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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 222**

**TOWN AND COUNTRY PLANNING**

**The Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009**

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|--|---------|------------------------|
| <i>Made</i>                                | - - - - | <i>3rd June 2009</i>   |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>5th June 2009</i>   |
| <i>Coming into force</i>                   | - -     | <i>3rd August 2009</i> |

The Scottish Ministers make the following Order in exercise of the powers conferred by section 58(1) and (2) of the Planning etc. (Scotland) Act 2006<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009 and comes into force on 3rd August 2009.

(2) In this Order—

“the Act” means the Town and Country Planning (Scotland) Act 1997<sup>(2)</sup>;

“the 2006 Act” means the Planning etc. (Scotland) Act 2006.

**Initiation and completion of development**

**2.** Sections 27A (notification of initiation of development), 27B (notification of completion of development) and 27C (display of notice while development is carried out) of the Act<sup>(3)</sup> apply only in respect of development for which planning permission is given on or after 3rd August 2009.

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(1) 2006 asp 17.

(2) 1997 c. 8.

(3) Sections 27A, 27B and 27C are introduced into the Town and Country Planning (Scotland) Act 1997 (“the Act”) by section 6(1) of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”).

### **Variation of planning applications**

3. Section 32A(3)(4) (variation of application other than one referred to the Scottish Ministers) of the Act applies only to appeals under section 47 (right of appeal) of the Act where notice of appeal is given to the Scottish Ministers under section 47(3) of the Act on or after 3rd August 2009.

### **Neighbour notification**

4.—(1) Notwithstanding the commencement of section 10 (publicity for applications) of the 2006 Act on 3rd August 2009, sections 34 (publication of notices of applications) and 38(1) (consultations in connection with determination of applications) of the Act shall continue to have effect as they did immediately before that date—

- (a) in respect of an application mentioned in paragraph (2); and
- (b) for the purposes of paragraph 7(5) of Schedule 9 (review of old mineral planning permissions) and paragraph 6(3) of Schedule 10 (periodic review of mineral planning permissions) to the Act.

(2) The applications are—

- (a) an application for planning permission;
- (b) an application for an approval required by a development order; and
- (c) an application for any consent, agreement or approval required by a condition imposed by a grant of planning permission,

made before 3rd August 2009.

### **Keeping and publication of lists of applications**

5. Section 36A(5) (lists of applications) of the Act applies only in relation to applications and notices mentioned in section 36A(1) of the Act where such application is made to or notice received by the planning authority on or after 3rd August 2009.

### **Power of planning authority to decline to determine applications**

6. Notwithstanding the coming into force of section 15 (additional grounds for declining to determine application for planning permission) of the 2006 Act on 3rd August 2009, section 39 (power of planning authority to decline to determine applications) of the Act shall continue to have effect as it did immediately before that date in respect of an application for planning permission made before that date.

### **Local developments: right to appeal for non-determination of an application**

7.—(1) Notwithstanding the commencement of section 17 (local developments: schemes of delegation) of the 2006 Act on 3rd August 2009, where the date on which a person who made an application of a kind mentioned in section 47(1) (appeals against planning decisions) of the Act first becomes entitled to appeal to the Scottish Ministers under section 47(2) (appeal against failure to take planning decision) of the Act is before 3rd August 2009—

- (a) section 47(2) of the Act shall continue to apply; and
- (b) section 43A(8)(c) of the Act(6) (right of review following failure to take planning decision) shall not apply,

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(4) Section 32A is introduced into the Act by section 8 of the 2006 Act.

(5) Section 36A is introduced into the Act by section 13 of the 2006 Act.

(6) Section 43A is introduced into the Act by section 17 of the 2006 Act.

in respect of that application.

(2) Section 43A(8)(a) and (b) (right of review of decision of appointed person) of the Act only apply in respect of an application determined by a person appointed by virtue of a scheme of delegation where notice of the decision on the application is given to the applicant on or after 3rd August 2009.

### **Call-in of applications by the Scottish Ministers**

**8.** Where a direction requiring an application to be referred to the Scottish Ministers instead of being dealt with by the planning authority is given under section 46(1) (call-in of application) of the Act before 3rd August 2009 section 46 of the Act shall continue to apply for the purposes of that application as it had effect immediately before that date.

### **Appeals**

**9.—(1)** Where notice of appeal is given to the Scottish Ministers under section 47(3) (appeals against planning decisions and failure to take such decisions), 130(2) (appeal against enforcement notice), 154(2) (appeal against refusal of certificate of lawful use or development), 169(2) (appeal against section 168 notice) or 180(2) (appeal against amenity notice) of the Act before 3rd August 2009—

- (a) the provisions of the Act specified in paragraph (2), as the case may be, shall continue to apply for the purposes of that appeal as those provisions had effect immediately before that date; and
- (b) section 47A(7) (matters which may be raised in an appeal under section 47(1)) of the Act shall not apply for the purposes of that appeal.

(2) The provisions are—

- (a) section 47 (appeals against planning decision and failure to take planning decision);
- (b) section 48 (determination of appeals);
- (c) section 130 (appeals against enforcement notice);
- (d) section 131 (appeals: supplementary provisions);
- (e) section 133 (grant or modification of planning permission on appeal against enforcement notice);
- (f) section 155 (further provision as to appeals);
- (g) section 169 (appeal against section 168 notice); and
- (h) Schedule 4 (determination of appeals by appointed person).

### **Duration of planning permission etc.**

**10.—(1)** Notwithstanding the commencement of sections 20(1) (duration of planning permission), 22 (further provision as regards duration of planning permission) and 56 (repeals) of and the schedule (repeals) to the 2006 Act on 3rd August 2009 the provisions of the Act specified in paragraph (2) shall continue to apply as they did immediately before that date in respect of a planning permission granted or deemed to have been granted before that date.

(2) The provisions are—

- (a) section 41 (conditional grant of planning permission);
- (b) section 58 (duration of planning permission);

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(7) Section 47A is introduced into the Act by section 19(2) of the 2006 Act.

- (c) section 60 (provisions supplementary to sections 58 and 59);
- (d) section 61 (termination of planning permission by reference to time limits);
- (e) section 71 (order requiring discontinuance of use);
- (f) section 88 (purchase notices); and
- (g) section 232 (right to compensation).

### **Planning permission in principle**

#### **11. Where—**

- (a) an application for outline planning permission is made before 3rd August 2009; and
- (b) no notice of the decision of the planning authority on the application is given to the applicant before that date,

the application shall for the purposes of section 59 (planning permission in principle) of the Act (as substituted by section 21 of the 2006 Act) be treated as an application for planning permission in principle.

### **Stop Notices: compensation**

**12.** Notwithstanding the commencement of section 56 (repeals) of and the schedule (repeals) to the 2006 Act on 3rd August 2009, section 143(2) (compensation for loss due to stop notice) of the Act shall continue to apply as it did immediately before that date in relation to a stop notice where the enforcement notice to which that stop notice relates is quashed or varied on the grounds mentioned in section 130(1)(a) (appeal against enforcement notice) of the Act as continued in force by article 9.

### **Urgent Crown development: application**

**13.** Section 242A(11)(8) of the Act shall continue to apply as it did immediately before 3rd August 2009 in respect of any application for planning permission made under section 242A of the Act before that date.

### **Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994**

**14.—(1)** The Conservation (Natural Habitats, &c.) Regulations 1994(13) are amended in accordance with paragraph (2).

(2) In regulation 54(4) (grant of planning permission)—

- (a) for “outline planning permission” in the first and second places where those words occur, substitute “planning permission in principle”;
- (b) for “approval of any reserved matters” substitute “any approval, consent or agreement required by a condition imposed on the grant of the permission”; and
- (c) for the words “In this paragraph” to the end substitute—

“In this paragraph “planning permission in principle” has the same meaning as in section 59 of the Town and Country Planning (Scotland) Act 1997(9).”.

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(8) Section 242A was inserted by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c. 2).

(13) S.I.1994/2716 as relevantly amended by S.I. 2007/1843.

(9) Section 59 is amended by section 21(1) of the 2006 Act.

## **Planning (Hazardous Substances)(Scotland) Act 1997**

15. Notwithstanding the amendment of sections 34 (publication of notices of applications), 130 (appeal against enforcement notice), 131 (appeals: supplementary provisions), 133 (grant or modification of planning permission on appeal) and 143 (compensation for loss due to stop notice) of the Act by the 2006 Act on 3rd August 2009 those provisions shall continue to have effect as they did immediately before that date for the purposes of sections 6 (certificates as to interests in land), 23 (contravention notices: supplementary provisions) and 29 (fees) of the Planning (Hazardous Substances) (Scotland) Act 1997<sup>(10)</sup>.

## **Amendment of the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004**

16.—(1) Subject to paragraph (8), the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004<sup>(11)</sup> are amended in accordance with paragraphs (2) to (7).

(2) In regulation 1(2)(a)(ii) (application) for “of reserved matters” substitute “, consent or agreement required by a condition imposed on a grant of planning permission in principle”.

(3) In regulation 2 (interpretation) for the definition of “outline planning permission” and “reserved matters” substitute ““planning permission in principle” has the same meaning as in section 59 of the 1997 Act<sup>(12)</sup>”.

(4) In regulation 3 (fees for planning applications) for “the approval of reserved matters” substitute “approval, consent or agreement required by a condition imposed on a grant of planning permission in principle”.

(5) In regulation 7 (exceptions)—

(a) in paragraph (a) omit “or” at the end of paragraph (iv) and after paragraph (iv) insert—

“(v) a requirement to review the application for planning permission under section 43A(8)(c) of the 1997 Act (review in default of planning decision); or”;  
and

(b) for paragraph (b) substitute—

“(b) the giving of approval, consent or agreement in respect of one or more matters requiring such approval, consent or agreement in terms of a condition imposed on a grant of a planning permission in principle following—

- (i) the withdrawal before notice of decision was issued of an application for such approval, consent or agreement in respect of the same matters;
- (ii) the granting of such an application in respect of the same matters;
- (iii) the refusal of such an application in respect of the same matters;
- (iv) the making of an appeal to the Scottish Ministers under section 47(2) of the 1997 Act in relation to such an application in respect of the same matters; or
- (v) a requirement to review such an application in respect of the same matters under section 43A(8)(c) of the 1997 Act.”.

(6) In regulation 8 (exceptions)—

(a) in paragraph (a)—

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<sup>(10)</sup> 1997 c. 10.

<sup>(11)</sup> S.S.I. 2004/219 as amended by S.S.I. 2007/253 and S.S.I. 2007/268.

<sup>(12)</sup> Section 59 is amended by section 21(1) of the [Planning etc. \(Scotland\) Act 2006](#) (asp 17).

- (i) in sub-paragraph (ii) for “approval of details of reserved matters” substitute “approval, consent or agreement in terms of a condition imposed on a grant of a planning permission in principle”; and
  - (ii) for sub-paragraph (iv) substitute—
    - “(iv) in the case of an application which is made following an appeal under section 47(2) of the 1997 Act or a review under section 43A(8)(c) of the 1997 Act, the expiry of the period prescribed by virtue of section 47(2) or section 43A(8)(c) of the 1997 Act as the case may be;”;
  - (b) in paragraph (b)—
    - (i) for “made in outline” in both places where those words occur substitute “an application for planning permission in principle”; and
    - (ii) for “outline planning permission” substitute “planning permission in principle”; and
  - (c) in paragraph (d) for “approval of reserved matters” substitute “approval, consent or agreement required by a condition imposed on a grant of planning permission in principle”.
- (7) In the Schedule (fees)—
- (a) for “approval of reserved matters” in every place where those words occur substitute “approval, consent or agreement required by a condition imposed on a grant of planning permission in principle”;
  - (b) for “outline planning permission” in every place where those words occur substitute “planning permission in principle”; and
  - (c) in paragraph 5—
    - (i) in paragraph (1)(a) for “approval of one or more reserved matters” substitute “approval, consent or agreement in respect of one or more matters requiring such approval, consent or agreement in terms of a condition imposed on a grant of a planning permission in principle”;
    - (ii) in paragraph (2) for “approval of all matters reserved by the outline permission” substitute “approval, consent or agreement in respect of all the matters requiring such approval, consent or agreement in terms of conditions imposed on a grant of a planning permission in principle”; and
  - (d) in paragraphs 12(1) and 13 for “outline application” substitute “application for planning permission in principle”.
- (8) The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 shall continue to have effect as they did immediately before 3rd August 2009 in respect of any application for approval of reserved matters.
- (9) In this article “reserved matters” has the same meaning as in section 59 (outline planning permission) of the Act as it applied immediately before section 21 of the 2006 Act comes into force.

St Andrew’s House,  
Edinburgh  
3rd June 2009

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes saving, transitional and consequential provisions in relation to the commencement of various provisions of the Planning etc. (Scotland) Act 2006 (“the 2006 Act”).

Section 6 of the 2006 Act introduces new sections 27A to 27C into the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). Article 2 provides that these new sections will apply only in respect of development authorised by a planning permission given after 3rd August 2009.

Section 8 of the 2006 Act introduces new section 32A into the 1997 Act. New section 32A will generally have effect immediately upon coming into force but article 3 provides that the restriction on variation of an application after an appeal has been made under section 47 of the 1997 Act will only apply where the notice of appeal is given after 3rd August 2009.

Article 4 preserves the existing sections 34 and 38(1) in relation to requirements to give notice of applications made before 3rd August 2009 and for the purposes of the review of mineral planning permissions under Schedules 9 and 10 of the 1997 Act.

Article 5 provides that the requirement to keep a list of applications under new section 36A of the 1997 Act as introduced by section 13 of the 2006 Act will only apply in respect of applications and notices received by the planning authority on or after 3rd August 2009.

Section 39 of the 1997 Act enables a planning authority to decline to determine an application in certain circumstances. Section 15 of the 2006 Act amends section 39 to introduce a wider range of circumstances in which the planning authority will be able to do so. Article 6 provides that for the purposes of an application made before 3rd August 2009 section 39 shall continue to apply as if not amended by section 15 of the 2006 Act.

Article 7(1) preserves an applicant’s right to appeal to the Scottish Ministers in respect of the failure of a planning authority to determine an application where that right arises prior to 3rd August 2009. Article 7(2) makes it clear that a right to require a review of an application under section 43A(8)(a) or (b) will only arise where the decision in question is made on or after 3rd August 2009.

The Schedule to the 2006 Act amends section 46 of the Act. Article 8 preserves section 46 as it applies immediately before 3rd August 2009 in relation to applications called in by the Scottish Ministers for determination before that date.

The 2006 Act amends various appeal provisions in the 1997 Act, article 9 preserves the provisions relation to such appeals as they apply immediately before 3rd August 2009 in relation to appeals which are made before that date. Article 9 also provides that the new section 47A introduced by section 19(2) of the 2006 Act will not apply to appeals under section 47 of the 1997 Act made before that date.

Section 20 of the 2006 Act amends section 58 of the 1997 Act to remove the requirement to impose conditions relating to when development must begin and to remove the imposition of a deemed condition if this requirement is not met. Planning permissions granted before 3rd August 2009 will however be subject to such a condition and article 10 preserves the existing law as it relates to such conditions.

Section 21 of the 2006 Act substitutes a new section 59. From 3rd August 2009 a planning authority will no longer grant outline planning permission but will instead grant planning permission in principle. Article 11 provides that where an application is made for outline planning permission

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before that date but no decision has been made on the application as at that date then the application is to be treated as if it is an application for planning permission in principle.

Article 12 preserves the existing provisions of section 143(2) for the purposes of compensation payable in relation to a stop notice where the related enforcement notice is quashed or varied on the grounds mentioned in section 130(1)(a). These grounds will only apply in relation to appeals made before 3rd August 2009.

Section 242A(11) is amended by the 2006 Act in consequence of changes to section 46 made by the 2006 Act. Article 13 preserves the current provisions in respect of an application made under section 242A before 3rd August 2009.

Articles 14 and 16 amend the Conservation (Natural Habitats, &c.) Regulations 1994 and the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 consequential upon the replacement by the 2006 Act of outline planning permission with planning permission in principle and applications for reserved matters with applications for approval, consent or agreement required by a condition imposed on the grant of planning permission. Article 15 preserves various provisions of the 1997 Act as they apply for the purposes of the Planning (Hazardous Substances) (Scotland) Act 1997.