

PLANNING ETC. (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Development Management

Section 23 – Planning obligations

121. **Subsection (1)** replaces section 75 of the 1997 Act – planning agreements – with new sections 75, 75A, 75B and 75C.
122. In **new section 75 – Planning obligations** – subsection (1) provides that a person may enter into a planning obligation, either by agreement with a planning authority or unilaterally. The obligation in respect of land in the authority’s district restricts or regulates the development or use of the land, either permanently or during a specified period. Typical examples could relate to the provision of road improvements, community facilities or extensions to schools relating to the development, either directly by the developer or through funding to the local authority.
123. Subsection (2) confirms that obligations can require operations or activities to be carried out, or require the land to be used in the specified way.
124. Subsection (3) states that an obligation may be subject to conditions, require the payment of a specified amount or periodic sums, and contain such other provisions as the planning authority or the person entering into the obligation believe to be necessary or expedient.
125. Subsection (4) states that an obligation can have effect on a specified date or a date determined by reference to an event.
126. Subsection (5) states that an obligation is enforceable by the planning authority against the owner of the land or (in the case of obligations other than those mentioned in subsection (2) or (3)(b)) any other person having use of the land, if it is recorded in the Register of Sasines or registered in the Land Register of Scotland. To be so recorded or registered the owner of the land must be a party to the obligation. In terms of subsection (12) it does not matter if the owner of the land at the time of recording or registration was owner at the time when the obligation was entered into. Subsection (6) prevents enforcement of a planning obligation under subsection (5) where a third party acquires right to the land prior to the obligation being recorded or registered.
127. Subsection (7) gives the planning authority powers to enter land, carry out operations and recover costs where there is a breach of a requirement in an obligation to carry out any operation. Subsection (8) requires the authority to give 21 days notice of their intention to do so.
128. Subsection (9) states that anyone wilfully obstructing someone who is acting in the exercise of the power of entry under subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 (at present £500).
129. Subsections (10) and (11) define owner in relation to planning obligations.

130. **New section 75A – Modification and discharge of planning obligations** – sets out the circumstances in which an obligation can be modified or discharged. Subsection (2) states that a person may apply to a planning authority for their agreement that an obligation should be modified or discharged. Subsection (1)(a) requires agreement to modification or discharge of a planning obligation to be pursuant upon an application made under subsection (2).
131. Subsection (4) gives the authority powers to continue, discharge or modify an obligation, and subsection (5) requires the authority to give notice of their determination to the applicant.
132. Subsections (6) to (8) set out that, where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland, the modification or discharge is effective from the date of recording or registration of the notice that the obligation is to be discharged or modified.
133. Subsection (9) allows regulations to provide for the form and content of an application under subsection 75A(2), the publication of notice of any such application, procedures for considering representations and the form and content of any notice given under subsection 75A(5).
134. **New section 75B – Appeals** – provides a right of appeal to the Scottish Ministers where a planning authority fail to comply with subsection 75A(5) (their duty to give notice of their determination of an application to modify or discharge an obligation) or determine that an obligation is to continue without modification.
135. Subsection (3) states that an appeal may be made within such period and by a notice served as prescribed in regulations. Subsection (4) allows the Scottish Ministers to continue, discharge or modify an obligation, and subsection (5) requires Ministers to give notice of their determination to the applicant.
136. Subsections (6) to (8) set out that when this determination takes effect where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland this is the date of recording or registration as the case may be.
137. Subsection (9) allows regulations to provide for the form and content of a notice served under subsection 75B(3), or given under subsection 75B(5).
138. Subsection (10) provides that the determination of an appeal under this section by Scottish Ministers is final save to the extent that there is a right to apply to the Court of Session under section 239 of the 1997 Act.
139. **New section 75C – Planning obligations: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by a planning obligation when ceasing to be the owner of that land. Under subsection (4), unless the obligation states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but in terms of subsection (5) that person may recover any expenditure incurred from the former owner.
140. **Subsection (2)** provides that subsections (3) and (4) of the existing section 75 of the 1997 Act will continue to apply to agreements entered into before the coming into force of section 23(1) of this Act.