



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### *Publicity for applications*

#### **[<sup>F1</sup>34 Notice by planning authority of certain applications made to them**

- (1) A planning authority are to give notice—
  - (a) to such persons or categories of person,
  - (b) in such manner,
  - (c) for such period, and
  - (d) on such number of occasions,as may be prescribed in regulations or in a development order, of such applications mentioned in subsection (2) as are made to the authority.
- (2) The applications are—
  - (a) for planning permission,
  - (b) for an approval required by a development order,
  - (c) for a consent, agreement or approval required by a condition imposed on a grant of planning permission, and
  - (d) for agreement under section 75A(2).
- (3) The regulations or development order may—
  - (a) make provision in relation to the applications generally or in relation to such of those applications as are of a class or classes prescribed in the regulations or order,
  - (b) make different provision for different classes so prescribed.

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- (4) No such application is to be determined until after—
- (a) the expiry of a period which is to be so prescribed,
  - (b) any requirement imposed by virtue of this section has been satisfied, and
  - (c) any sum recoverable from the applicant in respect of costs incurred by the planning authority in giving notice under subsection (1) has been paid to the authority.
- (5) For the purposes of this section an applicant is to provide—
- (a) to such person or persons,
  - (b) such information with respect to the application,
- as may be so prescribed.
- (6) A planning authority are to provide the Scottish Ministers with such information relating to the exercise by the authority of functions under this section (whether in relation to applications generally or in relation to a particular application or class of application) as the Scottish Ministers may request from them.]

#### Textual Amendments

- F1** S. 34 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 10(1)**, 59(2) (with [S.S.I. 2009/222](#), **art. 15**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

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

- (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>F2</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.
- (5) If any person—

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- (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>F3</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 [<sup>F4</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing 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

- F2** 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.)
- F3** 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.)
- F4** Words in s. 35(7) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 6\(2\)](#) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 11)

#### [<sup>F5</sup>35A Pre-application consultation: preliminary

(1) Before submitting an application for planning permission for a development of a class prescribed under this section the prospective applicant is, subject to the following provisions of this section, to comply with section 35B.

[ Subsection (1) does not apply to an application for planning permission]

- <sup>F6</sup>(1A) (a) [<sup>F7</sup>to which section 42 applies][<sup>F8</sup>, or
- (b) in circumstances specified by the Scottish Ministers in regulations under this section.]

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- (2) The regulations in question may, in prescribing classes of development, make different provision for different cases or classes of case and for different areas.
- (3) A prospective applicant for planning permission for a development may, by notice, require the planning authority to state whether or not, in their opinion, [<sup>F9</sup>compliance with section 35B is required].
- (4) But the regulations may, in prescribing a class of development, provide that subsections (3) and (5) to (9) are not to apply—
  - (a) as respects that class, or
  - (b) as respects that class in circumstances specified in the regulations.
- (5) Any notice under subsection (3) is to be in such form [<sup>F10</sup>, and have such content,] as may be prescribed in the regulations but must in any event contain the information mentioned in paragraphs (a) to (d) of section 35B(4).
- (6) A planning authority receiving such a notice may, if they do not consider that it contains sufficient information to enable them to provide the statement sought, request the prospective applicant to provide additional information specified by them.
- (7) Where such a notice is given it is the duty of the planning authority to provide the requisite statement within the period of 21 days after it is given (or within such other period as may be substituted for that period by the regulations).
- (8) The period of 21 days mentioned in subsection (7) (or any other period substituted for that period) does not include any period between a request for information being made under subsection (6) and that information being provided to the planning authority
- (9) If the authority respond by stating that in their opinion [<sup>F11</sup>compliance with section 35B is not required], then provided that the application for planning permission for the development in question is submitted within 12 months after the notice was given and does not differ materially from the information regarding it contained in the notice and mentioned in paragraphs (a) to (c) of section 35B(4) the prospective applicant need not comply with section 35B.
- (10) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” or “the authority” were a reference to the Scottish Ministers.

#### Textual Amendments

- F5** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by *Planning etc. (Scotland) Act 2006* (asp 17), **ss. 11, 59(2)** (with S.S.I. 2009/101, arts. 1(1), **2**); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/100, art. 2, sch.
- F6** S. 35A(1A) inserted (2.2.2013) by *The Public Services Reform (Planning) (Pre-application consultation) (Scotland) Order 2013* (S.S.I. 2013/25), arts. 1, **2(2)**
- F7** Words in s. 35A(1A) renumbered as s. 35A(1A)(a) (1.12.2019) by *Planning (Scotland) Act 2019* (asp 13), **ss. 18(2)(a)(i)**, 63(2); S.S.I. 2019/385, reg. 2
- F8** S. 35A(1A)(b) and word inserted (1.12.2019) by *Planning (Scotland) Act 2019* (asp 13), **ss. 18(2)(a)(ii)**, 63(2); S.S.I. 2019/385, reg. 2
- F9** Words in s. 35A(3) substituted (1.12.2019) by *Planning (Scotland) Act 2019* (asp 13), **ss. 18(2)(b)**, 63(2); S.S.I. 2019/385, reg. 2
- F10** Words in s. 35A(5) inserted (1.12.2019) by *Planning (Scotland) Act 2019* (asp 13), **ss. 18(2)(c)**, 63(2); S.S.I. 2019/385, reg. 2

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**F11** Words in s. 35A(9) substituted (1.12.2019) by **Planning (Scotland) Act 2019 (asp 13), ss. 18(2)(d), 63(2); S.S.I. 2019/385, reg. 2**

### **35B Pre-application consultation: compliance**

- (1) The following subsections apply where compliance with this section is required by virtue of section 35A(1).
- (2) The prospective applicant is to give notice (to be known as a “proposal of application notice”) to the planning authority that an application for planning permission for the development is to be submitted.
- (3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.
- (4) A proposal of application notice is to be in such form, and have such content, as may be prescribed but must in any event contain—
  - (a) a description in general terms of the development to be carried out,
  - (b) if the site at which the development is to be carried out has a postal address, that address,
  - (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and
  - (d) details as to how the prospective applicant may be contacted and corresponded with.
- (5) Regulations may—
  - (a) require that the proposal of application notice be given to persons specified in the regulations,
  - (b) specify—
    - (i) persons who are to be consulted as respects a proposed application, and
    - (ii) what form that consultation is to take.
- (6) Different provision may be made under subsection (5) for different cases or classes of case and for different areas.
- (7) The planning authority may, provided that they do so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that they require (either or both)—
  - (a) that the proposal of application notice be given to persons additional to those specified under subsection (5) (specifying in the notification who those persons are),
  - (b) that consultation additional to any required by virtue of subsection (5) (b) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).
- (8) In considering whether to give notification under subsection (7) the planning authority are to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.
- (9) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” were a reference to the Scottish Ministers.

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#### Textual Amendments

- F5** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11**, 59(2) (with [S.S.I. 2009/101](#), arts. 1(1), **2**); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/100](#), art. 2, sch.

### 35C Pre-application consultation report

- (1) A person who, before submitting an application for planning permission for a development, is required to comply with section 35B and who proceeds to submit that application is to prepare a report (a “pre-application consultation report”) as to what has been done to effect such compliance.
- (2) A pre-application consultation report is to be in such form [<sup>F12</sup>and include such content] as may be prescribed.]

#### Textual Amendments

- F5** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11**, 59(2) (with [S.S.I. 2009/101](#), arts. 1(1), **2**); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/100](#), art. 2, sch.
- F12** Words in s. 35C(2) inserted (1.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 18(4)**, 63(2); [S.S.I. 2019/385](#), reg. 2

### 36 Registers of applications etc.

- (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,
  - [<sup>F13</sup>(aa) any variation, by virtue of section 32A(1), to such an application,
  - (ab) documents to which regard was had in dealing with each such application (including documents to which regard was had in considering whether to agree to such a variation),
  - (ac) material considerations to which regard was had by virtue of section 37(2),
  - (ad) any pre-application consultation report prepared under section 35C(1) and submitted with such an application,]
  - (b) the manner in which [<sup>F14</sup>each such application has been dealt with and a copy of any notice given by virtue of paragraph (d) or (e) of section 43(1) in respect of an application (or, in the case of an application in respect of which notice does not fall to be so given, a statement of the reasons on which the authority based their decision on the application)], [<sup>F15</sup>...
  - [<sup>F16</sup>(ba) applications under section 242A(2) for planning permission in respect of development in the district of that authority,]
  - [<sup>F17</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, [<sup>F18</sup>and

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- (d) any planning obligation entered into under section 75]
- (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 [<sup>F19</sup>and variations to applications] and of any plans or drawings submitted with [<sup>F20</sup>such applications and variations and copies of documents to which regard was had in dealing with such applications and in considering whether to agree to such variations], 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<sup>F21</sup> or review] 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

- F13** S. 36(1)(aa)-(ad) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(i)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F14** Words in s. 36(1)(b) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(ii)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F15** 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.
- F16** 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.
- F17** 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))
- F18** S. 36(1)(d) and word inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(v)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F19** Words in s. 36(3)(a) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(b)(i)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F20** Words in s. 36(3)(a) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(b)(ii)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F21** Words in s. 36(3)(b) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(2)**

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

- C1** S. 36 applied (with modifications) (1.6.2011) by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (S.S.I. 2011/139), regs. 1, **33(17)(b)(i)**



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## [<sup>F22</sup>36A Lists of applications

- (1) Every planning authority are, in such manner as may be prescribed by regulations or a development order, to keep a list of—
  - (a) the applications mentioned in section 36(1)(a) which are made to them (including any variations, by virtue of section 32A(1), to those applications),
  - (b) the applications mentioned in section 36(1)(ba) which are made in respect of development in their district, and
  - (c) the proposal of application notices received by them under section 35B(2).
- (2) Weekly, or at such intervals as may be so prescribed, the authority are—
  - (a) to revise the list by removing from it the entries relating to—
    - (i) such applications as have been determined, and
    - (ii) such proposal of application notices as have ceased to be current, and
  - (b) in such manner as may be so prescribed (or, if and in so far as the regulations or development order may admit, in such manner as the authority consider appropriate), to publish that revised list.
- (3) The availability of the list is to be advertised by the authority in a local newspaper at such intervals as may be so prescribed.
- (4) The regulations or development order may make provision as to how any costs incurred by the authority by virtue of this section are to be recovered from the applicants.
- (5) In this section “publish”, without prejudice to that expression's generality, may include publish by electronic means (as for example by means of the internet).
- (6) For the purposes of subsection (2)(a)(ii), a notice ceases to be current when—
  - (a) an application for planning permission is submitted for the development in question,
  - (b) the prospective applicant gives notice in writing under this paragraph to the planning authority that no application is to be submitted for the development in question, or
  - (c) 12 months have elapsed since the date on which the proposal of application notice was given.]

### Textual Amendments

- F22** S. 36A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 13, 59(2) (with [S.S.I. 2009/222](#), art. 5); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/219](#), art. 2, sch.



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