



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise his/her SGL so issues emerging can be considered for future case work.

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| Guidance note: | Planning Obligation Appeals (POA) |
| Relating to: | This note relates to appeals submitted under section 75B of the Town and Country Planning (Scotland) Act 1997. |
| Background/ legislative and policy framework: | <p>Background ‘Planning obligations’ are obligations entered into in an agreement or a unilateral obligation made under section 75 of the 1997 Planning Act. The 2006 Planning Act brought in significant changes to section 75 to clarify the role and scope of such obligations and introduce procedures in new sections 75A and 75B to allow their modification or discharge.</p> <p>A person against whom a planning obligation is enforceable may apply to the planning authority for their agreement that the planning obligation be modified as specified in the application or discharged (section 75A(2)). The form, content and procedure for such an application is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations)(Scotland) Regulations 2010, which came into effect on 1 February 2011 (click here for link to regulations).</p> <p>Such an application to the planning authority is to be made in writing and is to¹:</p> <ul style="list-style-type: none"> (a) contain the postal address of the land to which the planning obligation relates, or if the land in question has no postal address, a description of the location of the land; (b) be accompanied by a plan sufficient to identify that land; (c) be accompanied by a copy of the planning obligation to which the application relates, or otherwise contain sufficient information to identify that planning obligation; (d) contain the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent; (e) state the relationship of the applicant to the land to which the planning obligation relates and why the planning obligation is enforceable against the applicant; (f) state whether the applicant seeks the modification or discharge of the planning obligation and, if modification of |

¹ Regulation 3(2) of the Town and Country Planning (Modification and Discharge of Planning Obligations)(Scotland) Regulations 2010

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| | <p>the obligation is sought, set out the changes which the applicant wishes to be made to the obligation;</p> <p>(g) set out the grounds on which the applicant seeks modification or discharge of the planning obligation; and</p> <p>(h) be accompanied by a statement setting out (to the extent known to the applicant)—</p> <p style="padding-left: 40px;">(i) the names of the other parties to the relevant instrument and of other interested parties; and</p> <p>(ii) the address at which such parties may be contacted.</p> <p>Circular 3/2012 details Scottish Government policy on the use of planning obligations, including unilateral obligations, and the determination of applications for modification and discharge.</p> <p>Appeals</p> <p>Section 75B of the Act gives the applicant the right to appeal to Scottish Ministers where:</p> <p style="padding-left: 40px;">(i) the planning authority fail to make a decision within 2 months² of the receipt of a valid application or</p> <p style="padding-left: 40px;">(ii) the authority determine that the obligation is to continue without modification.</p> <p>Regulation 21 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 applies to a planning obligation appeal.</p> <p>An appeal must be submitted by the applicant on the planning obligation appeal form which is available from the DPEA web site and the form should be accompanied by the documentation as set out above. An appeal must be lodged within 3 months from the date of the decision by the planning authority or, in the case of non-determination, within 3 months of the date a decision should have been made³.</p> <p>The Planning Authority will be asked to provide a response to the appeal using the Planning Authority Response Form and any documents which were taken into account in reaching their decision that have not already been submitted. If the appeal is against the non-determination of an application the Act states that it is to be assumed that the planning authority have determined that the planning obligation is to continue to have effect without modification⁴.</p> |
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² Regulation 7 of the Town and Country Planning (Modification and Discharge of Planning Obligations)(Scotland) Regulations 2010 specifies that a planning authority are to reach a decision within 2 months of the receipt of a valid application. The right of appeal for non-determination arises on the expiry of this 2 month period. There is no provision for a planning authority to extend this period by agreement.

³ See regulation 4 – an application is valid on the date the last of the items required by regulation 3 is received.

⁴ Section 75B(2)

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| DPEA practice: | <p>DPEA planning obligation appeals will be received by the administration team, added to the case handling system and checked for validity. The case officer will request the planning authority response to the appeal and the Head of Performance & Administration will allocate the case to a reporter for consideration.</p> <p>Reporters should note that an 'interested party' to a POA is defined in the regulations and is a person other than the applicant who owns the land to which the planning obligation relates or a person against whom the obligation is enforceable.</p> <p>Our targets for dealing with planning obligation appeals are as for other appeals held under the 2013 regulations (See Guidance Note 3.)</p> |
| Process: | <p>A planning obligation appeal will follow the same procedure as appeals under Part 3 of the 2013 regulations (planning permission appeals and other appeals under section 47). See Guidance notes 3, 7 and 8.</p> <p>Section 75B(4) provides that a reporter who is allocated a Planning Obligation appeal may determine that the planning obligation:-</p> <ul style="list-style-type: none"> (a) is to continue to have effect without modification; or (b) is discharged; or (c) is to have effect subject to the modifications specified in the application. <p>There is no scope for a reporter to modify an obligation other than as proposed by the appellant.</p> <p>Where an appeal relates to an obligation that has been recorded in the Register of Sasines or registered in the Land Register of Scotland, the determination to modify or discharge the obligation does not take effect until the date on which the notice is so recorded or registered.⁵ A determination that the obligation is to continue to have effect without modification does not need to be recorded/ registered.⁶</p> <p>If an obligation is modified, it is enforceable from the date that it is recorded or registered. Where it is discharged or is to continue without modification, it is enforceable from the date of the reporter's decision.⁷</p> <p>A determination to modify or discharge an obligation must be signed in ink so that it can be registered in the Land Register or recorded in the Register of Sasines.</p> |

⁵ Section 75(B)(6)and (7)

⁶ Section 75(B) (6)

⁷ Section 75(B)(8)