



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART III

CONTROL OVER DEVELOPMENT

Determination of applications

37 Determination of applications: general considerations.

- (1) Where an application is made to a planning authority for planning permission—
 - (a) subject to sections [F¹27B(2) [F², 58 and 59]], they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or
 - (b) they may refuse planning permission.

- (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

[F³(2A) The notice of the planning authority's decision on an application must include a statement as to whether the authority consider that the application is for a development that is in accordance with the development plan for the time being applicable to the area to which the application relates together with an explanation of why the authority have reached that view.]

- (3) Subsection (1) has effect subject to sections 34 and 35 and to the following provisions of this Act, and to sections 59(1), 60 and 65 of the ^{M1}Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

- (4) The date of the grant or refusal of—
 - (a) planning permission,
 - (b) an approval required by a development order, or

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(c) any consent, agreement or approval required by a condition imposed on the grant of planning permission,
shall be the date on which the [^{F4}notice of the] planning authority's decision bears to have been signed on behalf of the authority.

Textual Amendments

- F1** Words in s. 37(1)(a) substituted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 54\(5\)\(a\), 59\(2\); S.S.I. 2009/219, art. 2, sch.](#)
- F2** Words in s. 37(1)(a) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\), s. 63\(2\), sch. 2 para. 6\(2\); S.S.I. 2022/275, reg. 2\(2\)\(f\) \(with reg. 3\)](#)
- F3** S. 37(2A) inserted (1.3.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\), ss. 30\(2\), 63\(2\); S.S.I. 2019/385, reg. 3](#)
- F4** Words in s. 37(4) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 54\(5\)\(b\), 59\(2\); S.S.I. 2009/219, art. 2, sch.](#)

Marginal Citations

- M1** 1997 c. 9.

38 Consultations in connection with determination of applications.

- (1) In determining any application [^{F5}mentioned in section 34(2)], the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection [^{F6}(4)(a)] of that section.
- (2) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 35(1)(b), regulations or a development order may—
- (a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;
 - (b) require a planning authority—
 - (i) to take into account in determining such an application such representations, made within such period, as may be prescribed, and
 - (ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (3) Regulations or a development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) Before a planning authority grant planning permission for the use of land as a caravan site they shall, unless they are also the authority with power to issue a site licence for that land, consult the local authority with that power.
- (5) In this section “site licence” means a licence under Part 1 of the ^{M2}Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site.

Textual Amendments

- F5** Words in s. 38(1) 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\(2\)\(a\), 59\(2\) \(with S.S.I. 2009/222, art. 4\); S.S.I. 2008/411, art. 2\(2\)\(3\)\(a\), S.S.I. 2009/219, art. 2, sch.](#)

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F6 Word in s. 38(1) 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(2)(b), 59(2)** (with [S.S.I. 2009/222](#), **art. 4**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, **sch.**

Marginal Citations

M2 [1960 c. 62](#).

[^{F7}38A Pre-determination hearings

- (1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.
- (2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the authority consider appropriate.
- (3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.
- (4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a planning authority may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the authority do so elect, subsections (2) and (3) apply accordingly.]

Textual Amendments

F7 S. 38A 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. 14(1), 59(2)**; [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

39 [^{F8}Declining to determine an application]

- [^{F9}(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—
- (a) if—
 - (i) in the period of [^{F10}5] years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and
 - (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
 - (b) if—

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- (i) in that period of [F115] years the planning authority have refused more than one similar application,
 - (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
 - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (c) if—
- (i) in that period of [F125] years the planning authority have refused more than one similar application,
 - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
 - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (d) if—
- (i) in that period of [F135] years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
 - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or
- (e) if—
- (i) in that period of [F145] years two similar applications have been made to the planning authority,
 - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
 - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in the development plan (so far as material to the current application) or in any other material consideration.
- (1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—
- (a) compliance with section 35B was required as respects the development, and
 - (b) there has not been such compliance.
- (1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.

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(1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.

(1D) Subsection (1A) is subject to section 35A(9).]

(2) For the purposes of this section an application for planning permission for the development of any land shall be taken to be similar to a later application only if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.

[^{F15}(2A) For the purposes of the application of this section by virtue of section 43A(5)—

- (a) the references in subsection (1) to an appeal to the Scottish Ministers include a reference to a requirement on the planning authority to review a case by virtue of section 43A(8);
- (b) the references in that subsection to the dismissal by the Scottish Ministers of an appeal include a reference to the upholding by the planning authority of a determination on review; and
- (c) the references to an appeal under section 47(2) include a reference to a requirement to review under section 43A(8)(c).]

^{F16}(3)

Textual Amendments

- F8** S. 39 heading 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. 15\(c\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 6](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)
- F9** S. 39(1)-(1D) substituted for s. 39(1) (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. 15\(a\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 6](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)
- F10** Word in [s. 39\(1\)\(a\)\(i\)](#) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 22\(2\)\(a\)](#), [63\(2\)](#); [S.S.I. 2022/275](#), [reg. 2\(2\)\(a\)](#) (with [reg. 3](#))
- F11** Word in [s. 39\(1\)\(b\)\(i\)](#) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 22\(2\)\(b\)](#), [63\(2\)](#); [S.S.I. 2022/275](#), [reg. 2\(2\)\(a\)](#) (with [reg. 3](#))
- F12** Word in [s. 39\(1\)\(c\)\(i\)](#) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 22\(2\)\(c\)](#), [63\(2\)](#); [S.S.I. 2022/275](#), [reg. 2\(2\)\(a\)](#) (with [reg. 3](#))
- F13** Word in [s. 39\(1\)\(d\)\(i\)](#) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 22\(2\)\(d\)](#), [63\(2\)](#); [S.S.I. 2022/275](#), [reg. 2\(2\)\(a\)](#) (with [reg. 3](#))
- F14** Word in [s. 39\(1\)\(e\)\(i\)](#) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), [ss. 22\(2\)\(e\)](#), [63\(2\)](#); [S.S.I. 2022/275](#), [reg. 2\(2\)\(a\)](#) (with [reg. 3](#))
- F15** S. 39(2A) inserted (2.2.2013) by [The Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \(S.S.I. 2013/26\)](#), [arts. 1](#), [2\(2\)](#)
- F16** S. 39(3) repealed (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. 15\(b\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 6](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)

[^{F17}39A Declining to determine an application: further provision

The Scottish Ministers must publish guidance outlining what constitutes a “similar application” and a “significant change” for the purposes of section 39.]

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Textual Amendments

- F17** S. 39A inserted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 38(2)**, 63(2); S.S.I. 2022/275, reg. 2(2)(d) (with reg. 3)

40 Assessment of environmental effects.

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects^[F18], including effects on biodiversity,] of the proposed development.
- (2) The regulations—
- may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any ^[F19]EU obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the ^{M3}European Communities Act 1972, and
 - may make different provisions for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, no statutory instrument containing such regulations shall be subject to annulment by virtue of section 275(3).
- ^[F20](4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.
- [In subsection (1), “effects on biodiversity” includes the net positive effects on ^{F21}(4A) biodiversity that would be likely to result from the development.]
- (5) In subsection (4), “ water environment ” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3).]

Textual Amendments

- F18** Words in s. 40(1) inserted (1.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 24(2)(a)**, 63(2); S.S.I. 2019/385, reg. 2
- F19** Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F20** S. 40(4)(5) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(3)**, 38(1); S.S.I. 2007/50, art. 2
- F21** S. 40(4A) inserted (1.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 24(2)(b)**, 63(2); S.S.I. 2019/385, reg. 2

Marginal Citations

- M3** 1972 c. 68.

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41 Conditional grant of planning permission.

- (1) Without prejudice to the generality of section 37(1) to (3), conditions may be imposed on the grant of planning permission under that section—
 - (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;
 - (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.
 - [^{F22}(c) for identifying (whether by means of a specified time period or otherwise) when the applicant may be required to—
 - (i) make an application for a consent, agreement or approval, or
 - (ii) carry out some other action in connection with the permission or development.]
- (2) Conditions may not be imposed by a planning authority under subsection (1)(a) for regulating the development or use of any land within the area of another planning authority except with the consent of that authority.
- (3) Subject to paragraph 1(6)(a) of Schedule 3, a planning permission which is granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.
- (4) Where—
 - (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition, and
 - (b) any building or other operations are commenced after the time so specified, the commencement and carrying out of those operations do not constitute development for which that permission was granted.
- ^{F23}(5)
- (6) Part I of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals.

Textual Amendments

F22 S. 41(1)(c) inserted (1.10.2022) by Planning (Scotland) Act 2019 (asp 13), ss. 32(2), 63(2); S.S.I. 2022/275, reg. 2(2)(b) (with reg. 3)

F23 S. 41(5) repealed (3.8.2009) by Planning etc. (Scotland) Act 2006 (asp 17), s. 59(2), sch. (with S.S.I. 2009/222, art. 10(2)(a)); S.S.I. 2009/219, art. 2, sch.

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[^{F24} **41A Conditional grant of planning permission: noise-sensitive developments**

- (1) A development that is the subject of an application for planning permission is a “noise-sensitive development” if residents or occupiers of the development are likely to be affected by significant noise from existing activity in the vicinity of the development (a “noise source”).
- (2) Without prejudice to the generality of section 41(1), a planning authority—
 - (a) must, when considering under section 37 whether to grant planning permission for a noise-sensitive development subject to conditions, take particular account of whether the development includes sufficient measures to mitigate, minimise or manage the effect of noise between the development and any existing cultural venues or facilities (including in particular, but not limited to, live music venues), or dwellings or businesses in the vicinity of the development, and
 - (b) may not, as a condition of granting planning permission for a noise-sensitive development, impose on a noise source additional costs relating to acoustic design measures to mitigate, minimise or manage the effects of noise.]

Textual Amendments

F24 S. 41A inserted (20.12.2019) by Planning (Scotland) Act 2019 (asp 13), ss. 25(2), 63(2); S.S.I. 2019/377, reg. 2 (with reg. 4)

[^{F25} **41B Conditional grant of planning permission: provision of toilet facilities within certain large developments**

- (1) Without prejudice to the generality of section 41(1), a planning authority may grant planning permission for a development that falls within subsection (2) only on condition that the development includes at least one toilet facility described in subsection (3).
- (2) A development that is the subject of an application for planning permission falls within this subsection if it is for the construction of a building, structure or other erection for use for any of the following purposes—
 - (a) as a school, college or university,
 - (b) as a community centre, sports and leisure centre, or similar public building,
 - (c) as a hospital or other facility for the provision of health services,
 - (d) as a retail outlet^{F26}...,
 - (e) as a cultural centre, such as a museum, concert hall or art gallery,
 - (f) as a stadium or large auditorium,
 - (g) as a major transport terminus or interchange,
 - (h) as a motorway service facility,
 - [as a conference or exhibition centre,
 - ^{F27}(i) as a restaurant or cafe,
 - (j) as a public house or nightclub.]
- (3) The toilet facility mentioned in subsection (1) is an accessible public facility which—

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- (a) has sufficient space, being not less than 12 square metres, to allow up to two carers to assist an adult to use the toilet and the equipment mentioned in paragraph (c),
 - (b) has a ^{F28}...toilet with sufficient space, being not less than 1 metre, from the wall on either side for carers to assist an adult to use the toilet,
 - (c) includes—
 - (i) a height-adjustable changing bench of a size suitable for an adult,
 - (ii) a tracking hoist able to cover the full floor area of the facility,
 - (d) is equipped with—
 - (i) a non-slip floor surface,
 - (ii) a screen or curtain,
 - ^{F29}(iii) a height adjustable wash hand basin,
 - (iv) grab rails to assist in the use of the toilet facility,
 - (v) a shelf [^{F30}or other surface] suitable for temporary placing of colostomy bags and related equipment.
[a call assistance system.]
 - ^{F31}(vi)
- (4) The Scottish Ministers may by regulations—
- (a) amend subsection (2) so as—
 - (i) to add, amend or remove a purpose, or
 - (ii) to describe other types of development that fall within subsection (2), (whether or not by reference to the development's use for a particular purpose) and to amend or remove such types,
 - (b) specify that the requirement in subsection (1) does not apply—
 - (i) to a particular building, structure or erection,
 - (ii) to such descriptions of buildings, structures or erections as may be prescribed, or
 - (iii) in such circumstances as may be prescribed,
 - (c) amend the description of toilet facility in subsection (3).]

Textual Amendments

- F25** S. 41B inserted (1.12.2019 for specified purposes, 18.5.2020 for specified purposes) by [Planning \(Scotland\) Act 2019 \(asp 13\), ss. 26\(2\), 63\(2\)](#); S.S.I. 2019/385, reg. 2; S.S.I. 2020/67, reg. 2 (with reg. 3)
- F26** Words in s. 41B(2)(d) omitted (18.5.2020) by virtue of [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), **2(2)(a)**
- F27** S. 41B(2)(i)-(k) inserted (18.5.2020) by [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), **2(2)(b)**
- F28** Word in s. 41B(3)(b) omitted (18.5.2020) by virtue of [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), **2(3)(a)**
- F29** S. 41B(3)(d)(iii)(iv) substituted (18.5.2020) by [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), **2(3)(b)**
- F30** Words in s. 41B(3)(d)(v) inserted (18.5.2020) by [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), **2(3)(c)**
- F31** S. 41B(3)(d)(vi) inserted (18.5.2020) by [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), **2(3)(d)**

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Modifications etc. (not altering text)

- C1 S. 41B(1) restricted (18.5.2020) by [The Town and Country Planning \(Changing Places Toilet Facilities\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/144\)](#), regs. 1(1), 3

42 Determination of applications to develop land without compliance with conditions previously attached.

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
 - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- [^{F32}(3) The Scottish Ministers may by regulations or a development order make special provision as regards the procedure to be followed in connection with such applications.]
- (4) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.

Textual Amendments

- F32 S. 42(3) substituted (1.12.2019) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), ss. 20(2), 63(2); S.S.I. 2019/385, reg. 2

43 Directions etc. as to method of dealing with applications.

- (1) Provision may be made by regulations or a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by planning authorities, and in particular—
- (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
- [^{F33}(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
- (i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and

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- (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;]
 - (b) for authorising the planning authority, in such cases and subject to such conditions as may be prescribed by the regulations or the order, or by directions given by the Secretary of State under the regulations or the order, to grant planning permission for development which does not accord with the provisions of the development plan;
 - [^{F34}(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars, documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);]
 - (c) for requiring the planning authority, before granting or refusing planning permission for any development, to consult such authorities or persons as may be prescribed by the regulations or the order or by directions given by the Secretary of State under the regulations or the order;
 - (d) for requiring the planning authority to give to any applicant for planning permission, within such time as may be prescribed by the regulations or the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
 - (e) for requiring the planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of their decision on his application, within such time as may be so prescribed;
 - (f) for requiring [^{F35}, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be prescribed by or under the regulations, order or directions], such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.
- [^{F36}(1A) Any notice given by virtue of paragraph (d) or (e) of subsection (1)—
- (a) is to include a statement of—
 - (i) the terms of the planning authority's decision,
 - (ii) any conditions to which that decision is subject, and
 - (iii) the reasons on which the authority based that decision, and
 - (b) may include such other information as may be prescribed by the regulations or the order.]
- (2) Paragraphs (d) and (f) of subsection (1) shall apply in relation to applications for an approval required by regulations under this Act or a development order as they apply in relation to applications for planning permission.
- [^{F37}(3) Paragraphs (a) and (f) of that subsection shall apply in relation to applications under section 75A(2) as they apply in relation to applications for planning permission.
- (4) For the purposes of the application provided for in subsection (3), the reference in paragraph (a) of subsection (1) to restricting the grant of planning permission is to

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be construed as a reference to restricting^{F38}... the making of any determination under [F39 section 75A(4)].]

Textual Amendments

- F33** S. 43(1)(aa) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(i)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F34** S. 43(1)(bb) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(ii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F35** Words in s. 43(1)(f) substituted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(iii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F36** S. 43(1A) 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. 16(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F37** S. 43(3)(4) added (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(c)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.
- F38** Words in s. 43(4) repealed (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 37(3)(a)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F39** Words in s. 43(4) substituted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 37(3)(b)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)

[F40 43A Local developments: schemes of delegation

- (1) A planning authority are—
- (a) as soon as practicable after the coming into force of section 17 of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), and thereafter—
 - (i) whenever required to do so by the Scottish Ministers, or
 - (ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations under this section,

to prepare a scheme (to be known as a “ scheme of delegation ”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and
 - (b) to keep under review the scheme so prepared.
- (2) Other than for the purposes of subsections (8) to (16) or section 47, the determination of any person so appointed is to be treated as that of the authority.
- (3) References in subsection (1) to a development do not include references to a development of a class mentioned in section 38A(1).
- (4) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—
- (a) the form and content of, and
 - (b) the procedures for preparing and adopting,

a scheme of delegation.
- (5) Where an application for planning permission falls to be determined by a person so appointed, sections [F41 27A(2), 27B(2), 30(3), 32A,] 37(1) to (3), 38, 39[F42, 40],

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41(1) and (2)^{F43}, 42, 43(1) to (2), 46, 58, 59 and 60] and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (18)), as they apply to an application which falls to be determined by the planning authority.

- (6) The planning authority may, if they think fit, decide themselves to determine an application which would otherwise fall to be determined by a person so appointed.
- (7) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.
- (8) Where a person so appointed—
 - (a) refuses an application for planning permission or for consent, agreement or approval,
 - (b) grants it subject to conditions, or
 - (c) has not determined it within such period as may be prescribed by regulations or a development order ^{F44} or within such extended period as may at any time be agreed upon in writing between the applicant and the person so appointed], the applicant may require the planning authority to review the case.

^{F45} [A requirement to review may not be made by virtue of paragraph (c) of subsection (8) (8A) if within the period (or extended period) mentioned in that paragraph notice has been given to the applicant that—

- (a) the power under section 39 to decline to determine the application has been exercised; or
- (b) the application has been referred to the Scottish Ministers in accordance with directions given under section 46.]
- (9) Where a requirement to review is made by virtue of paragraph (c) of subsection (8), the person so appointed is, for the purposes of the review, to be deemed to have decided to refuse the application.
- (10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).
- (11) Without prejudice to the generality of subsection (10), the regulations or order may—
 - (a) make different provision for different cases or classes of case,
 - (b) make different provision for different stages of a case,
 - (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
 - (d) make provision in relation to time limits (including a time limit for requiring the review), and
 - (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with.
- (12) Any notice given by virtue of paragraph (e) of subsection (11)—
 - (a) is to include a statement of—
 - (i) the terms in which the planning authority have decided the case reviewed, and
 - (ii) the reasons on which the authority based that decision, and
 - (b) may include such other information as may be prescribed by the regulations or the order.

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- (13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to—
- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or
 - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions,
- and, subject to section 43B, as to what matters may be raised in the course of the review.
- (14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.
- (15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8).
- (16) Subject to subsection (17) and except as provided under section 239, the decision of a planning authority in a case reviewed under this section is final.
- (17) Where a requirement to review is made by virtue of paragraph (c) of subsection (8) and the planning authority have not conducted the review within such period as may be prescribed by regulations or a development order, the authority are to be deemed to have decided to refuse the application and section 47(1) is to apply accordingly.
- (18) The modification is that, in paragraph 1(6) of Schedule 3, for paragraph (b) there is substituted—
- “(b) is to be regarded for the purposes of section 43A as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under subsection (8) of that section.”.

Textual Amendments

- F40** Ss. 43A, 43B inserted (12.12.2008 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 17, 59(2)** (with [S.S.I. 2009/222](#), art. 7(1)(b)(2)); [S.S.I. 2008/411](#), art. 2(2)(3)(a), [S.S.I. 2009/100](#), art. 2, sch., [S.S.I. 2009/219](#), art. 2, sch.
- F41** Words in s. 43A(5) inserted (2.2.2013) by [The Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \(S.S.I. 2013/26\)](#), arts. 1, **2(3)(a)(i)**
- F42** Words in s. 43A(5) inserted (2.2.2013) by [The Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \(S.S.I. 2013/26\)](#), arts. 1, **2(3)(a)(ii)**
- F43** Words in s. 43A(5) substituted (2.2.2013) by [The Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \(S.S.I. 2013/26\)](#), arts. 1, **2(3)(a)(iii)**
- F44** Words in s. 43A(8)(c) inserted (2.2.2013) by [The Public Services Reform \(Planning\) \(Local Review Procedure\) \(Scotland\) Order 2013 \(S.S.I. 2013/24\)](#), arts. 1, **2(2)**
- F45** S. 43A(8A) inserted (2.2.2013) by [The Planning etc. \(Scotland\) Act 2006 \(Supplementary and Consequential Provisions\) Order 2013 \(S.S.I. 2013/26\)](#), arts. 1, **2(3)(b)**

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43B Matters which may be raised in a review under section 43A(8)

- (1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate—
 - (a) that the matter could not have been raised before that time, or
 - (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
 - (a) the provisions of the development plan, or
 - (b) any other material consideration.]

Textual Amendments

F40 Ss. 43A, 43B inserted (12.12.2008 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 17, 59\(2\)](#) (with [S.S.I. 2009/222](#), art. 7(1)(b)(2)); [S.S.I. 2008/411](#), art. 2(2)(3)(a), [S.S.I. 2009/100](#), art. 2, sch., [S.S.I. 2009/219](#), art. 2, sch.

44 Effect of planning permission.

- (1) Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.
- (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
- (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

^{F46}45 Duty to draw attention to certain provisions for benefit of disabled.

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Textual Amendments

F46 S. 45 repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#); [S.S.I. 2009/219](#), art. 2, [sch.](#)

Changes to legislation:

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[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)