



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### *Other controls over development*

- 71 Orders requiring discontinuance of use or alteration or removal of buildings or works.**
- (1) If, having regard to the development plan and to any other material considerations, it appears to a planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
- (a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land, or
  - (b) that any buildings or works should be altered or removed,
- they may by order—
- (i) require the discontinuance of that use, or
  - (ii) impose such conditions as may be specified in the order on the continuance of it, or
  - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,
- as the case may be.
- (2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order.

*Status: Point in time view as at 19/04/2007.*

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- (3) Section 65 shall apply in relation to any planning permission granted by an order under this section as it applies in relation to planning permission granted by the planning authority on an application made under this Part [F1 or section 242A].
- (4) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Secretary of State under this section.
- (5) Planning permission for such development may be granted so as to have effect from—
  - (a) the date on which the development was carried out, or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
- (6) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the planning authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.
- (7) In the case of planning permission granted by an order under this section, the authority referred to in sections 58(1)(b) and 59(5) is the planning authority making the order.
- (8) The previous provisions of this section do not apply to the use of any land for development consisting of the winning or working of minerals or involving the deposit of refuse or waste materials except as provided in Schedule 8, and in that Schedule—
  - (a) Part I shall have effect for the purpose of making provision as respects land which is or has been so used, and
  - (b) Part II shall have effect as respects the registration of old mining provisions.

#### Textual Amendments

- F1** Words in s. 71(3) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(5)

## 72 Confirmation by Secretary of State of section 71 orders.

- (1) An order under section 71 shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (2) Where a planning authority submit an order to the Secretary of State for his confirmation under this section, they shall serve notice—
  - (a) on the owner of the land affected,
  - (b) on the lessee and the occupier of that land, and
  - (c) on any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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- (4) If within that period such a person so requires, the Secretary of State shall, before confirming the order, give such an opportunity both to that person and to the planning authority.
- (5) Where an order under section 71 has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on the owner, the lessee and occupier of the land to which the order relates.

### **73 Power of the Secretary of State to make section 71 orders.**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 71, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require the Secretary of State to give them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 71, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

### **74 Review of mineral planning permissions.**

- (1) Schedule 9 (which makes provision as respects the review of old mineral planning permissions) and Schedule 10 (which makes provision as respects the periodic review of mineral planning permissions) shall have effect.
- (2) Without prejudice to the generality of sections 30 and 31, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 9 or 10.
- (3) In this section and those Schedules “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

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## 75 Agreements regulating development or use of land.

- (1) A planning authority may enter into an agreement with any person interested in land in their district (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement.
- (2) Any such agreement may contain such incidental and consequential provisions (including financial ones) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.
- (3) An agreement made under this section with any person interested in land may, if the agreement has been recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, be enforceable at the instance of the planning authority against persons deriving title to the land from the person with whom the agreement was entered into.
- (4) No such agreement shall at any time be enforceable against a third party who has in good faith and for value acquired right (whether [<sup>F2</sup>title has been completed] or not) to the land prior to the agreement being recorded or registered or against any person deriving title from such third party.
- (5) Nothing in this section or in any agreement made under it shall be construed—
  - (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by any Minister or authority under this Act so long as those powers are exercised in accordance with the provisions of the development plan, or in accordance with any directions which may have been given by the Secretary of State as to the provisions to be included in such a plan, or
  - (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a).

### Textual Amendments

- F2** Words in s. 75(4) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 12 para. 60(2)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### Modifications etc. (not altering text)

- C1** S. 75 modified (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), s. 39 (with ss. 50(2), 51)
- C2** S. 75 modified (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), s. 45(1) (with ss. 52, 60)

**Status:**

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