



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART III

#### CONTROL OVER DEVELOPMENT

##### *Other controls over development*

#### **[<sup>F175</sup> Planning obligations**

- (1) A person may, in respect of land in the district of a planning authority—
- (a) by agreement with that authority, or
  - (b) unilaterally,
- enter into [<sup>F2</sup>a planning obligation.]

[<sup>F3</sup>(1A) For the purpose of this section and sections 75A to 75C, a planning obligation is an obligation which does any of the following—

- (a) restricts or regulates the development or use of land,
  - (b) requires the payment—
    - (i) of a specified amount or an amount determined in accordance with the relevant instrument, or
    - (ii) of periodical sums either indefinitely or for such period as is specified in the relevant instrument.]
- (2) Without prejudice to the generality of [<sup>F4</sup>paragraph (a) of subsection (1A), the reference in that paragraph] to restricting or regulating the development or use of land includes—
- (a) requiring operations or activities specified in the relevant instrument to be carried out in, on, under or over the land, or
  - (b) requiring the land to be used in a way so specified.

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- (3) A planning obligation may—
- (a) be unconditional or subject to conditions,
  - [<sup>F5</sup>(aa) impose a restriction or requirement either permanently or during such period as is specified in the relevant instrument,]
  - <sup>F6</sup>(b) .....
  - (c) contain such incidental and consequential provisions as—
    - (i) in the case of an agreement, appear to the planning authority to be necessary or expedient for the purposes of the agreement, or
    - (ii) in the case of a unilateral obligation, appear to the person entering into the obligation to be necessary or expedient for the purposes of that obligation.
- (4) Without prejudice to the generality of subsection (3)(a), the relevant instrument may provide for the postponement of the effectiveness of the planning obligation to a date specified in the instrument (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (5) A relevant instrument to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the instrument is so recorded or registered then the planning obligation is (unless the instrument provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the planning authority—
- (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection [<sup>F7</sup>(1A)(b) or (2)], and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,
 in so far as the obligation comprises any other requirement.
- (6) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the relevant instrument being so recorded or registered.
- (7) If there is a breach of a requirement, in a planning obligation, to carry out any operations in, on, under or over the land to which the obligation relates, the planning authority may—
- (a) enter the land and carry out the operations, and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (8) Before a planning authority exercise their power under subsection (7)(a) they are to give any person against whom the planning obligation is enforceable not less than twenty-one days' notice of their intention to do so.
- (9) A person wilfully obstructing someone who is acting in the exercise of a power under subsection (7)(a) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section, “owner” means a person who has right to the land to which the planning obligation relates whether or not that person has completed title; but if, in relation to the land (or, if the land is held *pro indiviso*, in relation to any *pro indiviso* share in

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the land) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.

(11) But where a heritable creditor is in lawful possession of security subjects which comprise the land, then “owner” includes the heritable creditor.

(12) For the purposes of subsection (5) it is immaterial whether the person who is owner of the land when the relevant instrument is recorded or registered was owner when the obligation was entered into.]

[<sup>F8</sup>(13) In this section and in sections 75A to 75C, “relevant instrument” means the instrument by which a planning obligation is entered into.]

#### Textual Amendments

- F1** Ss. 75-75C substituted for s. 75 (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. 23, 59(2)** (with S.S.I. 2010/431, arts. 1(1), **3**); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.
- F2** Words in s. 75(1) substituted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(a)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F3** S. 75(1A) inserted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(b)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F4** Words in s. 75(2) substituted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(c)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F5** S. 75(3)(aa) inserted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(d)(i)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F6** S. 75(3)(b) repealed (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(d)(ii)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F7** Words in s. 75(5)(a) substituted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(e)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)
- F8** S. 75(13) inserted (18.11.2020) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), **ss. 34(2)(f)**, 63(2); S.S.I. 2020/294, reg. 2 (with reg. 3)

#### Modifications etc. (not altering text)

- C1** S. 75 applied by S.S.I. 2010/431, art. 3(1) (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), arts. 1, **2(2)**)
- C2** S. 75(5)(6) excluded by S.S.I. 2010/431, art. 3(2) (as substituted (14.11.2011) by [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Amendment Order 2011 \(S.S.I. 2011/348\)](#), arts. 1, **2(2)**)

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**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\(9\)\(c\)](#)