



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART XI

#### VALIDITY

#### **237 Validity of development plans and certain orders, decisions and directions.**

(1) Except as provided by this Part, the validity of—

- [<sup>F1</sup>(a) a strategic development plan or local development plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted,]
- (b) a simplified planning zone scheme or any alteration of any such scheme, whether before or after the adoption or approval of the scheme or alteration,
- (c) an order under any provision of Part IX, whether before or after the order has been made,
- (d) an order under section 230, whether before or after the order has been made,
- (e) any such order as is mentioned in subsection (2), whether before or after it has been confirmed, or
- (f) any such action on the part of the Secretary of State as is mentioned in subsection (3) [<sup>F2</sup>or on the part of a planning authority as is mentioned in subsection (3A)],

shall not be questioned in any legal proceedings whatsoever.

(2) The orders referred to in subsection (1)(e) are—

- (a) any order under section 65 or under the provisions of that section as applied by or under any other provision of this Act;
- (b) any order under section 71 or under the provisions of that section as applied by or under any other provisions of this Act;
- (c) any tree preservation order;
- (d) any order made in pursuance of section 183(4);

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- (e) any order under paragraph 1, 3, 5 or 6 of Schedule 8.
- (3) The action referred to in subsection (1)(f) is action on the part of the Secretary of State of any of the following descriptions—
- [<sup>F3</sup>(za) any decision on an application under section 31A;]
- (a) any decision on an application referred to him under section 46;
- (b) any decision on an appeal under section 47;
- (c) any decision to confirm a completion notice under section 62;
- [<sup>F4</sup>(ca) any determination on an appeal under section 75B or 75F;]
- (d) any decision on an appeal under section 130;
- (e) any decision to confirm or not to confirm a purchase notice including—
- (i) any decision not to confirm such a notice in respect of part of the land to which it relates, or
- (ii) any decision to grant any permission, or give any direction, instead of confirming such a notice, either wholly or in part;
- (f) any decision on an appeal under section 154 against the refusal or partial refusal of an application for a certificate under section 150 or 151;
- [<sup>F5</sup>(fa) any decision on an appeal under section 169;]
- (g) any decision on an appeal under section 180 against a notice under section 179;
- (h) any decision relating—
- (i) to an application for consent under a tree preservation order,
- (ii) to an application for consent under any regulations made under section 182 or 183, or
- (iii) to any certificate or direction under any such order or regulations, whether it is a decision on appeal or a decision on an application referred to the Secretary of State for determination in the first instance.
- [<sup>F6</sup>(i) any decision on an application for planning permission under section 242A.]
- [<sup>F7</sup>(3A) The action on the part of a planning authority is any decision or determination (other than a deemed decision) in a review conducted by them by virtue of section 43A(8).]
- (4) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such action as is mentioned in subsection (3) [<sup>F8</sup>or on the part of a planning authority to take any such action as is mentioned in subsection (3A)].

#### Textual Amendments

- F1** S. 237(1)(a) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(11)(a)**, 59(2) (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F2** Words in s. 237(1)(f) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(3)(a)**, 59(2) (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2008/411](#), art. 2(2)(3)(a), [S.S.I. 2009/219](#), art. 2, sch.
- F3** S. 237(3)(za) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(11)(b)(i)**, 59(2) (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2007/130](#), art. 2(2), sch.
- F4** S. 237(3)(ca) inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(11)(b)(ii)**, 59(2); [S.S.I. 2010/400](#), art. 3, sch. (as amended (2.12.2010) by [S.S.I. 2010/430](#), art. 3)
- F5** S. 237(3)(fa) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(11)(b)(iii)**, 59(2) (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2007/130](#), art. 2(2), sch.

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- F6** S. 237(3)(i) added (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 92(2), 121(4)** (with s. 111); S.S.I. 2006/243, art. 3
- F7** S. 237(3A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(3)(b), 59(2)** (with S.S.I. 2008/427, arts. 1(1), **2-5**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F8** Words in s. 237(4) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(3)(c), 59(2)** (with S.S.I. 2008/427, arts. 1(1), **2-5**); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

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

- C1** S. 237 applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), **10(5)** (with regs. 4, 5)
- C2** S. 237(3): power to apply conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(b), 31, 40(2)** (with **ss. 9(3), 10(5), 38(6)**)

**238 Proceedings for questioning validity of development plans and certain schemes and orders.**

- (1) If any person aggrieved by a [<sup>F9</sup>strategic development plan or local development plan desires to question the validity of the plan] on the ground—
- (a) that it is not within the powers conferred by Part II, or
  - (b) that any [<sup>F10</sup>relevant requirement of that Part or of any regulations made under that Part has not been complied with,]
- he may make an application to the Court of Session under this section.
- (2) On any application under this section the Court of Session—
- (a) may by interim order wholly or in part suspend the operation of the plan <sup>F11</sup>..., either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
  - (b) if satisfied that the plan <sup>F12</sup>... is wholly or to any extent outside the powers conferred by Part II, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of that Part or of any regulations made under it, may wholly or in part quash the plan <sup>F12</sup>... either generally or in so far as it affects any property of the applicant.
- (3) Subsections (1) and (2) shall apply, subject to any necessary modifications, to a simplified planning zone scheme or an alteration of such a scheme or to an order under section 202, 203, 206, 207, 208 or 230 as they apply to any plan <sup>F13</sup>... there mentioned.
- (4) An application under this section must be made within 6 weeks from the relevant date.
- (5) For the purposes of subsection (4) the relevant date is—
- (a) in the case of an application in respect of [<sup>F14</sup>a strategic development plan, the date of its publication under section 14(1)(b);]
  - [<sup>F15</sup>(aa) in the case of an application in respect of a local development plan, the date of its publication under section 20A(1)(b);]
  - (b) in the case of an application by virtue of subsection (3) in respect of a simplified planning zone scheme or an alteration of such a scheme, the date of the publication of the first notice of the approval or adoption of the scheme or alteration required by regulations under paragraph 12 of Schedule 5;

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- (c) in the case of an application by virtue of subsection (3) in respect of an order under section 202 or 206(1)(a), the date on which the notice required by paragraph 1(7) of Schedule 16 is first published;
- (d) in the case of an application by virtue of subsection (3) in respect of an order under section 203, 206(1)(b), 207 or 208, the date on which the notice required by paragraph 11 of Schedule 16 is first published in accordance with that paragraph; and
- (e) in the case of an application by virtue of subsection (3) in respect of an order under section 230, the date on which the notice required by subsection (6) of that section is first published;

but subject, in the case of those orders made under sections 202, 203 and 230, to section 241.

- (6) In their application to simplified planning zone schemes and their alteration, subsections (1) and (2) shall have effect as if they referred to Part III instead of Part II.

#### Textual Amendments

- F9** Words in s. 238(1) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(a)(i), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F10** Words in s. 238(1)(b) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(a)(ii), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F11** Words in s. 238(2)(a) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(b)(i), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F12** Words in s. 238(2)(b) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(b)(ii), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F13** Words in s. 238(3) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(c), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F14** Words in s. 238(5)(a) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(d)(i), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.
- F15** S. 238(5)(aa) inserted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(12)(d)(ii), 59(2)** (with [S.S.I. 2008/427](#), arts. 1(1), 2-5); [S.S.I. 2009/70](#), art. 2, sch.

## 239 Proceedings for questioning the validity of other orders, decisions and directions.

- (1) If any person—
  - (a) is aggrieved by any order to which this section applies and wishes to question the validity of that order on the grounds—
    - (i) that the order is not within the powers of this Act, or
    - (ii) that any of the relevant requirements have not been complied with in relation to that order, or
  - (b) is aggrieved by any action on the part of the Secretary of State <sup>[F16]</sup>, or on the part of a planning authority,] to which this section applies and wishes to question the validity of that action on the grounds—
    - (i) that the action is not within the powers of this Act, or
    - (ii) that any of the relevant requirements have not been complied with in relation to that action,

he may make an application to the Court of Session under this section.

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- (2) Without prejudice to subsection (1), if the authority directly concerned with any order to which this section applies, or with any action on the part of the Secretary of State to which this section applies, wish to question the validity of that order or action on any of the grounds mentioned in subsection (1), the authority may make an application to the Court of Session under this section.
- (3) An application under this section must be made within 6 weeks from the date on which the order is confirmed (or, in the case of an order under section 65 which takes effect under section 67 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the action is taken.
- (4) This section applies to any such order as is mentioned in subsection (2) of section 237 and to any such action on the part of the Secretary of State as is mentioned in subsection (3) of that section [<sup>F17</sup>or on the part of a planning authority as is mentioned in subsection (3A) of that section].
- (5) On any application under this section the Court of Session—
  - (a) may, subject to subsection (6), by interim order suspend the operation of the order or action in question until the final determination of the proceedings;
  - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to it, may quash that order or action.
- (6) Paragraph (a) of subsection (5) shall not apply to applications questioning the validity of tree preservation orders.
- (7) In relation to a tree preservation order, or to an order made in pursuance of section 183(4), the powers conferred on the Court of Session by subsection (5) shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.
- (8) References in this section to the confirmation of an order include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.
- (9) In this section “the relevant requirements”, in relation to any order or action to which this section applies, means any requirements of this Act or of the <sup>M1</sup>Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under this Act or under that Act which are applicable to that order or action.
- (10) Any reference in this section to the authority directly concerned with any order or action to which this section applies—
  - (a) in relation to any such decision as is mentioned in section 237(3)(e), where the Secretary of State confirms the notice in question, wholly or in part, with the substitution of another local authority or statutory undertakers for the planning authority, includes a reference to that local authority or those statutory undertakers;
  - (b) in any other case, is a reference to the planning authority.

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#### Textual Amendments

- F16** Words in s. 239(1)(b) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(4)(a)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F17** Words in s. 239(4) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(4)(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

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

- C3** S. 239 applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), **10(5)** (with regs. 4, 5)
- C4** S. 239: power to apply conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(b)**, 31, 40(2) (with ss. 9(3), 10(5), 38(6))  
S. 239(1)(b),(2): extended (1.8.1999) by [S.S.I. 1999/1](#), **reg. 43**

#### Marginal Citations

- M1** [1992 c. 53](#).

**F18** **240** .....

#### Textual Amendments

- F18** S. 240 repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 127(18)**, Pt.IV; [S.I. 1998/3178](#), **art. 3**

### **241 Special provisions as to orders subject to special parliamentary procedure.**

- (1) Where an order under section 202, 203 or 230 is subject to special parliamentary procedure, then—
- if the order is confirmed by Act of Parliament under section 2(4), as read with section 10, of the <sup>M2</sup>Statutory Orders (Special Procedure) Act 1945, or under section 6 of that Act, sections 237 and 238 shall not apply to the order,
  - in any other case, section 238 shall have effect in relation to the order as if, in subsection (4) of that section, for the reference to the date there mentioned there were substituted a reference to the date on which the order becomes operative under that Act (“the operative date”).
- (2) Where by virtue of Part X any such action as is mentioned in section 240 is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—
- if the order in which the action is embodied is confirmed by Act of Parliament under that Act of 1945, sections 237 and 239 shall not apply, and
  - in any other case, the provisions of section 239 shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the operative date.

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**Marginal Citations**

**M2** 1945 (9 & 10 Geo.6) c. 18.

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