finally disposed of, without prejudice to the inclusion of any different entry relating thereto 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.

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

32 Reference of applications to Secretary of State

- (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.
- (2) A direction under this section—
 - (a) may be given either to a particular local planning authority or to local 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 accordingly.
- (4) Subject to subsection (5) of this section, where an application for planning permission is referred to the Secretary of State under this section, the following provisions of this Act, that is to say, sections 23(2) and (7), 24, 26(1) to (3) and 27(1), shall apply, with any necessary modifications, as they apply to an application for planning permission which falls to be determined by the local planning authority.
- (5) Before determining an application referred to him under this section, other than an application for planning permission referred to a Planning Inquiry Commission under section 45 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford 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) The decision of the Secretary of State on any application referred to him under this section shall be final.

33 Appeals against planning decisions

- (1) Where an application is made to a local planning authority for planning permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority or is granted by them subject to conditions, the applicant, if he is aggrieved by their decision, may by notice under this section appeal to the Secretary of State.
- (2) Any notice under this section shall be served within such time (not being less than twenty-eight days from the date of notification of the decision to which it relates, and in such manner as may be prescribed by a development order.
- (3) Where an appeal is brought under this section from a decision of a local planning authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the local planning authority, whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance.

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the local planning authority to which the appeal does not relate, he shall give notice of his intention to the local planning authority and to the applicant and shall afford to them an opportunity to make representations in regard thereto.

- (4) Before determining an appeal under this section, other than an appeal referred to a Planning Inquiry Commission under section 45 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Subject to subsection (4) of this section, the following provisions of this Act, that is to say, sections 24, 26(1) and (3) and 27(1) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under this section as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.
- (6) The decision of the Secretary of State on any appeal under this section shall be final.
- (7) If before or during the determination of an appeal under this section 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 26(1), 27(1) and 65 of this Act and of the development order and to any directions given under that order, planning permission for that development—
 - (a) could not have been granted by the local planning authority; or
 - (b) could not have been granted by them otherwise than subject to the conditions imposed by them,he may decline to determine the appeal or to proceed with the determination.
- (8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by or under any other provision of this Act.

34 Appeal in default of planning decision

Where an application is made to a local planning authority for planning permission, or for any approval of that authority required under a development order, then unless

within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either—

- (a) give notice to the applicant of their decision on the application ; or
- (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 32 of this Act,

the provisions of section 33 of this Act shall apply in relation to the application as if the permission or approval to which it relates had been refused by the local planning authority, and as if notification of their decision had been received by the applicant at the end of the period prescribed by the development order, or at the end of the said extended period, as the case may be.

35 Review of planning decisions where compensation claimed

- (1) The provisions of this section and of section 36 of this Act shall have effect where, in accordance with the provisions of section 143 of this Act, one or more claims for compensation in respect of a planning decision have been received by the Secretary of State, and the claim, or (if there is more than one) one or more of the claims, has not been withdrawn.
- (2) If, in the case of a planning decision of the local planning authority, it appears to the Secretary of State that, if the application for permission to develop the land in question had been referred to him for determination, he would have made a decision more favourable to the applicant, the Secretary of State may give a direction substituting that decision for the decision of the local planning authority.
- (3) If, in any case, it appears to the Secretary of State that planning permission could properly be granted (either unconditionally or subject to certain conditions) for some development of the land in question other than the development to which the application for planning permission related, the Secretary of State may give a direction that the provisions of this Act shall have effect in relation to that application and to the planning decision—
 - (a) as if the application had included an application for permission for that other development, and the decision had included the grant of planning permission (unconditionally or subject to the said conditions, as the case may be) for that development; or
 - (b) as if the decision had been a decision of the Secretary of State and had included an undertaking to grant planning permission (unconditionally or subject to the said conditions, as the case may be) for that development,as may be specified in the direction.
- (4) The reference in subsection (2) of this section to a decision more favourable to the applicant shall be construed—
 - (a) in relation to a refusal of permission, as a reference to a decision granting the permission, either unconditionally or subject to conditions, and either in respect of the whole of the land to which the application for permission related or in respect of part of that land; and
 - (b) in relation to a grant of permission subject to conditions, as a reference to a decision granting the permission applied for unconditionally or subject to less stringent conditions.

36 Provisions supplementary to s. 35

- (1) Before giving a direction under section 35 of this Act the Secretary of State shall give notice in writing of his proposed direction to the local planning authority to whose decision that direction relates, and to any person who made, and has not since withdrawn, a claim for compensation in respect of that decision ; and, if so required by the local planning authority or by any such person, shall afford to each of them an opportunity to appear before, and be heard by. a person appointed by the Secretary of State for the purpose.
- (2) In giving any direction under section 35 of this Act, the Secretary of State shall have regard to the provisions of the development plan for the area in which the land in question is situated, in so far as those provisions are material to the development of that land, and shall also have regard to the local circumstances affecting the proposed development, including the use which prevails generally in the case of contiguous or adjacent land, and to any other material considerations.
- (3) Where the Secretary of State gives a direction under section 35 of this Act, he shall give notice of the direction to the local planning authority to whose decision the direction relates, and to every person (if any) who made, and has not since withdrawn, a claim for compensation in respect of that decision.

*Deemed planning permission***37 Development by local authorities and statutory undertakers with sanction of government department**

- (1) Where the sanction of a government department other than the Secretary of State is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers not being a local authority, that department may, on granting that sanction, 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 directions.
- (2) The provisions of this Act (except Parts VII and XII thereof) shall apply in relation to any planning permission deemed to be granted by virtue of directions under this section as if it had been granted by the Secretary of State on an application referred to him under section 32 of this Act.
- (3) For the purposes of this section development shall be taken to be sanctioned 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 for the borrowing of money for the purpose of the development, or 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 sanction of a government department shall be construed accordingly.

Duration of planning permission

38 Limit of duration of planning permission

- (1) Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—
- (a) five years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or
 - (b) such other period (whether longer or shorter) beginning with the said date as the authority concerned with the terms of the planning permission may direct, being a period which the authority considers appropriate having regard to the provisions of the development plan and to any other material considerations.
- (2) If planning permission is granted without the condition required by subsection (1) of this section, it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.
- (3) Nothing in this section applies—
- (a) to any planning permission granted by a development order;
 - (b) to any planning permission granted for a limited period ;
 - (c) to any planning permission granted under section 29 of this Act on an application relating to buildings or works completed, or a use of land instituted, before the date of the application ; or
 - (d) to any outline planning permission, as defined by section 39 of this Act.

39 Outline planning permission

- (1) In this section and section 38 of this Act "outline planning permission " means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority or the Secretary of State of matters (referred to in this section as " reserved matters") not particularised in the application.
- (2) Subject to the provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the following effect—
- (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and
 - (b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates—

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- (i) the expiration of five years from the date of the grant of outline planning permission; or
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- (3) If outline planning permission is granted without the conditions required by subsection (2) of this section, it shall be deemed to have been granted subject to those conditions.
- (4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2) of this section, substitute, or direct that there be substituted, for the periods of three years, five years or two years referred to in that subsection such other periods respectively (whether longer or shorter) as they consider appropriate.
- (5) The said authority may, in applying the said subsection, specify, or direct that there be specified, separate periods under paragraph (a) of the subsection in relation to separate parts of the development to which the planning permission relates ; and, if they do so, the condition required by paragraph (b) of the subsection shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.
- (6) In considering whether to exercise their powers under subsections (4) and (5) of this section, the said authority shall have regard to the provisions of the development plan and to any other material considerations.

40 Provisions supplementary to ss. 38 and 39

- (1) For the purposes of sections 38 and 39 of this Act, development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out.
- (2) In subsection (1) of this section " specified operation " means any of the following, that is to say—
- (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) 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 the last preceding paragraph;
 - (d) any operation in the course of laying out or constructing a road or part of a road ;
 - (e) any change in the use of any land, where that change constitutes material development.
- (3) In subsection (2)(e) of this section " 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 falling within any of paragraphs 1, 2, 3 and 5 to 9 of Schedule 6 to this Act, as read with Part III of that Schedule; and

- (c) development of any class prescribed for the purposes of this subsection; and in this subsection " general development order " means a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land in Scotland.
- (4) The authority referred to in sections 38(1)(b) and 39(4) of this Act is the local planning authority or the Secretary of State, in the case of planning permission granted by them, and—
- (a) in the case of planning permission under section 37 of this Act is the department on whose direction planning permission is deemed to be granted; and
- (b) in the case of planning permission granted on an appeal determined, under paragraph 1 or 4 of Schedule 7 to this Act, by a person appointed by the Secretary of State to determine the appeal, is that person.
- (5) For the purposes of section 39 of this Act, a reserved matter shall be treated as finally approved when an application for approval is granted or, in a case where the application is made to the local planning authority and there is an appeal to the Secretary of State against the authority's decision on the application and the Secretary of State or a person appointed by him under paragraph 1 or 4 of Schedule 7 to this Act to determine the appeal grants the approval, on the date of the determination of the appeal by the Secretary of State or that person.
- (6) Where a local planning authority grant planning permission, the fact that any of the conditions of the permission are required by the provisions of sections 38 or 39 of this Act to be imposed, or are deemed by those provisions to be imposed, shall not prevent the conditions being the subject of an appeal under section 33 of this Act against the decision of the authority.
- (7) In the case of planning permission (whether outline or other) having conditions attached to it by or under section 38 or 39 of this Act—
- (a) development carried out after the date by which the conditions of the permission require it to be carried out shall be treated as not authorised by the permission; and
- (b) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

41 Termination of planning permission by reference to time limit

- (1) The following provisions of this section shall have effect where, by virtue of section 38 or 39 of this Act, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within that period but the period has elapsed without the development having been completed.
- (2) If the local planning authority are of opinion that the development will not be completed within a reasonable period, they may serve a notice (in this section referred to as a " completion notice ") stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice, being a period of not less than twelve months after the notice takes effect.
- (3) A completion notice—

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- (a) shall be served on the owner and on the occupier of the land and on any other person who in the opinion of the local planning authority will be affected by the notice; and
 - (b) shall take effect only if and when it is confirmed by the Secretary of State, who may in confirming it 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.
- (4) If, within such period as may be specified in a completion notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall afford to that person and to the local planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) If a completion notice takes effect, the planning permission therein referred to shall at the expiration of the period specified in the notice, whether the original period specified under subsection (2) of this section or a longer period substituted by the Secretary of State under subsection (3) of this section, be invalid except so far as it authorises any development carried out thereunder up to the end of that period.
- (6) The local planning authority may withdraw a completion notice at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if they do so they shall forthwith give notice of the withdrawal to every person who was served with the completion notice.

Revocation or modification of planning permission

42 Power to revoke or modify planning permission

- (1) If it appears to the local planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part of this Act, the authority, subject to the following provisions of this section, may by order revoke or modify the permission to such extent as (having regard to those matters) they consider expedient.
- (2) Except as provided in section 43 of this Act, an order under this section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.
- (3) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, the authority shall serve notice on the owner, on the lessee and on the occupier of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person and to the local planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) The power conferred by this section to revoke or modify permission to develop land 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:

Provided that 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 been carried out before the date on which the order was confirmed as aforesaid.

43 Unopposed revocation or modification

- (1) The following provisions shall have effect where the local planning authority have made an order under section 42 of this Act but have not submitted the order to the Secretary of State for confirmation by him, and—
 - (a) 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 the order; and
 - (b) it appears to the authority that no claim for compensation is likely to arise under section 153 of this Act on account of the order.
- (2) The authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify—
 - (a) the period (not being less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
 - (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this subsection) 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 and 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)(a) of this section, and the notice shall include a statement to the effect that no compensation is payable under section 153 of this Act in respect of an order under section 42 of this Act which takes effect by virtue of this section and without being confirmed by the Secretary of State.
- (4) The authority shall send a copy of any advertisement published under subsection (2) of this section to the Secretary of State, not more than three days after the publication.
- (5) If within the period referred to in subsection (2) (a) of this section no person claiming to be affected by the order has given notice to the Secretary of State as aforesaid, and the Secretary of State has not directed that the order be submitted to him for confirmation, the order shall, at the expiration of the period referred to in subsection (2) (b) of this section, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 42(2) of this Act.
- (6) This section does not apply to an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part of this Act or under Part IV or V thereof; nor does it apply to an order modifying any conditions to which a planning permission is subject by virtue of section 38 or 39 of this Act.

Reference of certain matters to Planning Inquiry Commission or independent tribunal

44 Constitution of 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 section 45 of this Act.
- (2) Any such commission shall consist of a chairman and not less than two nor more than four other members appointed by the Secretary of State.
- (3) The Secretary of State may pay to the members of any such commission such remuneration and allowances as he may with the consent of the Minister for the Civil Service determine, and may provide for each such commission such officers or servants, and such accommodation, as appears to him expedient to provide for the purpose of assisting the commission in the discharge of their functions.
- (4) The validity of any proceedings of any such commission shall not be affected by any vacancy among the members of the commission or by any defect in the appointment of any member.
- (5) In Part II of Schedule 1 to the House of Commons Disqualification Act 1957 (commissions, tribunals and other bodies all members of which are disqualified under that Act), in its application to the House of Commons of the Parliament of the United Kingdom, the following entry shall be inserted at the appropriate place in alphabetical order:—

“A Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act 1972”.

45 References to a Planning Inquiry Commission

- (1) The following matters may, in the circumstances mentioned in subsection (2) of this section, be referred to a Planning Inquiry Commission, that is to say—
 - (a) an application for planning permission which the Secretary of State has under section 32 of this Act directed to be referred to him instead of being dealt with by a local planning authority;
 - (b) an appeal under section 33 of this Act (including that section as applied by or under any other provision of this Act);
 - (c) a proposal that a government department should give a direction under section 37 of this Act 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.
- (2) Any of the matters mentioned in subsection (1) of this section may be referred to any such 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) there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation thereof cannot be made unless there is a special inquiry for the purpose ;

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- (b) 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.
- (3) Two or more of the matters mentioned in subsection (1) of this section may be referred to the same commission under this section if it appears to the responsible Minister or Ministers that they relate to proposals to carry out development for similar purposes on different sites.
- (4) Where a matter referred to a commission under this section relates to a proposal to carry out development for any purpose at a particular site, the responsible Minister or Ministers may also refer to the commission the question whether development for that purpose should instead be carried out at an alternative site.
- (5) The responsible Minister or Ministers shall, on referring a matter to a commission under this section, state in the reference the reasons therefor and may draw the attention of the commission to any points which seem to him or them to be relevant to their inquiry.
- (6) A commission inquiring into a matter referred to them under this section shall—
 - (a) identify and investigate the considerations relevant to, or the technical or scientific aspects of, that matter which in their opinion are relevant to the question whether the proposed development should be permitted to be carried out and assess the importance to be attached to those considerations or aspects;
 - (b) thereafter, if the applicant, in the case of a matter mentioned in subsection (1) (d), (b) or (c) of this section, or the local planning authority in any case so desire, afford to each of them, and, in the case of an application or appeal mentioned in the said subsection (1)(d) or (b), to any person who has made representations relating to the subject matter of the application or appeal which the authority are required to take into account under section 26(2) or (3) of this Act, an opportunity of appearing before and being heard by one or more members of the commission;
 - (c) report to the responsible Minister or Ministers on the matter referred to them.
- (7) Any such commission may, with the approval of the Secretary of State and at his expense, arrange for the carrying out (whether by the commission themselves or by others) of research of any kind appearing to them to be relevant to a matter referred to them for inquiry and report.
- (8) Schedule 8 to this Act shall have effect for the construction of references in this section and in section 46 of this Act to " the responsible Minister or Ministers ".

46 Procedure on reference to a Planning Inquiry Commission

- (1) A reference to a Planning Inquiry Commission of a proposal that development should be carried out by or on behalf of a government department may be made at any time and a reference of any other matter mentioned in section 45 of this Act may be made at any time before, but not after, the determination of the relevant application referred under section 32 of this Act or the relevant appeal under section 33 of this Act or, as the case may be, the giving of the relevant direction under section 37 of this Act, notwithstanding that an inquiry or other hearing has been held into the proposal by a person appointed by any Minister for the purpose.

- (2) Notice of the making of a reference to any such commission shall be published in the prescribed manner, and a copy of the notice shall be served on the local planning authority for the area in which it is proposed that the relevant development shall be carried out, and—
- (a) in the case of an application for planning permission referred under section 32 of this Act or an appeal under section 33 of this Act, on the applicant and any person who has made representations relating to the subject matter of the application or appeal which the authority are required to take into account under section 26(2) or (3) of this Act;
 - (b) in the case of a proposal that a direction should be given under section 37 of this Act with respect to any development, on the local authority or statutory undertakers applying for sanction to carry out that development.
- (3) A Planning Inquiry Commission shall, for the purpose of complying with section 45(6) (b) of this Act, hold a local inquiry; and they may hold such an inquiry, if they think it necessary for the proper discharge of their functions, notwithstanding that neither the applicant nor the local planning authority desire an opportunity of appearing and being heard.
- (4) Where a Planning Inquiry Commission are to hold a local inquiry under subsection (3) of this section in connection with a matter referred to them, and it appears to the responsible Minister or Ministers, in the case of some other matter falling to be determined by a Minister of the Crown and required or authorised by an enactment other than this section to be the subject of a local inquiry, that the two matters are so far cognate that they should be considered together, he or, as the case may be, they may direct that the two inquiries be held concurrently or combined as one inquiry.
- (5) An inquiry held by such a commission under this section shall be treated for the purposes of the Tribunals and Inquiries Act 1971 as one held by a Minister in pursuance of a duty imposed by a statutory provision.
- (6) Subsections (4) to (9) of section 267 of this Act (power to summon and examine witnesses, and expenses at inquiries) shall apply to an inquiry held under subsection (3) of this section as they apply to an inquiry held under that section.
- (7) Subject to the provisions of this section and to any directions given to them by the responsible Minister or Ministers, a Planning Inquiry Commission shall have power to regulate their own procedure.

47 Commissions to inquire into planning matters affecting Scotland and England

- (1) The Ministers may constitute a Joint Planning Inquiry Commission to inquire into and report on any matter referred to them under this section ; and the matters which may be so referred are those which may, under section 45 of this Act or section 48 of the Town and Country Planning Act 1971, be referred to a Planning Inquiry Commission but which appear to the Ministers to involve considerations affecting both Scotland and England.
- (2) A Joint Planning Inquiry Commission shall consist of a chairman and not less than two nor more than four other members appointed by the Ministers.
- (3) The Ministers may pay to the members of any such commission such remuneration and allowances as they may with the consent of the Minister for the Civil Service determine, and may provide for each such commission such officers or servants, and

such accommodation, as appears to them expedient to provide for the purpose of assisting the commission in the discharge of their functions.

- (4) The validity of any proceedings of any such commission shall not be affected by any vacancy among the members of the commission or by any defect in the appointment of any member.
- (5) In Part II of Schedule 1 to the House of Commons Disqualification Act 1957 (commissions, tribunals and other bodies all members of which are disqualified under that Act), in its application to the House of Commons of the Parliament of the United Kingdom, the following entry shall be inserted at the appropriate place in alphabetical order:—

“A Joint Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act 1972”.
- (6) In this section " 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; but their functions under subsection (3) of this section may, by arrangements made between them, be exercised by either acting on behalf of both.
- (7) Schedule 9 to this Act shall have effect with respect to the Joint Planning Inquiry Commissions and references to them under this section, and with respect to the proceedings of a commission on any such reference.

48 Appeal to independent tribunal

- (1) Provision may be made by a development order for securing that, in the case of decisions of a local planning authority of such classes as may be prescribed by the order, being decisions relating to the design or external appearance of buildings or other similar matters, any appeal under section 33 of this Act shall lie to an independent tribunal constituted in accordance with the provisions of that order, instead of to the Secretary of State; and in relation to any such appeal the provisions of that section (except, in subsection (5) thereof, the references to sections 24 and 26(3) of this Act) and the provisions of section 34 of this Act shall apply, subject to such adaptations and modifications as may be specified in the order as they apply in relation to appeals to the Secretary of State under the said section 33.
- (2) If any tribunal is constituted in accordance with subsection (1) of this section, the Secretary of State may pay to the chairman and members of the tribunal such remuneration, whether by way of salaries or by way of fees, and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as the Minister for the Civil Service may determine.

Additional powers of control

49 Orders requiring discontinuance of use or alteration or removal of buildings or works

- (1) If it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity), regard being had to the development plan and to any other material considerations—
 - (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

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- (b) that any buildings or works should be altered or removed, the local planning authority may by order require the discontinuance of that use, or impose such conditions as may be specified in the order on the continuance thereof, or 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; and the provisions of section 42 of this Act shall apply in relation to any planning permission granted by an order under this section as they apply in relation to planning permission granted by the local planning authority on an application made under this Part of this Act.
- (3) The power conferred by subsection (2) of this section shall include power, by an order under this section, to grant planning permission, subject to such conditions as may be specified in the order—
- (a) for the retention, on the land to which the order relates, of buildings or works constructed or carried out before the date on which the order was submitted to the Secretary of State; or
- (b) for the continuance of a use of that land instituted before that date ;
- and subsection (3) of section 29 of this Act shall apply to planning permission granted by virtue of this subsection as it applies to planning permission granted in accordance with subsection (2) of that section.
- (4) An order under this section 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.
- (5) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, that authority shall serve notice on the owner, on the lessee and on the occupier of the land affected, and on any other person who in their opinion will be affected by the order; and if within the period specified in that behalf in the notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person and to the local planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (6) Where an order under this section has been confirmed by the Secretary of State, the local planning authority shall serve a copy of the order on the owner, on the lessee and on the occupier of the land to which the order relates.
- (7) 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 local 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.
- (8) In the case of planning permission granted by an order under this section, the authority referred to in sections 38(1)(b) and 39(4) of this Act is the local planning authority making the order.

50 Agreements regulating development or use of land

- (1) A local planning authority may enter into an agreement with any person interested in land in their area (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement.
- (2) An agreement made under this section with any person interested in land, may, if the agreement shall have been recorded in the appropriate Register of Sasines, be enforceable at the instance of the local planning authority against persons deriving title to the land from the person with whom the agreement was entered into:

Provided that no such agreement shall at any time be enforceable against a third party who shall have in bona fide onerously acquired right (whether completed by infestment or not) to the land prior to the agreement being recorded as aforesaid or against any person deriving title from such third party.

- (3) Nothing in this section or in any agreement made thereunder shall be construed—
 - (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by any Minister or authority under this Act so long as those powers are exercised in accordance with the provisions of the development plan, or in accordance with any directions which may have been given by the Secretary of State as to the provisions to be included in such a plan ; or
 - (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a) of this subsection.

Determination whether planning permission required

51 Applications to determine whether planning permission required

- (1) If any person who proposes to carry out any operations on land, or to make any change in the use of land, wishes to have it determined whether the carrying out of those operations, or the making of that change, would constitute or involve development of the land, he may, either as part of an application for planning permission, or without any such application, apply to the local planning authority to determine that question.
- (2) The provisions of sections 21, 26(1), 28(1), 31(2) and (4) and 32 to 34 of this Act shall, subject to any necessary modifications, apply in relation to any application under this section, and to the determination thereof, as they apply in relation to applications for planning permission and to the determination of such applications.
- (3) Where it is decided by the Secretary of State under any of the said provisions that any operations or use to which an application under this section relates would constitute or involve development, that decision shall not be final for the purposes of any appeal under the provisions of this Act relating to the enforcement of planning control, in relation to those operations or that use.