



Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

1972 CHAPTER 52

PART III

GENERAL PLANNING CONTROL

Duration of planning permission

38 Limit of duration of planning permission.

- (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) five 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 the said date as the authority concerned with the terms of the planning permission may direct, being a period which the authority considers appropriate having regard to the provisions of the development plan and to any other material considerations.
- (2) If planning permission is granted without the condition required by subsection (1) of this section, 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 five years beginning with the date of the grant.
- (3) Nothing in this section applies—
 - (a) to any planning permission granted by a development order;
 - [^{F1}(aa) to any planning permission granted by an enterprise zone scheme;]
 - [^{F2}(ab) to any planning permission granted by a simplified planning zone scheme;]
 - (b) to any planning permission granted for a limited period;

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Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Cross Heading: Duration of planning permission. (See end of Document for details)

- [^{F3}(bb) to 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;]
- (c) to any planning permission [^{F4}for any development carried out before the grant of planning permission]
- (d) to any outline planning permission, as defined by section 39 of this Act.

Textual Amendments

- F1** S. 38(3)(aa) inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 32 para. 19\(2\)](#)
- F2** S. 38(3)(ab) inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 26\(3\), Sch. 6 Pt. IV para. 2](#)
- F3** S. 38(3)(bb) substituted (24.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 51, Sch. 8, para. 3 \(with s. 84\(5\)\); S.I. 1992/71, art. 2](#)
- F4** Words in s. 38(3)(c) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 61, Sch. 13, para.13 \(with s. 84\(5\)\); S.I. 1992/334, Sch. 2](#)

39 Outline planning permission.

- (1) In this section and section 38 of this Act “outline planning permission” means planning permission granted, in accordance with the provisions of [^{F5}regulations under this Act or]a development order, with the reservation for subsequent approval by the . . . ^{F6} planning authority or the Secretary of State of matters (referred to in this section as “reserved matters”) not particularised in the application.
- (2) Subject to the provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the following effect—
- (a) that, in the case of any reserved matter, application for approval must be made [^{F7}before—
 - (i) the expiration of 3 years from the date of the grant of outline planning permission; or
 - (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:

Provided that only one such application may be made in the case after the expiration of the 3 year period mentioned in sub-paragraph (i) above]; and

- (b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates—
 - (i) the expiration of five years from the date of the grant of outline planning permission; or

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- (ii) the expiration of two 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) If outline planning permission is granted without the conditions required by subsection (2) of this section, it shall be deemed to have been granted subject to those conditions.
- (4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2) of this section, substitute, or direct that there be substituted, for the periods of three years, five years or two years referred to in that subsection such other periods respectively (whether longer or shorter) as they consider appropriate.
- (5) The said authority may, in applying the said subsection, specify, or direct that there be specified, separate periods under paragraph (a) of the subsection in relation to separate parts of the development to which the planning permission relates; and, if they do so, the condition required by paragraph (b) of the subsection shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.
- (6) In considering whether to exercise their powers under subsections (4) and (5) of this section, the said authority shall have regard to the provisions of the development plan and to any other material considerations.

Textual Amendments

- F5** Words in s. 39 inserted (25. 9. 1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 61, Sch. 13, para.14 (with s. 84(5)); S.I. 1991/2092, art.3
- F6** Word repealed by Local Government (Scotland) Act 1973 (c. 65), s. 172(2)
- F7** Words substituted by Local Government and Planning (Scotland) Act 1982 (c.43), Sch. 2 para. 13

40 Provisions supplementary to ss. 38 and 39.

- (1) For the purposes of sections 38 and 39 of this Act, development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out.
- (2) In subsection (1) of this section “specified operation” means any of the following, that is to say—
 - (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - (c) 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 the last preceding paragraph;
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land, where that change constitutes material development.
- (3) In subsection (2)(e) of this section “material development” means any development other than—

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- (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;
 - [^{F8}(b) development of a class specified in paragraph 1 or 2 of Schedule 6 to this Act;]
 - (c) development of any class prescribed for the purposes of this subsection;
- and in this subsection “general development order” means a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land in Scotland.
- (4) The authority referred to in sections 38(1)(b) and 39(4) of this Act is the . . . ^{F9} planning authority or the Secretary of State, in the case of planning permission granted by them, and—
- (a) in the case of planning permission under section 37 of this Act is the department on whose direction planning permission is deemed to be granted; and
 - (b) in the case of planning permission granted on an appeal determined, under paragraph 1 or 4 of Schedule 7 to this Act, by a person appointed by the Secretary of State to determine the appeal, is that person.
- (5) For the purposes of section 39 of this Act, a reserved matter shall be treated as finally approved when an application for approval is granted or, in a case where the application is made to the . . . ^{F9} planning authority and there is an appeal to the Secretary of State against the authority’s decision on the application and the Secretary of State or a person appointed by him under paragraph 1 or 4 of Schedule 7 to this Act to determine the appeal grants the approval, on the date of the determination of the appeal by the Secretary of State or that person.
- (6) Where a . . . ^{F9} planning authority grant planning permission, the fact that any of the conditions of the permission are required by the provisions of sections 38 or 39 of this Act 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 33 of this Act against the decision of the authority.
- (7) In the case of planning permission (whether outline or other) having conditions attached to it by or under section 38 or 39 of this Act—
- (a) development carried out after the date by which the conditions of the permission 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.

Textual Amendments

F8 S. 40(3)(b) substituted (25. 9. 1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\)](#), s. 60(6), [Sch. 12, para. 10](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

F9 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [s. 172\(2\)](#)

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41 Termination of planning permission by reference to time limit.

- (1) The following provisions of this section shall have effect where, by virtue of section 38 or 39 of this Act, 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 and that development has been begun within that period but the period has elapsed without the development having been completed.
- (2) If the . . . ^{F10} planning authority are of opinion that the development will not be completed within a reasonable period, they may serve a notice (in this section referred to as a “completion notice”) stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice, being a period of not less than twelve months after the notice takes effect.
- (3) a completion notice—
 - (a) shall be served on the owner and on the occupier of the land and on any other person who in the opinion of the . . . ^{F10} planning authority will be affected by the notice; and
 - (b) shall take effect only if and when it is confirmed by the Secretary of State, who may in confirming it 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.
- (4) If, within such period as may be specified in a completion notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall afford to that person and to the . . . ^{F10} planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) If a completion notice takes effect, the planning permission therein referred to shall at the expiration of the period specified in the notice, whether the original period specified under subsection (2) of this section or a longer period substituted by the Secretary of State under subsection (3) of this section, be invalid except so far as it authorises any development carried out thereunder up to the end of that period.
- (6) The . . . ^{F10} planning authority may withdraw a completion notice at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if they do so they shall forthwith give notice of the withdrawal to every person who was served with the completion notice.

Textual Amendments

F10 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

[^{F11}41A Limit of duration of planning permission for winning and working of minerals.

- (1) Every planning permission for development [^{F12}—
 - (a) consisting of the winning and working of minerals; or
 - (b) involving the depositing of mineral waste,]shall be subject to a condition as to the duration of the development.

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- (2) Except where a condition is specified under subsection (3) of this section the condition in the case of planning permission granted or deemed to be granted after the date of the commencement of section 24 of the ^{M1}Town and Country Planning (Minerals) Act 1981 is that the [^{F13}winning and working of minerals or the depositing of mineral waste] must cease not later than the expiration of the period of sixty years beginning with the date of the permission.
- (3) An authority granting planning permission after the date of the commencement of the said section 24 or directing after that date that planning permission shall be deemed to be granted may specify a longer or shorter period than sixty years, and if they do so, the condition is that the [^{F13}winning and working of minerals or the depositing of mineral waste] must cease not later than the expiration of a period of the specified length beginning with the date of the permission.
- (4) A longer or shorter period than sixty years may be prescribed for the purposes of subsections (2) and (3) of this section.
- (5) The condition in the case of planning permission granted or the commencement of section 24 of the ^{M2}Town and Country Planning (Minerals) Act 1981 is that the [^{F13}winning and working of minerals or the depositing of mineral waste] must cease not later than the expiration of the period of sixty years beginning with the date of the commencement of that section.
- (6) A condition to which planning permission for development [^{F14}. . .] is subject by virtue of this section is not to be regarded for the purposes of this Act as a condition such as is mentioned in subsection (1)(b) of section 27 of this Act.
- (7) Where planning permission for development [^{F14}. . .] is granted by the planning authority, any condition to which it is subject by virtue of this section is to be regarded for the purposes of section 33 of this Act as a condition imposed by a decision of the planning authority, and may accordingly be the subject of an appeal under that section.]

Textual Amendments

- F11** S. 41A inserted by [Town and Country Planning \(Minerals\) Act 1981 \(c. 36\), s. 24](#)
- F12** Words in s. 41A(1) substituted (24.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 51, Sch. 8 para. 4\(1\)](#) (with s. 84(5)); S.I. 1992/71, [art.2](#)
- F13** Words in s. 41A(2)(3)(5) substituted (24.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 51, Sch. 8, para. 4\(2\)](#) (with s. 84(5)); S.I. 1992/71, [art. 2](#)
- F14** Words in s. 41A(6)(7) omitted (24.1.1992) by virtue of [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), ss. 51, 84\(6\), Sch. 8, para. 4\(3\), Sch. 19, Pt.IV](#) (with s. 84(5)); S.I. 1992/71, [art. 2](#)

Marginal Citations

- M1** 1981 c. 36.
- M2** 1981 c. 36.

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