
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes saving, transitional and consequential provisions in relation to the commencement of various provisions of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”).

Section 6 of the 2006 Act introduces new sections 27A to 27C into the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). Article 2 provides that these new sections will apply only in respect of development authorised by a planning permission given after 3rd August 2009.

Section 8 of the 2006 Act introduces new section 32A into the 1997 Act. New section 32A will generally have effect immediately upon coming into force but article 3 provides that the restriction on variation of an application after an appeal has been made under section 47 of the 1997 Act will only apply where the notice of appeal is given after 3rd August 2009.

Article 4 preserves the existing sections 34 and 38(1) in relation to requirements to give notice of applications made before 3rd August 2009 and for the purposes of the review of mineral planning permissions under Schedules 9 and 10 of the 1997 Act.

Article 5 provides that the requirement to keep a list of applications under new section 36A of the 1997 Act as introduced by section 13 of the 2006 Act will only apply in respect of applications and notices received by the planning authority on or after 3rd August 2009.

Section 39 of the 1997 Act enables a planning authority to decline to determine an application in certain circumstances. Section 15 of the 2006 Act amends section 39 to introduce a wider range of circumstances in which the planning authority will be able to do so. Article 6 provides that for the purposes of an application made before 3rd August 2009 section 39 shall continue to apply as if not amended by section 15 of the 2006 Act.

Article 7(1) preserves an applicant’s right to appeal to the Scottish Ministers in respect of the failure of a planning authority to determine an application where that right arises prior to 3rd August 2009. Article 7(2) makes it clear that a right to require a review of an application under section 43A(8)(a) or (b) will only arise where the decision in question is made on or after 3rd August 2009.

The Schedule to the 2006 Act amends section 46 of the Act. Article 8 preserves section 46 as it applies immediately before 3rd August 2009 in relation to applications called in by the Scottish Ministers for determination before that date.

The 2006 Act amends various appeal provisions in the 1997 Act, article 9 preserves the provisions relation to such appeals as they apply immediately before 3rd August 2009 in relation to appeals which are made before that date. Article 9 also provides that the new section 47A introduced by section 19(2) of the 2006 Act will not apply to appeals under section 47 of the 1997 Act made before that date.

Section 20 of the 2006 Act amends section 58 of the 1997 Act to remove the requirement to impose conditions relating to when development must begin and to remove the imposition of a deemed condition if this requirement is not met. Planning permissions granted before 3rd August 2009 will however be subject to such a condition and article 10 preserves the existing law as it relates to such conditions.

Section 21 of the 2006 Act substitutes a new section 59. From 3rd August 2009 a planning authority will no longer grant outline planning permission but will instead grant planning permission in principle. Article 11 provides that where an application is made for outline planning permission

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before that date but no decision has been made on the application as at that date then the application is to be treated as if it is an application for planning permission in principle.

Article 12 preserves the existing provisions of section 143(2) for the purposes of compensation payable in relation to a stop notice where the related enforcement notice is quashed or varied on the grounds mentioned in section 130(1)(a). These grounds will only apply in relation to appeals made before 3rd August 2009.

Section 242A(11) is amended by the 2006 Act in consequence of changes to section 46 made by the 2006 Act. Article 13 preserves the current provisions in respect of an application made under section 242A before 3rd August 2009.

Articles 14 and 16 amend the Conservation (Natural Habitats, &c.) Regulations 1994 and the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 consequential upon the replacement by the 2006 Act of outline planning permission with planning permission in principle and applications for reserved matters with applications for approval, consent or agreement required by a condition imposed on the grant of planning permission. Article 15 preserves various provisions of the 1997 Act as they apply for the purposes of the Planning (Hazardous Substances) (Scotland) Act 1997.