



# 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.

[<sup>F1</sup>(1A) A direction under subsection (1) may be withdrawn or modified by a subsequent direction.]

- (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 [<sup>F2</sup>subsection (1)] has effect shall be referred to the Secretary of State.

- (4) <sup>F3</sup>... 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.

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<sup>F4</sup>(5) .....

<sup>F4</sup>(6) .....

- (7) The decision of the Secretary of State on any application referred to him under this section shall be final.

#### Textual Amendments

- F1** 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.
- F2** 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.
- F3** Words in s. 46(4) repealed (3.8.2009) by [Planning etc.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.
- F4** S. 46(5)(6) repealed (3.8.2009) by [Planning etc.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)

- 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—
- refuse an application for planning permission or grant it subject to conditions,
  - 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
  - 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>F5</sup>against the decision].

<sup>F6</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—
- notice of their decision on the application,
  - notice that they have exercised their power under section 39 to decline to determine the application, or
  - 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.

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- (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

- F5** 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.
- F6** 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)

- 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)**

### [<sup>F7</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

- F7** 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),

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and may deal with the application as if it had been made to him in the first instance.

<sup>F8</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>F9</sup>(4) .....

(5) <sup>F10</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
- (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

- F8** 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.](#)
- F9** 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.](#)
- F10** 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.](#)

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