

POLICY NOTE

THE PLANNING (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 9 AND SAVING AND TRANSITIONAL PROVISIONS) REGULATIONS 2022

SSI 2022/275 (C. 15)

The above instrument was made in exercise of the powers conferred by sections 63(2) and (3) of the Planning (Scotland) Act 2019. The instrument is subject to no procedure.

The instrument brings sections 22, 32, 33, 38 and 62, and paragraph 6 of schedule 2, of the Planning (Scotland) Act 2019 (“the 2019 Act”) into force. The effect of these provisions is to:

- **Extend planning authorities’ discretionary powers to decline to determine certain planning applications, and to require that Scottish Ministers publish guidance on what constitutes a “similar application” and “significant change” for these purposes.**
- **Alter the arrangements for setting the duration of planning permission and the time periods for applying for approval of matters specified in conditions.**
- **Amend the procedures for serving, objecting to and confirming completion notices.**

The instrument brings section 62 into force for the limited purposes of commencing paragraph 6 of schedule 2 to the 2019 Act.

Policy Objectives

Section 39 of the Town and Country Planning (Scotland) Act 1997 Act (“the 1997 Act”) provides discretionary powers for planning authorities to decline to determine planning applications where permission was previously refused for a similar application. Different criteria apply depending whether there has been an appeal or local review, but in each case the authority may decline to determine an application if the criteria were met within the previous two years. Regulation 2(1) and (2)(a) brings into force section 22 of the 2019 Act, which amends this period from two to five years. Regulation 2(1) and (2)(d) brings into force section 38 of the 2019 Act, which inserts new section 39A into the 1997 Act requiring the Scottish Ministers to publish guidance on what constitutes a “similar application” and a “significant change” for the purposes of declining to determine applications. Such guidance is to be set out in a revised development management circular, which will replace circular 3/2013¹.

Regulation 2(1) and (2)(b) brings into force section 32 of the 2019 Act, which makes a number of amendments to section 58 (duration of planning permission) and section 59 (planning permission in principle) of the 1997 Act, as well as related amendments to section 41 and section 60 of the 1997 Act. The amendments provide for the duration of planning permission, and time periods for seeking approval of detailed matters, to be specified through conditions attached to planning permission – rather than these being specified by primary legislation, namely sections 58 and 59 of the 1997 Act. Minor and consequential amendments

¹ <https://www.gov.scot/publications/planning-series-circular-3-2013-development-management-procedures/>

set out in paragraph 6 of schedule 2 to the 2019 Act are commenced by regulation 2(1) and (2)(e) and (f).

Regulation 2(1) and (2)(c) brings into force Section 33 of the 2019 Act, which amends sections 61 and 62 of the 1997 Act and introduces a new section 62A to the 1997 Act to remove the requirement for the Scottish Ministers to confirm every completion notice, while giving recipients of a notice a right to object which would trigger the need for the Scottish Ministers to confirm the notice.

Regulation 3 makes saving and transitional provision in relation to the above measures.

Consultation

As these regulations only bring into force provisions of the 2019 Act (and make saving and transition provision), no specific consultation has been carried out in relation to this instrument.

Impact Assessments

As these regulations only bring into force provisions of the 2019 Act (and make saving and transition provision), no impact assessments have been carried out in relation to this instrument.

Financial Effects

The Minister for Public Finance, Planning and Community Wealth confirms that no BRIA is necessary: these regulations bring into force specific provisions contained in the 2019 Act and make saving and transitional provision. The instrument itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Local Government and Communities

September 2022