



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.

Guidance note:	Time limits on planning permissions
Relating to:	Planning permission (full) Deemed planning permission (full)
Background/ legislative and policy framework:	<p>Section 58(1) of the Town and Country Planning (Scotland) Act 1997, from 1 October 2022, provides that grant of planning permission must be subject to a condition on its duration. The condition must provide that the development to which the permission relates must be begun not later than the expiration of either:</p> <ul style="list-style-type: none"> • three years from the date of grant of permission or • such other period as the planning decision-maker may specify when granting permission. <p>If no condition on duration is expressly attached to a grant of planning permission, then the permission is deemed to be subject to a condition limiting the duration of the permission to three years. Planning permission lapses if the development is not commenced as required by the condition.</p> <p>This rule also applies to deemed planning permission. It follows (for instance) that the duration of deemed planning permission for a generating station such as a windfarm granted consent under section 36 of the Electricity Act is three years, unless other provision is expressly made in the conditions of deemed permission.</p> <p>There are a number of exceptions from this rule set out in section 58(4):</p> <ul style="list-style-type: none"> • planning permission in principle (for which see guidance note 5) • retrospective planning permission • planning permission granted by a development order • planning permission for minerals or mineral-waste development that has conditions tying its commencement to completion of other phases of development • planning permission granted by an enterprise zone scheme • planning permission granted by a simplified planning zone
DPEA practice:	It will be normal DPEA practice for reporters to include an express condition setting the duration of the permission. The condition will set the duration at three years unless there is a

	<p>material reason for providing a different duration.</p> <p>As regards the section 58(4) exceptions from requirement to impose a condition:</p> <ul style="list-style-type: none"> • planning permission in principle is dealt with in guidance note 5; • retrospective planning permission will often take effect from the date of its grant, and therefore no condition on its duration will be required. In some circumstances though (for instance, in the case of permission that permits existing development without compliance with conditions previously attached) an express condition on duration will be required; • for other exceptions, where reporters are responsible for the form of the grant or deemed grant of permission, they should ensure that the duration of the permission is dealt with expressly as part of the grant. In a development subject to the exception for phased minerals development, for instance, this would require a planning condition tailored to the specific circumstances of the development's phasing
Process:	<p>The standard condition would normally be in this form:</p> <p>“The development to which this permission relates shall be begun no later than the expiration of three years beginning with the date of grant of this permission.”</p> <p>If a non-standard duration is to be applied to permission, then the word “three” in this condition can be amended as required.</p> <p>A condition (including a deemed condition) setting the duration of planning permission may be the subject of a section 42 application to develop land without compliance with conditions previously attached, with a view to extending the period for the development's commencement. A section 42 application can only be made, though, before the existing permission expires.</p>
Permissions issued before 1 October 2022:	<p>The previous form of section 58, which applied before 1 October 2022, provided a statutory limitation of three years to the duration of planning permission. This could be varied by direction of the granter of the permission. If there is no reference to such a direction on the face of such permission, it should be understood that the duration is three years. The Planning (Scotland) Act 2019 (Commencement no. 9 and Saving and Transitional Provisions) Regulations 2022 regulation 3 confirms that this arrangement continues to apply to planning permission granted before 1 October 2022.</p> <p>It is not possible to make a section 42 application solely in respect of the statutory duration of such a permission, because duration is not regulated by condition. Grant of an application</p>

	<p>under section 42 made in respect of conditions regulating other matters in such a permission would, though, result in a permission that would have to have attached to it a condition in respect of the permission's duration as required by section 58 as it applied after 1 October 2022.</p> <p>Under the law as it stood before 1 October 2022, planning permission granted for a limited period (in other words, for temporary development) was an exception from the application of the statutory limitation on duration. Express provision had to be made by condition for the duration of such permission. This exception no longer applies to permissions granted from 1 October 2022.</p>
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