



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III **S**

#### CONTROL OVER DEVELOPMENT

##### *Meaning of development*

#### 26 **Meaning of “development”.** **S**

- (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development” 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<sup>[F1]</sup>, or the operation of a marine fish farm in the circumstances specified in section 26AA].
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
  - (a) the carrying out of works for the maintenance, improvement or other alteration of any building being works which—
    - (i) affect only the interior of the building, or
    - (ii) do not materially affect the external appearance of the building,and are not works for making good war damage within the meaning of the <sup>M1</sup>War Damage Act 1943 or works begun after 7th December, 1969 for the alteration of a building by providing additional space in it underground;
  - (b) the carrying out by a <sup>[F2]</sup>roads authority (as defined by section 151(1) of the Roads (Scotland) Act 1984) on land within the boundaries of a road of any works required for the maintenance or improvement of the road <sup>[F3]</sup>but , in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];

*Status: Point in time view as at 19/04/2007.*

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- (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 road 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;
  - (e) [<sup>F4</sup>subject to subsection (2A),]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 of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;
  - (g) the demolition of any description of building specified in a direction given by the Secretary of State to planning authorities generally or to a particular planning authority.
- [<sup>F5</sup>(2AA) The Scottish Ministers may in a development order specify any circumstances, or description of circumstances, in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.
- (2AB) The development order may make different provision for different purposes.]
- [<sup>F6</sup>(2A) Development includes the carrying out of irrigation or drainage for agriculture or of any other water management project for that purpose.]
- (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 of it which is so used;
    - (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—
      - (i) the superficial area of the deposit is extended, or
      - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.
  - (4) For the purposes of this Act building operations include—
    - (a) demolition of buildings,
    - (b) rebuilding,
    - (c) structural alterations of or additions to buildings, and
    - (d) other operations normally undertaken by a person carrying on business as a builder.
  - (5) For the purposes of this Act mining operations include—
    - (a) the removal of material of any description—
      - (i) from a mineral-working deposit,
      - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker, or
      - (iii) from a deposit of iron, steel or other metallic slags, and
    - (b) the extraction of minerals from a disused railway embankment.

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(6) Where the placing or assembly of any [<sup>F7</sup>equipment] in any part of any [<sup>F8</sup>waters which

- (a) are inland waters,
- (b) not being inland waters, are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, or
- (c) are seaward of those baselines up to a distance of 12 nautical miles,]

for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the [<sup>F7</sup>equipment] resulted from carrying out engineering operations over that land; and in this [<sup>F9</sup>section]—

<sup>F10</sup>

...  
[<sup>F11</sup> “ equipment ” includes any tank, cage or other structure, or long-line, for use in fish farming; ]

“fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of [<sup>F12</sup>sea urchin,] crustacean or mollusc);

“inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and

<sup>F13</sup>

...

<sup>F10</sup> ...  
[<sup>F14</sup> “ nautical miles ” means international nautical miles of 1,852 metres ]

[<sup>F15</sup>(6AA) Where the making of any material change in the use of equipment so placed or assembled for that purpose would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the making of any such material change was development of that land.]

[<sup>F16</sup>(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of “equipment” and “fish farming” in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.

(6B) In subsection (6A), “ modifications ” includes amendments and repeals. ]

[<sup>F17</sup>(6C) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of, or in connection with, the application of this Act to—

- (a) any such placing or assembly as is mentioned in subsection (6) in waters described in paragraph (b) or (c) of that subsection; or
- (b) any material change in the use of equipment placed or assembled in those waters.

(6D) Any order under subsection (6C) may in particular provide that a planning authority specified in the order is to be the planning authority for the purposes of such an application of this Act despite the placing or assembly being something done, or the material change of use being made, outwith the district of the authority.

(6E) But in the application of subsections (6C) and (6D) to a case where, by virtue of paragraph (a) of section 10(1) of the National Parks (Scotland) Act 2000 (asp 10) the planning authority is a National Park authority, the reference in subsection (6D) to the district of the authority is to be construed as a reference to the National Park.

(6F) And the Scottish Ministers may direct that subsections (6C) and (6D) are to apply to a case where—

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- (a) by virtue of paragraph (b) of that section 10(1), a National Park authority is to be treated as the planning authority, or
  - (b) by virtue of paragraph (c) of that section 10(1), a National Park authority is to have certain functions in relation to planning.
- (6G) For the purposes of any such application as is provided for in—
- (a) paragraph (a) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be” in subsection (6D) there is to be substituted “National Park authority specified in the order is to be treated as” ,
  - (b) paragraph (b) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be the planning authority” in subsection (6D) there is to be substituted “National Park authority specified in the order is to have functions in relation to planning” .
- (6H) Before making an order under subsection (6C), the Scottish Ministers—
- (a) must consult—
    - (i) every planning authority, and
    - (ii) the Scottish Environment Protection Agency, and
  - (b) may consult such other persons as they think fit.
- (6I) An order under subsection (6C) may (without prejudice to the generality of that subsection)—
- (a) modify any enactment, instrument or document,
  - (b) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) provide for the delegation of functions,
  - (d) make different provision for different purposes and different areas.
- (6J) For the purposes of the exercise by a National Park authority of any planning functions which it has by virtue of subsections (6C) and (6D) in respect of waters described in paragraph (b) or (c) of subsection (6), any reference in section 9 of the National Parks (Scotland) Act 2000 (asp 10) (general purposes and functions of National Park authority) to the National Park itself is to be construed as including a reference to those waters.]
- (7) Without prejudice to any regulations under 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.

#### Textual Amendments

- F1** Words in s. 26(1) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(a)**, 59(2); [S.S.I. 2007/49](#), art. 2, sch., [S.S.I. 2007/139](#), art. 2, sch.
- F2** Words in s. 26(2)(b) substituted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 7 para. 20(2)** (with s. 111); [S.S.I. 2006/268](#), art. 3(d)
- F3** Words in s 26(2)(b) inserted (1.8.1999) by [S.S.I. 1999/1](#), **reg. 47**

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- F4** Words in s. 26(2)(e) inserted (30.9.2003) by [Environmental Impact Assessment \(Water Management\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/341\)](#), regs. 1, **2(a)** (with reg. 5)
- F5** S. 26(2AA)(2AB) inserted (6.2.2007 for specified purposes, 12.12.2008 for specified purposes) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(b)**, 59(2) (with s. 3(2)(3)); S.S.I. 2007/49, art. 2, sch., S.S.I. 2008/411, art. 2(2)(3)(a)
- F6** S. 26(2A) inserted (30.9.2003) by [Environmental Impact Assessment \(Water Management\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/341\)](#), regs. 1, **2(b)** (with reg. 5)
- F7** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), ss. **24(2)(a)(i)**, 38(1); S.S.I. 2007/50, art. 2
- F8** Words in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(c)(i)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F9** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(c)(ii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F10** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(c)(iii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F11** Words in s. 26(6) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), ss. **24(2)(a)(iii)**, 38(1); S.S.I. 2007/50, art. 2
- F12** Words in s. 26(6) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **8(2)** (with art. 14(3))
- F13** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), ss. **24(2)(a)(iv)**, 38(1); S.S.I. 2007/50, art. 2
- F14** Words in s. 26(6) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(c)(iv)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F15** S. 26(6AA) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(d)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F16** S. 26(6A)(6B) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), ss. **24(2)(b)**, 38(1); S.S.I. 2007/50, art. 2
- F17** S. 26(6C)-(6J) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **3(1)(e)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.

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

- C1** S. 26(1) extended (1.8.1999) by S.S.I. 1999/1, **reg. 44**
- C2** S. 26(1) applied (with modifications) (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **14(2)** (with art. 14(3))
- C3** S. 26(6) excluded (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **14(1)** (with art. 14(3))

#### **Marginal Citations**

- M1** 1943 c. 21.

*Status: Point in time view as at 19/04/2007.*

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## **[<sup>F18</sup>26AAMarine fish farms: circumstances referred to in section 26(1) S**

- (1) The circumstances to which section 26(1) refers are—
- (a) that the marine fish farm is being operated after—
    - (i) the date which is the appropriate date in respect of that fish farm, or
    - (ii) if earlier than that date, the date on which planning permission is granted, or an application for planning permission is refused, under section 31A, and
  - (b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that placing or assembly did not constitute development under this Act.
- (2) For the purposes of subsection (1)(a), the appropriate date in respect of a fish farm is whichever is the later of—
- (a) a date prescribed by the Scottish Ministers for the purposes of this subsection, and
  - (b) the date on which any authorisation which—
    - (i) relates to the operation of that fish farm, and
    - (ii) is in effect at the date of commencement of section 4 of the Planning etc. (Scotland) Act 2006 (asp 17), ceases to have effect.
- (3) In this section and in section 31A—
- “ authorisation ” means—
- (a) a consent for fish farming issued by the Crown Estate Commissioners,
  - (b) a licence granted under section 11 of the Orkney County Council Act 1974 (c.xxx), or
  - (c) a licence granted under section 11 of the Zetland County Council Act 1974 (c.viii),
- “ equipment ” has the same meaning as in section 26(6), and
- “ marine fish farm ” means a fish farm situated in any part of any waters referred to in paragraphs (b) and (c) of section 26(6). ]

### **Textual Amendments**

**F18** S. 26AA inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 4(1)**, 59(2); S.S.I. 2007/130, **art. 2(2)**, sch.

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

**C4** S. 26AA applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), **arts. 1(1)**, **14(2)** (with art. 14(3))

## **27 Time when development begun. S**

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—
- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
  - (b) if the development consists of a change in use, at the time when the new use is instituted;

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- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
- (3) The provisions referred to in subsection (2) are sections 52(2), 53(6), 54(4), 58, 59 and 61.
- (4) In subsection (2) “material operation” means—
  - (a) any work of construction in the course of the erection of a building,
  - (b) any work of demolition of a building,
  - (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building,
  - (d) 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 paragraph (c),
  - [<sup>F19</sup>(da) any placing or assembly of equipment as is mentioned in subsection (6) of section 26 in waters described in paragraph (b) or (c) of that subsection,]
  - (e) any operation in the course of laying out or constructing a road or part of a road, or
  - (f) any change in the use of any land which constitutes material development.
- (5) In subsection (4)(f) “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 of a class specified in paragraph 1 or 2 of Schedule 11, and
  - (c) development of any class prescribed for the purposes of this subsection.
- (6) In subsection (5) “general development order” means a development order (within the meaning of section 30(2)) made as a general order applicable (subject to such exceptions as may be specified in it) to all land in Scotland.

#### Textual Amendments

**F19** S. 27(4)(da) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **8(3)** (with art. 14(3))

#### *Requirement for planning permission*

### 28 **Development requiring planning permission.** **S**

- (1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.
- (2) 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 its use for the purpose for which it was normally used before the permission was granted.



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- (3) 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 its normal use.
- (4) 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) it could lawfully have been used if that development had not been carried out.
- (5) In determining for the purposes of subsections (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part or of previous planning control.
- (6) 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 Part II of the 1947 Act or Part III of the 1972 Act.
- (7) Subsection (1) has effect subject to Schedule 2 (which contains exemptions for certain uses of land on 1st July 1948).

## 29 Granting of planning permission: general. S

- (1) Planning permission may be granted—
  - (a) by a development order,
  - (b) by the planning authority (or, where this Part so provides, by the Secretary of State) on application to the authority in accordance with regulations or a development order,
  - (c) on the adoption or approval of a simplified planning zone scheme or alterations to such a scheme in accordance with section 49 or, as the case may be, section 53, or
  - (d) on the designation of an enterprise zone or the approval of a modified scheme under Schedule 32 to the <sup>M2</sup>Local Government Planning and Land Act 1980 in accordance with section 55 of this Act.
- (2) Planning permission may also be deemed to be granted under section 57 (development with government authorisation).
- (3) This section is without prejudice to any other provisions of this Act providing for the granting of permission.

### Marginal Citations

M2 1980 c. 65.

## *Development orders*

## 30 Development orders: general. S

- (1) The Secretary of State shall by regulations or by order provide for the granting of planning permission.



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- (2) An order under this section (in this Act referred to as a “development order”) may itself grant planning permission for development specified in the order, or for development of any class so specified, and may be made either—
  - (a) as a general order applicable, except so far as it otherwise provides, to all land, but which may make different provision with respect to different descriptions of land, or
  - (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.
- (3) In respect of development for which planning permission is not granted by a development order, regulations or an order may provide for the granting of planning permission by the planning authority (or, where this Part so provides, by the Secretary of State) on an application made to the planning authority in accordance with the regulations or the order.

### **31 Permission granted by development order. S**

- (1) 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.
- (2) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval of the planning authority to be obtained with respect to the design or external appearance of the buildings.
- (3) Without prejudice to the generality of subsection (1), 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 planning authority to direct that the permission shall not apply either—
  - (a) in relation to development in a particular area, or
  - (b) in relation to any particular development.
- (4) Any provision of a development order by which 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.
- (5) 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—
  - (a) shall not apply to any development specified in the order, or
  - (b) shall apply to it subject to such modifications as may be so specified.

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

**C5** S. 31 extended (1.8.1999) by [S.S.I. 1999/1](#), [reg. 46](#)

*Status: Point in time view as at 19/04/2007.*

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## <sup>F20</sup>Planning permission in respect of operation of marine fish farm

### Textual Amendments

**F20** S. 31A and cross-heading inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 4(2), 59(2); S.S.I. 2007/130, art. 2(2), sch.

### 31A Planning permission in respect of operation of marine fish farm **S**

- (1) This section applies to planning permission for the operation of a marine fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b).
- (2) Any planning permission is to be granted by the Scottish Ministers.
- (3) Without prejudice to the generality of subsection (2), planning permission may be granted under that subsection as respects a class of development.
- (4) Any planning permission granted by virtue of subsection (3) is to be granted by order, the class of development in question being specified in the order.
- (5) Planning permission may be granted either unconditionally or subject to conditions or limitations.
- (6) The conditions or limitations which may be imposed include conditions or limitations specified in any authorisation which is at the time of imposition in effect in relation to the fish farm.
- (7) The principal matters to be taken into account by the Scottish Ministers in coming to a decision as to whether to grant planning permission are the likely impact of the development on—
  - (a) any European site within the meaning of regulation 10 of the Conservation (Natural Habitats & c.) Regulations 1994 ( S.I. 1994/ 2716), and
  - (b) the environment generally.
- (8) The Scottish Ministers may by regulations make provision—
  - (a) specifying those cases where an application for planning permission must be made,
  - (b) as to the form of such an application,
  - (c) specifying documents and information which require to accompany such an application,
  - (d) as to consultation in connection with such an application, and
  - (e) as to any other matters concerning procedure on such an application.]

### Modifications etc. (not altering text)

**C6** S. 31A applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), 14(2) (with art. 14(3))

*Status: Point in time view as at 19/04/2007.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part III is up to date with all changes known to be in force on or before 05 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Applications for planning permission*

#### **32 Form and content of applications for planning permission. S**

Any application to a planning authority for planning permission—

- (a) shall be made in such manner as may be prescribed by regulations or by a development order, and
- (b) shall include such particulars and be verified by such evidence as may be required by the regulations or the development order or by directions given by the planning authority under the regulations or order.

#### **33 Planning permission for development already carried out. S**

- (1) On an application made to a planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
- (2) Subsection (1) applies to development carried out—
  - (a) without planning permission,
  - (b) in accordance with planning permission granted for a limited period, or
  - (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted so as to have effect from—
  - (a) the date on which the development was carried out, or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.

### *Publicity for applications*

#### **34 Publication of notices of applications. S**

- (1) Subject to subsection (2), regulations or a development order may provide, either in relation to applications generally or in relation to applications of a class or classes prescribed in the regulations or order, that—
  - (a) any such application shall have been notified to such persons or classes of person, and in such manner, as may be so prescribed;
  - (b) any such application shall have been advertised, either in a local newspaper or on the land to which the application relates, or both, in such a manner and for such a period or on such a number of occasions as may be so prescribed;
  - (c) any newspaper advertisement required by virtue of paragraph (b) shall be placed by the planning authority to whom the application is made;
  - (d) the planning authority may recover from the applicant the cost incurred by them in arranging any such advertisement;
  - (e) any such application shall be accompanied by such certificates as to compliance with the requirements of provisions made under paragraphs (a) and (b) as may be so prescribed;
  - (f) the applicant shall 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;

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- (g) no such application shall be entertained unless such further conditions as to payment as may be so prescribed have been complied with;
  - (h) no such application shall be determined until after the expiry of any period which may be so prescribed.
- (2) The applications mentioned in subsection (1) are—
- (a) applications for planning permission,
  - (b) applications for an approval required by a development order, and
  - (c) applications for any consent, agreement or approval required by a condition imposed on a grant of planning permission.
- (3) If any person knowingly or recklessly—
- (a) issues a notification,
  - (b) makes advertisement (other than newspaper advertisement), or
  - (c) supplies a certificate,
- which purports to comply with provisions made under subsection (1) but which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (6) Proceedings for an offence under this section may be brought at any time within the period of 2 years following the commission of the offence.

### **35 Notice etc. of applications to owners and agricultural tenants. S**

- (1) Regulations or a development order shall make provision—
- (a) as to the notice of any application for planning permission to be given to any person (other than the applicant) who at the beginning of the period of 21 days ending with the date of the application was—
    - (i) the owner of, or
    - (ii) the tenant of any agricultural [<sup>F21</sup>land] any part of which was comprised in,
 any of the land to which the application relates, and
  - (b) requiring any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,
- and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) The regulations or order may require an applicant for planning permission to certify, in such form as may be prescribed by the regulations or the order, or to provide evidence, that any requirements of the regulations or the order have been satisfied.
- (3) Regulations or an order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.

*Status: Point in time view as at 19/04/2007.*

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- (5) If any person—
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—
- [<sup>F22</sup>“agricultural land” means land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);] and
- “owner” in relation to any land means any person who—
- (a) under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than 7 years, or
  - (b) in the case of such applications as may be prescribed by regulations or by a development order, is entitled to an interest in any mineral so prescribed,
- and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.
- (8) Proceedings for an offence under this section may be brought at any time within the period of 2 years following the commission of the offence.

#### Textual Amendments

- F21** Word in s. 35(1)(a)(ii) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 51\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)
- F22** Words in s. 35(7) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 51\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

## 36 Registers of applications etc. **S**

- (1) Every planning authority shall keep, in such manner as may be prescribed by regulations or a development order, a register containing such information as may be so prescribed with respect to—
- (a) applications for planning permission and for approval required by the regulations or order made to that authority,
  - (b) the manner in which such applications have been dealt with, <sup>F23</sup>...
- [<sup>F24</sup>(ba) applications under section 242A(2) for planning permission in respect of development in the district of that authority,]

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- [<sup>F25</sup>(bb) the grant or refusal of planning permission by the Scottish Ministers under section 31A in respect of development in the district of that authority,]
- (c) simplified planning zone schemes relating to zones in the authority's area.
- (2) The regulations or the order may make provision for the register to be kept in two or more parts, each part containing such information relating to applications mentioned in subsection (1)(a) as may be prescribed by the regulations or order.
- (3) The regulations or the order may also make provision—
- (a) for a specified part of the register to contain copies of applications and of any plans or drawings submitted with them, and
- (b) for the entry relating to any application, and everything relating to it, 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 to it 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.

#### Textual Amendments

- F23** Word in s. 36(1)(b) repealed (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 12(a)(iii)**, 59(2); [S.S.I. 2007/130](#), [art. 2\(2\)](#), [sch.](#)
- F24** S. 36(1)(ba) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 12(a)(iv)**, 59(2); [S.S.I. 2007/130](#), [art. 2\(2\)](#), [sch.](#)
- F25** S. 36(1)(bb) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), [arts. 1\(1\)](#), **8(4)** (with [art. 14\(3\)](#))

### *Determination of applications*

#### 37 **Determination of applications: general considerations.** **S**

- (1) Where an application is made to a planning authority for planning permission—
- (a) subject to sections 58 and 59, they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or
- (b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- (3) Subsection (1) has effect subject to sections 34 and 35 and to the following provisions of this Act, and to sections 59(1), 60 and 65 of the <sup>M3</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- (4) The date of the grant or refusal of—
- (a) planning permission,
- (b) an approval required by a development order, or
- (c) any consent, agreement or approval required by a condition imposed on the grant of planning permission,
- shall be the date on which the planning authority's decision bears to have been signed on behalf of the authority.



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#### Marginal Citations

M3 1997 c. 9.

### 38 Consultations in connection with determination of applications. **S**

- (1) In determining any application to which section 34(1) applies, the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection (1)(h) of that section.
- (2) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 35(1)(b), regulations or a development order may—
  - (a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;
  - (b) require a planning authority—
    - (i) to take into account in determining such an application such representations, made within such period, as may be prescribed, and
    - (ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (3) Regulations or a development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) Before a planning authority grant planning permission for the use of land as a caravan site they shall, unless they are also the authority with power to issue a site licence for that land, consult the local authority with that power.
- (5) In this section “site licence” means a licence under Part 1 of the <sup>M4</sup>Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site.

#### Marginal Citations

M4 1960 c. 62.

### 39 Power of planning authority to decline to determine applications. **S**

- (1) A planning authority may decline to determine an application for planning permission for the development of any land if—
  - (a) within the period of 2 years ending with the date on which the application is received, the Secretary of State has refused a similar application referred to him under section 46 or has dismissed an appeal against the refusal of a similar application, and
  - (b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.
- (2) For the purposes of this section an application for planning permission for the development of any land shall be taken to be similar to a later application only if the



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development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.

- (3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 47(2) in respect of an application.

#### 40 Assessment of environmental effects. **S**

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

- (2) The regulations—

- (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the <sup>M5</sup>European Communities Act 1972, and
- (b) may make different provisions for different classes of development.

- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, no statutory instrument containing such regulations shall be subject to annulment by virtue of section 275(3).

- [<sup>F26</sup>(4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.

- (5) In subsection (4), “ water environment ” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3). ]

#### Textual Amendments

**F26** S. 40(4)(5) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\), ss. 24\(3\), 38\(1\); S.S.I. 2007/50, art. 2](#)

#### Marginal Citations

**M5** 1972 c. 68.

#### 41 Conditional grant of planning permission. **S**

- (1) Without prejudice to the generality of section 37(1) to (3), conditions may be imposed on the grant of planning permission under that section—

- (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 planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;

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- (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.
- (2) Conditions may not be imposed by a planning authority under subsection (1)(a) for regulating the development or use of any land within the area of another planning authority except with the consent of that authority.
- (3) Subject to paragraph 1(6)(a) of Schedule 3, a planning permission which is granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.
- (4) 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, 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.
- (5) Subsection (4)(a) does not apply to a condition attached to the planning permission by or under section 58 or 59.
- (6) Part I of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals.

#### **42 Determination of applications to develop land without compliance with conditions previously attached. S**

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (3) Special provision may be made with respect to such applications—
  - (a) by regulations under section 32 as regards the form and content of the application, and
  - (b) by a development order as regards the procedure to be followed in connection with the application.

*Status: Point in time view as at 19/04/2007.*

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- (4) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.

#### 43 Directions etc. as to method of dealing with applications. **S**

- (1) Provision may be made by regulations or a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by planning authorities, and in particular—
- (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the 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;
  - [<sup>F27</sup>(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
    - (i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
    - (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;]
  - (b) for authorising the planning authority, in such cases and subject to such conditions as may be prescribed by the regulations or the order, or by directions given by the Secretary of State under the regulations or the order, to grant planning permission for development which does not accord with the provisions of the development plan;
  - [<sup>F28</sup>(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars, documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);]
  - (c) for requiring the planning authority, before granting or refusing planning permission for any development, to consult such authorities or persons as may be prescribed by the regulations or the order or by directions given by the Secretary of State under the regulations or the order;
  - (d) for requiring the planning authority to give to any applicant for planning permission, within such time as may be prescribed by the regulations or 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 planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of their decision on his application, within such time as may be so prescribed;
  - (f) for requiring [<sup>F29</sup>, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be

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prescribed by or under the regulations, order or directions], 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) Paragraphs (d) and (f) of subsection (1) shall apply in relation to applications for an approval required by regulations under this Act or a development order as they apply in relation to applications for planning permission.

#### Textual Amendments

- F27** S. 43(1)(aa) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(i)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F28** S. 43(1)(bb) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(ii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F29** Words in s. 43(1)(f) substituted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(iii)**, 59(2); S.S.I. 2007/130, art. 2(1)

#### 44 Effect of planning permission. **S**

- (1) Without prejudice to the provisions of this Part 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 in it.
- (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.
- (3) 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.

#### 45 Duty to draw attention to certain provisions for benefit of disabled. **S**

- (1) This section applies to the grant by the planning authority of an application for planning permission in respect of any building or premises in relation to which a duty is imposed by any of sections 4, 5 and 7 to 8A of the <sup>M6</sup>Chronically Sick and Disabled Persons Act 1970 (facilities at premises open to the public to include, where reasonable and practicable, provision for the needs of the disabled etc.).
- (2) The planning authority shall, when granting the planning permission, draw the attention of the person to whom the permission is granted to the section or sections in question.

#### Marginal Citations

- M6** 1970 c. 44.

*Status: Point in time view as at 19/04/2007.*

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

#### **46 Call-in of applications by Secretary of State. S**

(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>F30</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>F31</sup>subsection (1)] has effect shall be referred to the Secretary of State.

(4) Subject to subsection (5), where an application is referred to the Secretary of State under this section—

- (a) sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and paragraphs 2 to 6 of Schedule 3 shall apply, with any necessary modifications, as they apply to an application which falls to be determined by the planning authority, and
- (b) regulations or a development order may apply, with or without modifications, to an application so referred any requirements imposed by the regulations or order by virtue of section 34 or 35.

(5) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the planning authority so wish, give to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(6) Subsection (5) does not apply to an application for planning permission referred to a Planning Inquiry Commission under section 69.

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

#### **Textual Amendments**

**F30** 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.

**F31** 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.

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

**C7** 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)**

**C8** 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))

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#### **47 Right to appeal against planning decisions and failure to take such decisions. S**

- (1) Where a planning authority—
  - (a) refuse an application for planning permission or grant it subject to conditions,
  - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions, or
  - (c) refuse an application for any approval of that authority required under a development order or grant it subject to conditions,the applicant may appeal to the Secretary of State.
- (2) A person who has made such an application may also appeal to the Secretary of State if the planning authority have not given to the applicant—
  - (a) notice of their decision on the application,
  - (b) notice that they have exercised their power under section 39 to decline to determine the application, or
  - (c) notice that the application has been referred to the Secretary of State in accordance with directions given under section 46,within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by regulations or a development order.
- (4) The time prescribed for the service of such a notice must not be less than—
  - (a) 28 days from the date of the notification of the decision, or
  - (b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection.
- (5) For the purposes of the application of sections 48(1) and 218(1)(b) and paragraph 2(2)(c) of Schedule 16 in relation to an appeal under subsection (2), the authority shall be deemed to have decided to refuse the application in question.

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

- C9** S. 47 modified (1.8.1999) by [S.S.I. 1999/1, reg. 45](#)
- C10** S. 47 applied (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(Transitional Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/269\)](#), arts. 1(1), 3(7)

#### **48 Determination of appeals. S**

- (1) On an appeal under section 47 the Secretary of State may—
  - (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the planning authority (whether the appeal relates to that part of it or not),and may deal with the application as if it had been made to him in the first instance.



*Status: Point in time view as at 19/04/2007.*

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- (2) Before determining the appeal the Secretary of State shall, if either the appellant or the planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) If the Secretary of State proposes to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, he shall give notice of his intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about his proposals.
- (4) Subsection (2) does not apply to an appeal referred to—
  - (a) a Planning Inquiry Commission under section 69, or
  - (b) a Joint Planning Inquiry Commission under section 70.
- (5) Subject to subsection (2), in relation to an appeal to the Secretary of State under section 47—
  - (a) sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3 shall apply, with any necessary modifications, as they apply in relation to an application for planning permission which falls to be determined by the planning authority, and
  - (b) regulations or a development order may apply, with or without modifications, to such an appeal any requirements imposed by the regulations or order by virtue of section 34 or 35.
- (6) The decision of the Secretary of State on such an appeal shall be final.
- (7) If, before or during the determination of such an appeal in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 37 and 41(1) and (2), any regulations made under this Act in that regard and of any development order and any directions given under such regulations or order, planning permission for that development—
  - (a) could not have been granted by the planning authority, or
  - (b) could not have been granted otherwise than subject to the conditions imposed,
 he may decline to determine the appeal or to proceed with the determination.
- (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.

### *Simplified planning zones*

## 49 **Simplified planning zones.** S

- (1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.



*Status: Point in time view as at 19/04/2007.*

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- (2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission—
  - (a) for development specified in the scheme, or
  - (b) for development of any class so specified.
- (3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

## **50 Making of simplified planning zone schemes. S**

- (1) Every planning authority shall consider, as soon as practicable after 1st October 1987, the question for which part or parts of their district a simplified planning zone scheme is desirable, and then shall keep that question under review.
- (2) If as a result of their original consideration or of any such review a planning authority decide that it is desirable to prepare a scheme for any part of their district they shall do so; and a planning authority may at any time decide—
  - (a) to make a simplified planning zone scheme,
  - (b) to alter a scheme adopted by them, or
  - (c) with the consent of the Secretary of State, to alter a scheme approved by him.
- (3) Schedule 5 has effect with respect to the making and alteration of simplified planning zone schemes and other related matters.

## **51 Simplified planning zone schemes: conditions and limitations on planning permission. S**

- (1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—
  - (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted, and
  - (b) conditions or limitations requiring the consent, agreement or approval of the planning authority in relation to particular descriptions of permitted development.
- (2) Different conditions or limitations may be specified for different cases or classes of case.
- (3) Nothing in a simplified planning zone scheme shall affect the right of any person—
  - (a) to do anything not amounting to development, or
  - (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme.
- (4) No limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

*Status: Point in time view as at 19/04/2007.*

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## 52 Duration of simplified planning zone scheme. **S**

- (1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of 10 years beginning with that date.
- (2) When the scheme ceases to have effect planning permission under it shall also cease to have effect except in a case where the development authorised by it has been begun.

## 53 Alteration of simplified planning zone scheme. **S**

- (1) This section applies where alterations to a simplified planning zone scheme are adopted or approved.
- (2) The adoption or approval of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land, or such part of it as is specified in the scheme, planning permission for development so specified or of any class so specified.
- (3) The adoption or approval of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.
- (4) The adoption or approval of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions immediately.
- (5) The adoption or approval of alterations providing for—
  - (a) the exclusion of land from the simplified planning zone,
  - (b) the withdrawal of planning permission, or
  - (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,
 has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption or approval.
- (6) The adoption or approval of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun.

## 54 Exclusion of certain descriptions of land or development. **S**

- (1) The following descriptions of land may not be included in a simplified planning zone—
  - (a) land in a conservation area;
  - (b) land in a National Scenic Area;
  - (c) land identified in the development plan for the area as part of a green belt;
  - <sup>F32</sup>(d) land in a site of special scientific interest;
  - (e) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;]

*Status: Point in time view as at 19/04/2007.*

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- (2) Where land included in a simplified planning zone becomes land of a description mentioned in subsection (1), that subsection does not have effect to exclude it from the zone.
- (3) The Secretary of State may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—
  - (a) in relation to an area of land specified in the order or to areas of land of a description so specified, or
  - (b) for development of a description specified in the order.
- (4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun.

#### Textual Amendments

**F32** S. 54(1)(d)(e) substituted for s. 54(1)(d) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004](#) (asp 6), s. 59(2), [Sch. 7 para. 12\(1\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2

### *Enterprise zone schemes*

## **55 Planning permission for development in enterprise zones. S**

- (1) An order designating an enterprise zone under Schedule 32 to the <sup>M7</sup>Local Government, Planning and Land Act 1980 shall (without more) have effect on the date on which the order designating the zone takes effect to grant planning permission for development specified in the scheme or for development of any class so specified.
- (2) The approval of a modified scheme under paragraph 11 of that Schedule shall (without more) have effect on the date on which the modifications take effect to grant planning permission for development specified in the modified scheme or for development of any class so specified.
- (3) Planning permission so granted shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or, if none are specified, shall be unconditional.
- (4) Subject to subsection (5), where planning permission is so granted for any development or class of development the enterprise zone authority may direct that the permission shall not apply in relation to—
  - (a) a specified development,
  - (b) a specified class of development, or
  - (c) a specified class of development in a specified area within the enterprise zone.
- (5) An enterprise zone authority shall not give a direction under subsection (4) unless—
  - (a) they have submitted it to the Secretary of State, and
  - (b) he has notified them that he approves of their giving it.
- (6) If the scheme or the modified scheme specifies, in relation to any development it permits, matters which will require approval by the enterprise zone authority, the permission shall have effect accordingly.

*Status: Point in time view as at 19/04/2007.*

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- (7) The Secretary of State may by regulations make provision as to—
- (a) the procedure for giving a direction under subsection (4), and
  - (b) the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subsection (6).
- (8) Such regulations may modify any provision of the planning Acts or any instrument made under them or may apply any such provision or instrument (with or without modification) in making any such provision as is mentioned in subsection (7).
- (9) Nothing in this section prevents planning permission being granted in relation to land in an enterprise zone otherwise than by virtue of this section (whether the permission is granted in pursuance of an application made under this Part<sup>F33</sup>, under section 242A] or by a development order).
- (10) Nothing in this section prejudices the right of any person to carry out development apart from this section.

#### Textual Amendments

**F33** Words in s. 55(9) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004](#) (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), 4(2)

#### Marginal Citations

**M7** 1980 c. 65.

## 56 Effect on planning permission of modification or termination of scheme. **S**

- (1) Modifications to an enterprise zone scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the modifications take effect.
- (2) When an area ceases to be an enterprise zone, planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

### *Deemed planning permission*

## 57 Development with government authorisation. **S**

- (1) Where the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority, that department may, on granting that authorisation, 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 direction.
- (2) On granting a consent under section 36 or 37 of the<sup>M8</sup>Electricity Act 1989 in respect of any operation or change of use that constitutes development, the Secretary of State may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

*Status: Point in time view as at 19/04/2007.*

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- (3) The provisions of this Act (except Part XI) shall apply in relation to any planning permission deemed to be granted by virtue of a direction under this section as if it had been granted by the Secretary of State on an application referred to him under section 46.
- (4) For the purposes of this section development is authorised 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—
    - (i) for the borrowing of money for the purpose of the development, or
    - (ii) 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 authorisation of a government department shall be construed accordingly.
- (5) In subsection (2) “ancillary development”, in relation to development consisting of the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station; and in this subsection “extension” and “generating station” have the <sup>M9</sup>same meanings as in Part I of the Electricity Act 1989.

#### Marginal Citations

**M8** 1989 c. 29.

**M9** 1989 c. 29.

### *Duration of planning permission*

## **58 General condition limiting duration of planning permission. S**

- (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) 5 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 that date as the authority concerned with the terms of the planning permission may direct.

*Status: Point in time view as at 19/04/2007.*

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- (2) The period mentioned in subsection (1)(b) shall be a period which the authority consider appropriate having regard to the provisions of the development plan and to any other material considerations.
- (3) If planning permission is granted without the condition required by subsection (1), 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 5 years beginning with the date of the grant.
- (4) Nothing in this section applies to—
  - (a) any planning permission granted by a development order,
  - (b) any planning permission for any development carried out before the grant of planning permission,
  - (c) any planning permission granted for a limited period,
  - (d) any planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste which is granted (or deemed to be granted) subject to a condition that the development to which it relates must be begun before the expiration of a specified period after—
    - (i) the completion of other development consisting of the winning and working of minerals already being carried out by the applicant for the planning permission, or
    - (ii) the cessation of depositing of mineral waste already being carried out by the applicant for the planning permission,
  - (e) any planning permission granted by an enterprise zone scheme,
  - (f) any planning permission granted by a simplified planning zone scheme, or
  - (g) any outline planning permission, within the meaning of section 59.

## 59 Outline planning permission. **S**

- (1) In this section “outline planning permission” means planning permission granted, in accordance with the provisions of regulations or a development order, with the reservation for subsequent approval by the planning authority or the Secretary of State of matters not particularised in the application (“reserved matters”).
- (2) Subject to the provisions of this section, where outline planning permission is granted for development consisting of or including the carrying out of building or other operations, it shall be granted subject to conditions to the effect—
  - (a) that, in the case of any reserved matter, application for approval must be made before—
    - (i) the expiration of 3 years from the date of the grant of outline planning permission,
    - (ii) the expiration of 6 months from the date on which an earlier application for such approval was refused, or
    - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed,
 whichever is the latest, and
  - (b) that the development to which the permission relates must be begun not later than—

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- (i) the expiration of 5 years from the date of the grant of outline planning permission, or
  - (ii) if later, the expiration of 2 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) Only one application for approval may be made in a case to which subsection (2)(a) applies after the expiration of the 3 year period mentioned in subsection (2)(a)(i).
- (4) If outline planning permission is granted without the conditions required by subsection (2), it shall be deemed to have been granted subject to those conditions.
- (5) The authority concerned with the terms of an outline planning permission may in applying subsection (2) substitute, or direct that there be substituted, for the periods of 3 years, 5 years and 2 years referred to in that subsection such other periods respectively (whether longer or shorter) as they consider appropriate.
- (6) The authority may also specify, or direct that there be specified, separate periods under subsection (2)(a) in relation to separate parts of the development to which the planning permission relates; and, if they do so, the condition required by subsection (2)(b) shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.
- (7) In considering whether to exercise their powers under subsections (5) and (6), the authority shall have regard to the provisions of the development plan and to any other material considerations.

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

**C11** S. 59 excluded (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **3(2)(a)** (with art. 14(3))

**60 Provisions supplementary to sections 58 and 59. S**

- (1) The authority referred to in section 58(1)(b) and 59(5) is—
  - (a) the planning authority or the Secretary of State, in the case of planning permission granted by them,
  - (b) in the case of planning permission deemed to be granted under section 57(1), the department on whose direction planning permission is deemed to be granted,
  - (c) in the case of planning permission deemed to be granted under section 57(2), the Secretary of State, and
  - (d) in the case of planning permission granted on an appeal determined under paragraph 1 or 5 of Schedule 4 by a person appointed by the Secretary of State to determine the appeal, that person.
- (2) For the purposes of section 59, a reserved matter shall be treated as finally approved—
  - (a) when an application for approval is granted, or
  - (b) in a case where the application is made to the planning authority and on an appeal to the Secretary of State against the authority's decision on the application the Secretary of State or a person mentioned in subsection (1)(d) grants the approval, when the appeal is determined.



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- (3) Where a planning authority grant planning permission, the fact that any of the conditions of the permission are required by the provisions of section 58 or 59 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 47 against the decision of the authority.
- (4) In the case of planning permission (whether outline or other) which has conditions attached to it by or under section 58 or 59—
  - (a) development carried out after the date by which the conditions 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.

## 61 Termination of planning permission by reference to time limit: completion notices. **S**

- (1) This section applies where—
  - (a) by virtue of section 58 or 59, 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, that development has been begun within that period, but that period has elapsed without the development having been completed,
  - (b) development has been begun in accordance with planning permission under a simplified planning zone scheme but has not been completed by the time the area ceases to be a simplified planning zone, or
  - (c) development has been begun in accordance with planning permission under an enterprise zone scheme but has not been completed by the time the area ceases to be an enterprise zone.
- (2) If the planning authority are of the opinion that the development will not be completed within a reasonable period, they may serve a notice (“a completion notice”) stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice.
- (3) The period so specified must not be less than 12 months after the notice takes effect.
- (4) A completion notice shall be served—
  - (a) on the owner of the land,
  - (b) on the occupier of the land, and
  - (c) on any other person who in the opinion of the planning authority will be affected by the notice.
- (5) The planning authority may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect.
- (6) If they do so they shall immediately give notice of the withdrawal to every person who was served with the completion notice.

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## **62 Effect of completion notice. S**

- (1) A completion notice shall not take effect unless and until it is confirmed by the Secretary of State.
- (2) In confirming a completion notice the Secretary of State may 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.
- (3) If, within such period as may be specified in a completion notice (which must not be less than 28 days from its service) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall give him and the planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If a completion notice takes effect, the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice (whether the original period specified under section 61(2) or a longer period substituted by the Secretary of State under subsection (2)).
- (5) Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

## **63 Power of Secretary of State to serve completion notice. S**

- (1) If it appears to the Secretary of State that it is expedient that a completion notice should be served in respect of any land, he may himself serve such a notice under section 61.
- (2) A completion notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to completion notices apply, so far as relevant, to a completion notice served by the Secretary of State as they apply to a completion notice served by a planning authority, but with the substitution for any reference in those provisions to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

### *Variation, revocation and modification of planning permission*

## **64 Power to vary planning permission. S**

Notwithstanding any other provision of this Part, a planning authority may, at the request of the grantee or a person acting with his consent, vary any planning permission granted by them, if it appears to them that the variation sought is not material.

## **65 Power to revoke or modify planning permission. S**

- (1) If it appears to the planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part <sup>F34</sup>or

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section 242A], the authority may by order revoke or modify the permission to such extent as they consider expedient.

- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section 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.
- (4) 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 previously been carried out.
- (5) Part II of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed by an order under this section revoking or modifying permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials.

#### Textual Amendments

**F34** Words in s. 65(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(3)

## 66 Procedure for section 65 orders: opposed cases. **S**

- (1) Except as provided in section 67, an order under section 65 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a planning authority submit such an order to the Secretary of State for confirmation, they shall serve notice on—
  - (a) the owner of the land affected,
  - (b) the lessee and the occupier of the land affected, and
  - (c) any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before he confirms the order, give such an opportunity both to that person and to the planning authority.
- (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
- (6) The Secretary of State may confirm an order submitted to him under this section without modification or subject to such modifications as he considers expedient.

*Status: Point in time view as at 19/04/2007.*

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## 67 Procedure for section 65 orders: unopposed cases. **S**

- (1) This section applies where—
  - (a) the planning authority have made an order under section 65, and
  - (b) 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 it.
- (2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—
  - (a) subject to subsection (4), the period within which persons affected by the order may give notice to the Secretary of State that they wish to have an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and
  - (b) subject to subsection (5), the period 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 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)(b).
- (4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.
- (5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).
- (6) The authority shall send a copy of any advertisement published under subsection (2) to the Secretary of State not more than 3 days after the publication.
- (7) If—
  - (a) no person claiming to be affected by the order has given notice to the Secretary of State under subsection (2)(a) within the period referred to in that subsection, and
  - (b) the Secretary of State has not directed within that period that the order be submitted to him for confirmation,the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Secretary of State as required by section 66(1).
- (8) This section does not apply to—
  - (a) an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part<sup>F35</sup>, section 242A) or Part VI, or
  - (b) an order modifying any conditions to which a planning permission is subject by virtue of section 58 or 59.

### Textual Amendments

**F35** Words in s. 67(8)(a) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(4)

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## **68 Revocation and modification of planning permission by the Secretary of State. S**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 65, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 65, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.
- (8) Part II of Schedule 3 shall have effect in relation to orders made by the Secretary of State by virtue of subsection (1) as it has effect in relation to orders made by the planning authority under section 65.

### *References to Planning Inquiry Commissions*

## **69 Power to refer certain planning questions to Planning Inquiry Commission. S**

- (1) The Secretary of State may constitute a Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2) in the circumstances mentioned in subsection (3).
- (2) The matters that may be referred to a Planning Inquiry Commission are—
  - (a) an application for planning permission which the Secretary of State has under section 46 directed to be referred to him instead of being dealt with by a planning authority;
  - (b) an appeal under section 47 (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 57(1) 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.

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- (3) Any of those matters may be referred to a Planning Inquiry 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) that there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation of them cannot be made unless there is a special inquiry for the purpose;
  - (b) that 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.
- (4) Schedule 6, which contains further provisions as to Planning Inquiry Commissions, and as to the meaning of “the responsible Minister or Ministers” in subsection (3) and in that Schedule, shall have effect.

## 70 Power to refer certain planning questions to Joint Planning Inquiry Commission. **S**

- (1) The Ministers may constitute a Joint Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2).
- (2) The matters that may be referred to a Joint Planning Inquiry Commission are the matters which may, under section 101 of the <sup>M10</sup>Town and Country Planning Act 1990 or section 69 of this Act, be referred to a Planning Inquiry Commission but which appear to the Ministers to involve considerations affecting both Scotland and England.
- (3) In subsections (1) and (2) “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.
- (4) Schedule 7, which contains further provisions as to Joint Planning Inquiry Commissions, shall have effect.

### Marginal Citations

M10 1990 c. 8.

### *Other controls over development*

## 71 Orders requiring discontinuance of use or alteration or removal of buildings or works. **S**

- (1) If, having regard to the development plan and to any other material considerations, it appears to a planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
  - (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
  - (b) that any buildings or works should be altered or removed,they may by order—
  - (i) require the discontinuance of that use, or



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- (ii) impose such conditions as may be specified in the order on the continuance of it, or
  - (iii) 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.
  - (3) Section 65 shall apply in relation to any planning permission granted by an order under this section as it applies in relation to planning permission granted by the planning authority on an application made under this Part [<sup>F36</sup>or section 242A].
  - (4) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Secretary of State under this section.
  - (5) Planning permission for such development may be granted so as to have effect from—
    - (a) the date on which the development was carried out, or
    - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
  - (6) 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 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.
  - (7) In the case of planning permission granted by an order under this section, the authority referred to in sections 58(1)(b) and 59(5) is the planning authority making the order.
  - (8) The previous provisions of this section do not apply to the use of any land for development consisting of the winning or working of minerals or involving the deposit of refuse or waste materials except as provided in Schedule 8, and in that Schedule—
    - (a) Part I shall have effect for the purpose of making provision as respects land which is or has been so used, and
    - (b) Part II shall have effect as respects the registration of old mining provisions.

#### Textual Amendments

**F36** Words in s. 71(3) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004](#) (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), 4(5)

## 72 Confirmation by Secretary of State of section 71 orders. **S**

- (1) An order under section 71 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.



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- (2) Where a planning authority submit an order to the Secretary of State for his confirmation under this section, they shall serve notice—
  - (a) on the owner of the land affected,
  - (b) on the lessee and the occupier of that land, and
  - (c) on any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before confirming the order, give such an opportunity both to that person and to the planning authority.
- (5) Where an order under section 71 has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on the owner, the lessee and occupier of the land to which the order relates.

### **73 Power of the Secretary of State to make section 71 orders. S**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 71, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require the Secretary of State to give them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 71, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

### **74 Review of mineral planning permissions. S**

- (1) Schedule 9 (which makes provision as respects the review of old mineral planning permissions) and Schedule 10 (which makes provision as respects the periodic review of mineral planning permissions) shall have effect.

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- (2) Without prejudice to the generality of sections 30 and 31, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 9 or 10.
- (3) In this section and those Schedules “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

## 75 Agreements regulating development or use of land. **S**

- (1) A planning authority may enter into an agreement with any person interested in land in their district (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.
- (2) Any such agreement may contain such incidental and consequential provisions (including financial ones) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.
- (3) An agreement made under this section with any person interested in land may, if the agreement has been recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, be enforceable at the instance of the planning authority against persons deriving title to the land from the person with whom the agreement was entered into.
- (4) No such agreement shall at any time be enforceable against a third party who has in good faith and for value acquired right (whether <sup>F37</sup>title has been completed] or not) to the land prior to the agreement being recorded or registered or against any person deriving title from such third party.
- (5) Nothing in this section or in any agreement made under it 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).

### Textual Amendments

**F37** Words in s. 75(4) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), [Sch. 12 para. 60\(2\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### Modifications etc. (not altering text)

**C12** S. 75 modified (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006](#) (asp 13), [s. 39](#) (with ss. 50(2), 51)

**C13** S. 75 modified (19.4.2007) by [Edinburgh Airport Rail Link Act 2007](#) (asp 16), [s. 45\(1\)](#) (with ss. 52, 60)

**Status:**

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**Changes to legislation:**

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