

2010

THE SCOTTISH GOVERNMENT  
DIRECTORATE FOR THE BUILT ENVIRONMENT  
CONSULTATION ON PLANNING OBLIGATIONS AND  
GOOD NEIGHBOUR AGREEMENTS REGULATIONS 2010

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circular

**The Scottish Government  
Directorate for the Built Environment**

## **Consultation on Planning Obligations and Good Neighbour Agreements Regulations 2010**

### **Responding to this consultation paper**

We are inviting written responses to this consultation paper by 30 July. Please send your response to:

[PlanningobligationsandGNA@scotland.gsi.gov.uk](mailto:PlanningobligationsandGNA@scotland.gsi.gov.uk)

or to

Consultation on Planning Obligations and Good Neighbour Agreements Regulations  
Directorate for the Built Environment  
The Scottish Government  
2-J (South), Victoria Quay  
Edinburgh  
EH6 6QQ

Please indicate in your response which questions or part of the consultation paper you are responding to as this will aid our analysis of the responses received.

If you have any queries on the content of the consultative draft or the consultation process please contact Iain McLeod on 0131 244 7064.

In the Directorate for the Built Environment we have changed our methods of distribution. Publications are only available as electronic publications, apart from a few exceptions which are also published in hard copy. We have improved the e-newsletter system to provide an effective way of alerting you to new publications, including consultations. To register for electronic newsletters about planning, please register your details at <http://www.scotland.gov.uk/Topics/Built-Environment/planning/news/e-news> .

The Scottish Government also has an e-mail alert system for all consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx> ). This system allows you to register and receive a weekly e-mail containing details of all new consultations. SEconsult complements the planning e-newsletter system described above and allows you to register for consultations on specific topic areas across the Government. Please follow the SEconsult link above if you wish to register.

## **Handling your response**

We need to know how you wish your response to be handled and whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** included with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Publishing responses**

Where respondents have given permission for their response to be made public, these will be made available to the public in the Scottish Government Library within 6 weeks of the close of the consultation and on the SEconsult web pages within 6 weeks of the close of the consultation. Where agreement to publish has been given, we will check all responses for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4556. Responses can be copied and sent to you, but a charge may be made for this service.

## **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help Ministers reach a decision on the draft proposals to extend permitted development rights. Further details on the timing of this process will be available through the Scottish Government's planning topic page at [www.scotland.gov.uk/Topics/planning](http://www.scotland.gov.uk/Topics/planning) .

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to;

Directorate for the Built Environment, 2-J (South), Victoria Quay, Edinburgh, EH6 6QQ).

## RESPONDENT INFORMATION FORM:

### Consultation on Planning Obligations and Good Neighbour Agreements Regulations 2010

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding (please tick one box)
- (a) As an individual  
 go to Q2 and then Q4
- (b) On behalf of a group/organisation  go to Q3 and then Q4

#### INDIVIDUALS

- 2a. Do you agree to your response being made available to the public in the Scottish Government library and/or on the Scottish Government website?

Yes (go to 2b below)

No, not at all  *We will treat your response as confidential*

- 2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

#### ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your response to be made available?

Yes

No  *We will treat your response as confidential*

#### SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

## Equal Opportunities Questionnaire

This Equal Opportunities Questionnaire is requested in order that the Scottish Government can build an accurate picture of the make-up and diversity of the people that our planning policies impact on, and to ensure that the way in which we carry out our consultations is inclusive and not unwittingly discriminatory. If you have responded to this consultation as an individual, it would be helpful if you could complete this form. This information is only used for this purpose.

If you have a disability that requires us to make a reasonable adjustment to enable you to complete this form, please notify us.

Name	
Consultation to which you are responding	
Gender	Male <input type="checkbox"/> Female <input type="checkbox"/>

### Ethnic Origin

How would you describe your ethnic or cultural origin?		
White Scottish <input type="checkbox"/>	White British <input type="checkbox"/>	White European/Other <input type="checkbox"/>
Black Scottish <input type="checkbox"/>	Black British <input type="checkbox"/>	Black African <input type="checkbox"/>
Black Caribbean <input type="checkbox"/>	Black Other <input type="checkbox"/>	
Asian Scottish <input type="checkbox"/>	Asian British <input type="checkbox"/>	
Indian <input type="checkbox"/>	Pakistani <input type="checkbox"/>	Chinese/Other Asian <input type="checkbox"/>
Bangladeshi <input type="checkbox"/>		
Mixed Race Origin <input type="checkbox"/>		Other <input type="checkbox"/>

### Age

Under 25 <input type="checkbox"/>	25-39 <input type="checkbox"/>	40-54 <input type="checkbox"/>	55-65 <input type="checkbox"/>	65+ <input type="checkbox"/>
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### Disability

Do you have a disability as defined by the Disability Discrimination Act 1995 (DDA)? Yes <input type="checkbox"/> No <input type="checkbox"/>
The definition of a disability under the DDA is "a physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities."

## THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. In general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a consultation paper inviting answers to specific questions or more general views about the material presented. Consultation papers are distributed to organisations and individuals with an interest in the issue, electronically or in hard copy and are placed on the Scottish Government's consultations webpage to allow for participation from a wider audience. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4556).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at <http://www.scotland.gov.uk/consultations>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review,
- inform the development of a particular policy,
- help decisions to be made between alternative policy proposals, or
- be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

**Consultation Paper on;**

- **The Town and Country Planning (Planning Obligations) (Scotland) Regulations 2010**
- **The Town and Country Planning (Good Neighbour Agreements) (Scotland) Regulations 2010**

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# CONSULTATION ON PLANNING OBLIGATIONS AND GOOD NEIGHBOUR AGREEMENTS REGULATIONS 2010

The Scottish Government  
Directorate for the Built Environment

## Consultation on Planning Obligations and Good Neighbour Agreements Regulations 2010

Consultation Paper on:

- The Town and Country Planning (Planning Obligations) (Scotland) Regulations 2010
- The Town and Country Planning (Good Neighbour Agreements) (Scotland) Regulations 2010

### Introduction

The purpose of this consultation is seeking comments and feedback on two sets of proposed regulations that will further implement the Planning etc (Scotland) Act 2006 (the 2006 Act). Specifically, the regulations relate to sections 23 and 24 of the 2006 Act which respectively amend and extend section 75 of the Town and Country Planning (Scotland) Act 1997 and introduce Good Neighbour Agreements.

This consultation does not seek views on policy with regard to the use of planning agreements (or obligations as they will be known) or good neighbour agreements, or the provisions in the primary legislation regarding these measures. Provisions in the Planning etc (Scotland) Act 2006 were set out in the White Paper: *Modernising the planning system*<sup>1</sup> and consulted on prior to Parliamentary approval of the Act. **This consultation is concerned with the content and purpose of Regulations required to implement the provisions of sections 23 and 24 of the 2006 Act.**

### Policy background

Section 23 of the Planning etc (Scotland) Act 2006<sup>2</sup> will, when implemented, replace the existing section 75 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) with a revised section 75. Introduction of the new section 75 will mean planning agreements will in future be referred to as planning obligations. This reflects the fact that there is an obligation placed on the parties to the agreement to abide by

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2005/06/27113519/35231>

<sup>2</sup> [http://www.opsi.gov.uk/legislation/scotland/acts2006/pdf/asp\\_20060017\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/acts2006/pdf/asp_20060017_en.pdf)

its terms. Section 23 will also add new sections 75A, 75B and 75C into the 1997 Act. These sections are concerned with the use of planning agreements. The underlying principles governing the use of planning obligations entered into under section 75 will remain unchanged. Current guidance on the use of planning agreements is set out in Planning Circular 1/2010: *Planning Agreements*<sup>3</sup>.

The 2006 Act will introduce provisions;

- Specifically allowing the developer/landowner to propose the obligation rather than the planning authority, i.e. allowing an obligation to be proposed unilaterally;
- Specifically allowing obligations involving the continuing payment of financial contributions;
- Allows obligations to set a future date at which they would come into effect or allow for the obligation to be triggered by a specific event (for example, to take effect once a certain stage of a development was completed); and,
- Giving planning authorities powers to take direct action (after giving 21 days notice) to carry out work where there is a breach of an obligation. The new provisions also provide powers to recover costs involved from the responsible person.

Section 24 of the Planning etc (Scotland) Act 2006 introduces a further set of new sections into the 1997 Act (Sections 75D, 75E, 75F and 75G). These introduce the concept of good neighbour agreements (GNAs) and are similar in layout and scope to the sections covering planning obligations. Section 75D sets out a framework for negotiating a GNA, 75E and 75F cover processes for a GNA to be modified or discharged by application to the planning authority and appeal (if necessary) to Scottish Ministers, while 75G covers continuing liability of former owners and others with an interest in the land.

Good neighbour agreements are a new element of the modernised planning system, although there have in the past been a small number of developments where agreements similar in effect to the proposed GNAs have been entered into outside the planning system. The introduction of provisions for GNAs will establish a legislative framework for *voluntary* agreements between a developer or landowner and a local community body, such as a community council. A GNA might, for example, require a developer to provide information to the community council on the progress of the development and compliance with conditions.

GNAs are not intended to be used to secure the provision of infrastructure or community benefits and the legislation specifically precludes the use of such agreements to secure financial payments.

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<sup>3</sup> Planning Circular 1/2010: *Planning Agreements*.  
<http://www.scotland.gov.uk/Publications/2010/01/27103054/0>

## **The Town and Country Planning (Planning Obligations) (Scotland) Regulations 2010**

Sections 75A and 75B introduce, respectively, provisions to allow for the modification or discharge of an obligation through application to the planning authority, and for an appeal to be made to Scottish Ministers where the request to modify or discharge is declined. Both these sections allow for regulations to be made in respect of the process of making and determining an application or an appeal.

Section 75C is concerned with continuing liability of former owners in respect of a planning obligation. No regulations are required to implement this section.

The draft regulations are reproduced at Annex A.

### **Questions on The Town and Country Planning (Planning Obligations) (Scotland) Regulations 2010.**

#### **Form and content of an application for modification or discharge of an agreement (regulation 3)**

Part 2 of the regulations requires an application for modification or discharge of an obligation to include, or be accompanied by;

- the postal address of the land in question, or a description of the land so that it can be identified;
- a plan of the land;
- a copy of the relevant agreement/obligation;
- contact details for the applicant, their agent (where applicable) and their relationship to the land to which the obligation relates;
- where the obligation was entered into in connection with a grant of planning permission, the reference number of the planning permission;
- whether the applicant is seeking to discharge or modify the obligation and the grounds on which they are seeking to do so; and,
- names and contact details for any other parties to the agreement/obligation (as far as they are known to the applicant).

**Q1. Do you consider the information required to be (a) sufficient and (b) reasonable for a decision to be taken? Is there any other information that should be supplied?**

#### **Notification of interested parties (regulation 5) & List of Applications (regulation 6)**

The planning authority is required to notify ‘interested parties’ of any application. “Interested parties” are defined in regulation 2 as the owner of the land or any other person against whom the planning obligation is enforceable (other than the person applying for the modification or discharge of the obligation).

**Q2. Is the requirement to notify “interested parties” as defined in the regulations sufficient?**

Other bodies, for example, utilities providers, Transport Scotland, community bodies, etc, may have a specific interest in the outcome of the application although they have no direct involvement in the agreement itself.

**Q3. Should the planning authority be specifically required to inform such third parties where they have an interest?**

The planning authority is required to inform “interested parties” within 5 days of the validation date. Regulation 3 (2)(i) requires the applicant to provide (where known) names and addresses of interested parties. Whilst regulation 5(4) notes that the planning authority does not have to make inquiries as to the identity or whereabouts of interested parties and that it is sufficient simply to send notification to them at the address supplied by the applicant.

Regulation 6 requires that the planning authority make details of the application to modify or discharge the planning obligation available through the publicly available Register of Applications. The information to be displayed in the Register includes;

- the location of the land to which the obligation relates;
- name and address of the applicant or their agent;
- details of the proposed changes to the obligation; and,
- the date by which any comments or representations may be made.

**Q4. Do you consider that these processes (notification of interested parties and display of the information in the Register) are sufficient to ensure adequate notification?**

**Q5. Where an applicant indicates that they do not have information, or that they only have partial information, regarding interested parties (for example, the names but not the addresses) should there be a requirement to check this?**

Regulation 5(3) sets out the information to be contained in the notice to the “interested parties” and how they can make representations. The planning authority may set a date by which representations must be made. This date must be at least 21 days from the date of service of the notice regulation 5 (3)(d).

**Q6. Do you consider that this period (21 days) is sufficient to allow interested parties to prepare and submit suitable representations?**

**Time Period for determination (regulation 7)**

This regulation sets out that the planning authority should give notice of their decision within two months of the validation date.

**Q7. Do you consider the two month period allows sufficient time for proper consideration of the application?**

**Notice of determination (regulation 8)**

Regulation 8 covers the issue and content of the planning authority’s notice of determination. This is to be issued to the applicant and every interested party and must set out the terms of the planning authority’s decision and the reasons on which the decision is based, along with reference numbers for the application for modification or discharge and any relevant planning permission.

An accompanying note (of the form set out in schedule 1 to the regulations) informs the applicant of their right to appeal to Scottish Ministers should the planning authority decline to discharge or modify the obligation as sought.

**Q8. Is it sufficient to issue the notice of determination to the applicant and interested parties (as defined in the regulations)? Should the notice be sent to all parties who commented or recorded in the register of applications maintained by the planning authority under section 36 of the 1997 Act**

### **Appeals (regulation 9)**

Part 3 of the regulations applies the Town and Country Planning (Appeals) (Scotland) Regulations 2008 to appeals made under section 75B. This covers the submission, handling and determination of an appeal to the Scottish Ministers, ensuring that an appeal is handled in a similar manner to other planning appeals.

**Q9. Do you have any comments on the application of these regulations to this particular type of appeal?**

### **General (regulation 10)**

Part 4 allows documents to be sent to or by applicants and/or interested parties electronically where the person agrees this. The regulations also note that sending any document by electronic means is taken as agreement to future correspondence being in the same format. This deemed agreement to receive documents electronically can be withdrawn, following a seven day notice period.

**Q10. Do you have any views on the use of electronic communications in respect of an application to modify or discharge a planning obligation?**

## **The Town and Country Planning (Good Neighbour Agreement) (Scotland) Regulations 2010**

Under the provisions set out in section 75D, a person (such as a developer or landowner) may enter into a good neighbour agreement (GNA) with a community body. A GNA might, for example, set out that a site operator would provide regular updates to the community body on the progress of development on the site, perhaps allowing for the community body to take part in site inspections to reassure that work was being carried out in accordance with the planning permission. A GNA **cannot** however require the person to make monetary payments, for example contributing to a common good fund. As with a planning agreement or obligation a GNA may be recorded in either the Register of Sasines or the Land Register of Scotland and, once recorded, be enforceable against successors in title to the land.

A community body is defined in section 75D of the 1997 Act. It may be the community council for the area where the development is taking place. Alternatively it may be a body (or trust) which the planning authority considers has a substantial connection to the land in question an example of such a body might be a local heritage or conservation group.

The Town and Country Planning (Good Neighbour Agreements) (Scotland) Regulations 2010 deal with the processes of applying for modification or discharge of a GNA and are broadly similar in content to those relating to Planning Obligations. There are however some changes in terminology and drafting to reflect the fact that a GNA is made between a community body, rather than a planning authority, and a person with an interest in the land. Therefore, while a planning authority may be approached under the provisions of section 75E to consider discharge or modification of a GNA, it is in this situation acting as a 'third party' rather than having a direct interest as it would do with a planning obligation. It should be noted that either party to the GNA may approach the planning authority to request that the agreement be modified or discharged. The legislation requires that before they do so they must have attempted to agree the desired changes with the other party through informal discussions.

The draft regulations are reproduced at Annex B

## **Questions on The Town and Country Planning (Good Neighbour Agreement) (Scotland) Regulations 2010**

### **Form and content of an application (regulation 3)**

This regulation lists the information to be included in an application to a planning authority for modification or discharge of a GNA. This information includes;

- the postal address of the land in question, or a description of the land so that it can be identified;
- a plan of the land;
- a copy of the relevant GNA;
- contact details for the applicant and their agent (where applicable);

- a statement as to whether the applicant is a community body and if not, the relationship of the applicant to the land to which the GNA relates and why the GNA is enforceable against them (for example; if the applicant is a developer or landowner);
- where the GNA was entered into in connection with a grant of planning permission, the reference number of the planning permission;
- whether the application is for the GNA to be discharged or to be modified and why the change is being sought; and,
- names and contact details for any other parties to the GNA (as far as they are known to the applicant).

The application **must** also be accompanied by evidence that the applicant has attempted to reach agreement regarding the proposed changes but that this has been unsuccessful.

**Q11. Do you consider the information required to be (a) sufficient and (b) reasonable for a decision to be taken? Is there any other information that should be supplied?**

#### **Notification by the planning authority (regulation 5 & 6)**

Regulation 5 requires the planning authority to notify ‘interested parties’ of any application. “Interested parties” are defined in regulation 2 as the community body, the owner of the land and/or any other person against whom the obligation in the GNA is enforceable (other than the person applying for the modification or discharge of the obligation).

**Q12. Is the requirement to notify ‘interested parties’ as defined in the regulations sufficient?**

The planning authority is required to inform the interested parties within 5 days of the validation date, providing details of the GNA, the changes sought and how to make representations to the planning authority. Regulation 3 (2)(i) requires the applicant to provide (where known) names and addresses of interested parties.

Regulation 5(4) notes that the planning authority does not have to make inquiries as to the identity or whereabouts of interested parties and that it is sufficient simply to send notification to them at the address supplied by the applicant.

Regulation 6 requires that the planning authority make details of the application to modify or discharge the GNA available through the publicly available Register of Applications. The information to be displayed in the Register includes;

- the location of the land to which the obligation relates;
- name and address of the applicant or their agent;
- details of the proposed changes to the obligation; and,
- the date by which any comments or representations may be made.

**Q13. Do you consider that these processes (notification of interested parties and display of the information in the Register) are sufficient to ensure adequate notification?**

**Q14. Where an applicant indicates that they do not have information, or that they only have partial information, regarding interested parties (for example, the names but not the addresses) should there be a requirement to check this?**

Regulation 5(3) sets out the information to be contained in the notice to the “interested parties” and how they can make representations. The planning authority may set a date by which representations must be made. This date must be at least 21 days from the date of service of the notice.

**Q15. Do you consider that this period (21 days) is sufficient to allow interested parties to prepare and submit suitable representations?**

#### **Time Period for determination (regulation 7)**

This regulation sets out that the planning authority should give notice of their decision within two months of the validation date.

**Q16. Do you consider the two month period to allow sufficient time for proper consideration of the application?**

#### **Notice of Determination (regulation 8)**

This regulation covers the issue and content of the planning authority’s notice of determination. This is to be issued to the applicant, the community body and every interested party. The notice must set out the terms of the planning authority’s decision and the reasons on which the decision is based, along with reference numbers for the application for modification or discharge and any relevant planning permission.

An accompanying note (of the form set out in schedule 1 to the regulations) informs the applicant of their right to appeal to Scottish Ministers should the planning authority decline to discharge or modify the obligation as sought.

**Q17. Is it sufficient to issue the notice of determination only to the applicant and interested parties (as defined in the regulations)?**

#### **Appeal (regulation 9)**

Where the planning authority declines the application, the applicant has a right of appeal to the Scottish Ministers (section 75F of the 1997 Act). Part 3 of the regulations applies the Town and Country Planning (Appeals) (Scotland) Regulations 2008 to appeals made under section 75F. This covers the submission, handling and determination of an appeal to the Scottish Ministers, ensuring that an appeal is handled in a similar manner to other planning appeals.

**Q18. Do you have any comments on the application of these Regulations to this particular type of appeal?**

#### **Electronic Communications (regulation 10)**

This regulation allows documents to be sent to or by applicants and/or interested parties electronically where the person agrees this. The regulations also note that sending any document by electronic means is taken as agreement to future correspondence being in the same format. This deemed agreement to receive documents electronically can be withdrawn, following a seven day notice period.

**Q19. Do you have any views on the use of electronic communications in respect of an application to modify or discharge a planning obligation?**

## **Partial Regulatory Impact Assessment**

A partial regulatory impact assessment (RIA) is attached at Annex C. The purpose of the RIA is to identify costs and benefits associated with the introduction of the regulations and the impact they will have on various stakeholders; business, planning authorities, community organisations, individuals, etc.

**Q20. Do you have any comments regarding the partial Regulatory Impact Assessment?**

2010 No.

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (Planning Obligations)  
(Scotland) Regulations 2010**

<i>Made</i> - - - -	2010
<i>Laid before the Scottish Parliament</i>	2010
<i>Coming into force</i> - -	2010

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 75A, 75B, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997<sup>(4)</sup> and of all other powers enabling them to do so.

**PART 1**

**Preliminary**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Planning Obligations) (Scotland) Regulations 2010 and come into force on [ ] 2010.

(1) These Regulations apply to applications made under section 75A of the Act and to appeals made under section 75B of the Act.

**Interpretation**

2. In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“application” means an application for modification or discharge of a planning obligation entered into under section 75(1) of the Act;

“interested party” means, other than where such a person is the applicant—

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<sup>(4)</sup> 1997 c.8. Sections 75E and 75F were inserted by section 24 of the Planning etc. (Scotland) Act 2006 (asp 17). Section 275 (2A) was inserted by section 54(16)(f) of that Act. Section 267 was amended by section 19(5) of that Act. Section 275A was inserted by section 52(1) of that Act.

- (a) the owner of the land to which the planning obligation in respect of which the application is made relates; and
  - (b) any other person against whom the planning obligation is enforceable;
- “validation date” is the date on which an application is taken to have been made in accordance with regulation 4.

## PART 2

### Applications for modification or discharge of an obligation

#### **Form and content of an application for modification or discharge of a planning obligation**

3.—(1) An application to a planning authority for modification or discharge of a planning obligation is to be made in accordance with this regulation.

(2) An application is to be made in writing and is to—

- (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 relevant agreement containing the planning obligation to which the application relates;
- (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) where the planning obligation was entered into in connection with the grant of planning permission, give the reference number given to the application for such permission by the planning authority;
- (g) state whether the applicant seeks the discharge or modification of the planning obligation and if modification of the obligation is sought set out the textual changes which the applicant wishes to be made to the obligation;
- (h) set out the grounds on which the applicant seeks modification or discharge of the planning obligation; and
- (i) provide, a statement setting out (to the extent known to the applicant)—
  - (i) the names of the other parties to the relevant agreement and of other interested parties; and
  - (ii) the address at which such parties may be contacted.

#### **Validation date and acknowledgement of applications**

4. An application under regulation 3 is to be taken to have been made on the date on which the last of the items or information required in accordance with that regulation is received by the planning authority.

#### **Notification of interested parties**

5.—(1) A planning authority must notify every interested party in accordance with this regulation that an application has been made.

(2) Notice in accordance with paragraph (1) must be given no later than 5 working days after the validation date.

(3) The notice to be given in accordance with paragraph (1) must—

- (a) state the name of the applicant;

- (b) describe the planning obligation and the relevant agreement within which it is contained and state that an application for modification or discharge of the obligation has been made;
  - (c) be accompanied by a copy of the application;
  - (d) state that representations may be made to the planning authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 21 days after service of the notice).
- (4) Notwithstanding paragraph (2) the planning authority are not required to make any investigation as to the identity or whereabouts of an interested party and it shall be sufficient for the purposes of this regulation that notice is given to those persons detailed at the address given in the statement referred to in regulation 3(2)(i).

**List of applications**

6.—(1) The planning authority are to include the information specified in paragraph (2) relating to an application in the list of applications to be kept in accordance with section 36A of the Act.

(2) The information is—

- (a) the reference number given to the application by the planning authority;
- (b) the location of the land to which the planning obligation relates;
- (c) the name and address of the applicant or the applicant’s agent;
- (d) a description of the proposed discharge or modification; and
- (e) the date of expiry of the period within which comments or representations may be made in relation to the application.

(3) Information relating to the application is to be included in the same section of the list of applications as information relation to applications for planning permission.

**Time period for determination**

7. Where a planning authority have received an application the period within which the authority are to give notice to an applicant of their determination is two months after the validation date.

**Notice of determination**

8.—(1) The planning authority must as regards an application give—

- (a) the applicant; and
- (b) every interested party,

notice (“a notice of determination”) as to the manner in which the application has been dealt within the period mentioned in regulation 7.

(2) A notice of determination must include—

- (c) a statement of the terms of the planning authority’s decision and the reasons on which the authority based that decision;
- (d) the reference number of the application;
- (e) where the relevant agreement was entered into in connection with the grant of planning permission, the reference number given to the application for such permission by the planning authority.

(3) A notice of determination must be accompanied by a notification in the terms set out in Schedule 1 to these Regulations.

## PART 3

### Appeals

#### **Application of Town and Country Planning (Appeals) (Scotland) Regulations 2008**

**9.**—(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2008 apply to an appeal under section 75B of the Act as they apply to an appeal under section 47 of the Act with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) in regulation 2—
  - (i) in the definition of “appellant”, for “47, 130, 154, 169 or 180” substitute “75B”;
  - (ii) for the definition of “interested party” substitute—
    - i “interested party” means, other than where such a person is the applicant—
      - (a) the owner of the land to which the planning obligation in respect of which the application is made relates; and
      - (b) any other person against whom the planning obligation is enforceable; i;
  - (iii) for the definition of “period allowed for determination of the application” substitute—
    - i “period allowed for determination of the application” means the period specified in regulation 7 of the Town and Country (Planning Obligations) (Scotland) Regulations 2010; i;
- (b) in regulation 3—
  - (i) in paragraph (1) for “47” substitute “75B”;
  - (ii) in paragraph 2(a) for “47(1)” substitute “75B(1)(b); and
  - (iii) in paragraph 2(b) for “47(2)” substitute “75B(1)(a);
- (c) in regulation 4(2) omit paragraphs (c) and (d);
- (d) in regulation 5—
  - (i) omit paragraph (2);
  - (ii) in paragraph (3) for paragraphs (b) and (c) substitute—
    - i (b) describe the planning obligation and the relevant agreement within which it is contained; i.

## PART 4

### General

#### **Electronic communications**

**10.**—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that the document transmitted by the electronic communication is—
  - (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and

- (iii) sufficiently permanent to be used for subsequent reference.
- (3) Any person sending a document using electronic communications is to be taken to have agreed—
- (c) to the use of such communications for all purposes relating to the application or appeal, as the case may be, which are capable of being carried out electronically;
  - (d) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.
- (4) Deemed agreement under paragraph (3) shall subsist until that person gives notice to revoke the agreement.
- (5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.
- (6) In this regulation—
- “address” includes any number or address used for the purpose of such communications or storage;
  - “document” includes any notice, consent, agreement, decision, representation, statement, report or other information or communication;
  - “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000();
  - “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and
  - “sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
2010

## SCHEDULE 1

Regulation 8(3)

### NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on determination of an application for modification or discharge of a planning obligation*

If the applicant is aggrieved by the decision of the planning authority to refuse discharge or modify a planning obligation, the applicant may appeal to the Scottish Ministers under section 75B of the Town and Country Planning (Scotland) Act 1997 within three months from (and including) the date of this notice. The notice of appeal should be addressed to the [Note 1].

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Note 1 - Insert details of address to which the notice of appeal should be sent.

2010 No.

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (Good Neighbour Agreement)  
(Scotland) Regulations 2010**

<i>Made</i> - - - -	2010
<i>Laid before the Scottish Parliament</i>	2010
<i>Coming into force</i> - -	2010

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 75E, 75F, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997<sup>(5)</sup> and of all other powers enabling them to do so.

**PART 1**

**Preliminary**

**Citation, commencement and application**

1.-(1) These Regulations may be cited as the Town and Country Planning (Good Neighbour Agreement) (Scotland) Regulations 2010 and come into force on [] 2010.

(2) These Regulations apply to applications made under section 75E of the Act and to appeals made under section 75F of the Act.

**Interpretation**

2. In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“application” means an application for modification or discharge of an obligation entered into under a good neighbour agreement;

“community body” means the community body (within the meaning of section 75D(2) of the Act) which entered into the good neighbour agreement to which the application relates;

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<sup>(5)</sup> 1997 c.8. Sections 75E and 75F were inserted by section 24 of the Planning etc. (Scotland) Act 2006 (asp 17). Section 275 (2A) was inserted by section 54(16)(f) of that Act. Section 267 was amended by section 19(5) of that Act. Section 275A was inserted by section 52(1) of that Act.

“good neighbour agreement” means the agreement entered into under section 75D(1) of the Act containing the objection to which the application [or appeal] relates;

“interested party” means, other than where such a person is the applicant—

- (e) the community body;
- (f) the owner of the land to which obligation in respect of which the application is made relates; and
- (g) any other person against whom an obligation is enforceable;

“validation date” is the date on which an application is taken to have been made in accordance with regulation 4.

## PART 2

### Applications for modification or discharge of an obligation

#### **Form and content of an application for modification or discharge of an obligation**

3.—(1) An application to a planning authority for modification or discharge of an obligation entered into under a good neighbour agreement is to be made in accordance with this regulation.

(2) An application is to be made in writing and is to—

- (a) contain the postal address of the land to which the 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 good neighbour agreement containing the obligation to which the application relates;
- (h) 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.
- (i) state if the applicant is a community body and, if not, state the relationship of the applicant to the land to which the obligation relates and why the obligation is enforceable against the applicant;
- (j) where the obligation was entered into in connection with the grant of planning permission, give the reference number given to the application for such permission by the planning authority;
- (k) state whether the applicant seeks the discharge or modification of the obligation and if modification of the obligation is sought set out the textual changes which the applicant wishes to be made to the obligation;
- (l) set out the grounds on which the applicant seeks modification or discharge of the obligation;
- (m) provide, a statement setting out (to the extent known to the applicant)—
  - (i) the names of the other parties to the good neighbour agreement and of other interested parties; and
  - (ii) the address at which such parties may be contacted; and
- (n) provide evidence that the applicant has attempted to reach agreement regarding the modification or discharge of the obligation but has been unable to do so.

#### **Validation date and acknowledgement of applications**

4. An application under regulation 3 is to be taken to have been made on the date on which the last of the items or information required in accordance with that regulation is received by the planning authority.

### **Notification by the planning authority**

5. —(1) A planning authority must notify any interested party in accordance with this regulation that an application has been made.
- (2) Notice in accordance with paragraph (1) must be given no later than 5 working days after the validation date.
- (3) The notice to be given in accordance with paragraph (1) must—
- (a) state the name of the applicant;
  - (b) describe the obligation and the good neighbour agreement within which it is contained and state that an application for modification or discharge of the obligation has been made;
  - (c) be accompanied by a copy of the application;
  - (d) state that representations may be made to the planning authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 21 days after service of the notice).
- (4) Notwithstanding paragraph (2) the planning authority are not required to make any investigation as to the identity or whereabouts of an interested party and it shall be sufficient for the purposes of this regulation that notice is given to those persons detailed in at the address given in the statement referred to in regulation 3(2)(h).

### **List of applications**

- 6.—(1) The planning authority are to include the information specified in paragraph (2) relating to an application in the list of applications to be kept in accordance with section 36A of the Act.
- (2) The information is—
- (a) the reference number given to the application by the planning authority;
  - (b) the location of the land to which the good neighbour agreement relates;
  - (c) the name and address of the applicant or the applicant's agent;
  - (d) a description of the proposed discharge or modification; and
  - (e) the date of expiry of the period within which comments or representations may be made in relation to the application.
- (3) Information relating to the application is to be included in the same section of the list of applications as information relation to applications for planning permission.

### **Time period for determination**

7. Where a planning authority have received an application the period within which the authority are to give notice to an applicant of their determination is two months after the validation date.

### **Notice of determination**

8. —(1) The planning authority must as regards an application give—
- (a) the applicant;
  - (b) the community body; and
  - (c) every interested party.

notice (“a notice of determination”) as to the manner in which the application has been dealt within the period mentioned in regulation 7.

- (2) A notice of determination must include—
- (a) a statement of the terms of the planning authority's decision and the reasons on which the authority based that decision;

- (b) the reference number of the application;
  - (c) where the agreement was entered into in connection with the grant of planning permission, the reference number given to the application for such permission by the planning authority.
- (3) A notice of determination sent to a community body or any person against whom the obligation to which the application for discharge or modification relates is enforceable must be accompanied by a notification in the terms set out in Schedule 1 to these Regulations.

## PART 3

### Appeals

#### **Application of Town and Country Planning (Appeals) (Scotland) Regulations 2008**

9.—(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2008 apply to an appeal under section 75F of the Act as they apply to an appeal under section 47 of the Act with the modifications specified in paragraph (2).

(2) The modifications are—

(a) in regulation 2—

(i) in the definition of “appellant”, for “47, 130, 154, 169 or 180” substitute “75F”;

(ii) after the definition of “appointed person” insert—

“community body” means the community body (within the meaning of section 75D(2) of the Act) which entered into the good neighbour agreement to which the application relates; and

(iii) for the definition of “interested party” substitute—

“interested party” means, other than where such a person is the applicant—

(a) the community body;

(b) the owner of the land to which the obligation in respect of which the application is made relates; and

(c) any other person against whom the obligation is enforceable; and

(iv) for the definition of “period allowed for determination of the application” substitute—

“period allowed for determination of the application” means the period specified in regulation 7 of the Town and Country (Good Neighbour Agreement) (Scotland) Regulations 2010; and

(b) in regulation 3—

(i) in paragraph (1) for “47” substitute “75F”;

(ii) in paragraph 2(a) for “47(1)” substitute “75F(1)(b); and

(iii) in paragraph 2(b) for “47(2)” substitute “75F(1)(a);

(c) in regulation 4(2) omit paragraphs (c) and (d);

(d) in regulation 5—

(i) omit paragraph (2);

(ii) in paragraph (3) for paragraphs (b) and (c) substitute—

“(b) describe the obligation and the good neighbour agreement within which it is contained; and

## PART 4

### General

#### **Electronic communications**

**10.**—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (o) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (p) that the document transmitted by the electronic communication is—
  - (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application or appeal, as the case may be, which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) shall subsist until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, agreement, decision, representation, statement, report or other information or communication;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000();

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
2010

## SCHEDULE 1

Regulation 8(3)

### NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on determination of an application for modification or discharge of a good neighbour agreement*

A community body, and any person against whom the obligation to which the application for discharge or modification relates is enforceable, may appeal to the Scottish Ministers under section 75F of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of appeal should be addressed to the [Note 1].

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Note 1 - Insert details of address to which the notice of appeal should be sent.

**Partial Regulatory Impact Assessment for:**

## **Consultation on Planning Obligations and Good Neighbour Agreements Regulations 2010**

### **Introduction and summary**

This is a draft Regulatory Impact Assessment (RIA) of the proposals for regulations to implement the provisions made in the Planning etc (Scotland) Act 2006 (the 2006 Act) in respect of;

- Planning obligations
- Good neighbour agreements

This draft assesses the impact of the proposals in the consultation paper on business and other interests. It considers the additional costs that may be imposed by the legislative changes and seeks to assess the wider benefits which may be brought by the changes.

The proposals for the regulations, and this assessment, may be revised following consultation.

### **Objective**

The Scottish Government is seeking to implement provisions in the Planning etc. (Scotland) Act (the 2006) Act to extend existing, and introduce new, powers relating to planning obligations (previously known as planning agreements) and good neighbour agreements.

The proposed Regulations will, amongst other things, set out:

- The information required to be submitted to planning authorities to support a request to modify or discharge a planning obligation or good neighbour agreement;
- Timescales for applications for modification or discharge to be considered and decisions issued;
- Where an application for modification or discharge is rejected, procedures for an appeal to Scottish Ministers.

### **Background**

The Planning etc (Scotland) Act 2006 contains provisions which will replace section 75 of the Town and Country Planning (Scotland) Act 1997 and introduce several new sections (75A to 75G).

Section 23 of the 2006 Act will implement sections 75 to 75C relating to planning obligations, previously known as planning agreements (or section 75 agreements). The principle changes are that there will be a formal mechanism

for a person to request that an obligation be varied or discharged should circumstances change after it has been concluded. There will be a right of appeal to Scottish Ministers if the planning authority refuses the request. Other changes include the introduction of unilateral obligations and a new power to allow planning authorities to take direct action to carry out works where a person does not comply with the terms of a planning obligation.

Section 24 of the 2006 Act implements sections 75D to 75G, which will introduce good neighbour agreements (GNAs). These are voluntary agreements between a developer or landowner and a community body, such as a community council. Good neighbour agreements are intended to build trust between the developer and the community and encourage businesses to take the views of local representative groups into account in the way they operate a site or facility. Issues to be covered could include, for example; hours of operation, patterns and frequency of vehicle movements, agreement on regular provision of operational information, environmental performance and agreement on site visits. GNAs do not permit any payment of money. As with planning obligations the new legislation for GNAs contains provisions for applications to be made to the relevant planning authority for modification or discharge and for an appeal to Scottish Ministers where the application is refused.

While the legislation enabling planning obligations and good neighbour agreements and allowing for their modification and discharge, etc, is set out in the 2006 Act, there is a requirement for regulations to set out the detail of such matters as; the accompanying information required for an application, notification of other interested parties and timescales for determining applications, etc.

## **Consultation**

### *Within Government:*

The Scottish Government Directorate for the Built Environment has consulted with colleagues in Scottish Government Legal Directorate and the Directorate for Planning and Environmental Appeals in the drafting of the proposed regulations.

### *Public consultation:*

The regulations which are the subject of the current consultation are consequential to the provisions of the 2006 Act. The need for the regulations is not therefore a matter for consultation (having been agreed by Parliament) however the detail of the regulations is. Views are being sought on the draft RIA as part of the public consultation.

## **Options**

The Scottish Government has considered options for implementing the provisions of the 2006 Act. The options identified are:

Option 1 - do nothing and remain with the status quo.

Option 2 - Implement the legislation in the 2006 Act. In order to do so certain Regulations are required. The proposed regulations are set out (in draft form) within this consultation.

Option 1 (do nothing and remain with the status quo) would mean that the current legislation regarding planning agreements would continue in operation. It would also mean that there would be no formal legislative framework for the setting up, recording of, or modification of GNAs. Option 1 is however not considered viable, given the commitment in the White Paper: *Modernising the Planning System*, subsequently confirmed by the Scottish Parliament in approving the 2006 Act, to implement the provisions. Therefore the partial RIA focuses on the costs and benefits of implementing the proposed Regulations.

### **Costs and benefits**

At this stage we are unable to estimate costs accurately. Planning obligations may be complicated and involve considerable costs in drafting and concluding the agreement. Clearly, where such an obligation is the subject of a request to modify or discharge it, there will be costs associated with the application and, if necessary, any subsequent appeal. The same may be true for good neighbour agreements. However these costs would depend to a greater or lesser degree on the complexity of the individual application, and the nature of the modification sought.

Another factor would be the number of applications which were in fact made. Given that historically the use of planning agreements varies markedly between planning authorities, the number of applications could also be expected to vary between authorities.

Finally there would potentially be financial implications arising from any modification or discharge affecting the payment of developer contributions under a planning obligation.

### **Sectors and groups affected:**

- Public sector - planning authorities will have to allocate resources to dealing with applications for modification or discharge of obligations or GNAs and where a decision is subject to appeal to Scottish Ministers there will be further costs in preparing material for the appeal. There is also potential that a successful application for modification or discharge against a planning obligation would reduce an anticipated developer contribution which could have a negative impact on infrastructure provision.
- Private sector – developers will incur costs in preparing an application or appeal. There might also be potential for additional costs in complying with a request to modify or discharge a GNA if this resulted in an increased obligation on the developer. Equally, there would be potential benefits if an obligation or GNA was modified or discharged.

- Community groups (GNAs only) – there may be costs involved in making or opposing an application for modification or discharge and any subsequent appeal.
- Individuals – where an individual is party to a planning obligation or GNA (for example as a landowner or interested party) they may incur costs similar to those that may be incurred by developers (see above).

## **Benefits**

All parties with an interest in planning obligations and/or GNAs will to some extent benefit from the introduction of a formal process for altering or discharging obligations and GNAs. At present any changes to an agreement after it has been concluded have to be made through mutual agreement with no clear timescales to procedures, and, critically, no requirement for either party to even consider the other parties request. The formal process will ensure that reasonable requests are considered within a set timescale, benefiting all parties.

Developers will benefit if a planning obligation or GNA which is no longer considered appropriate is modified or discharged and the modification or discharge either reduces any financial obligation or any other obligation which might require commitment of resources (for example if the amount of information supplied to a community group under a GNA was to be reduced).

## **Costs**

There would be costs to planning authorities associated with the handling of requests for modification or discharge, such as;

- Staffing and other resource commitments involved in handling and determining an application (and for defending any subsequent appeal);
- Distribution of information; the costs here would vary depending on whether the information was sent electronically, or in hard copy, or a mixture of both;
- There will be costs incurred to developers and individuals who submit an application (and any subsequent appeal) associated with gathering the required information and preparing their application.

## **Small/Micro Firms Impact Test**

We take the view that the impact on such firms would be minimal. The legislation does not extend the circumstances where a planning obligation would be sought; therefore it does not place any additional burden, over and above what is already in place, on businesses including small/micro firms. While there is a possibility that a firm might be approached to enter into a GNA and therefore some costs associated with negotiating such an agreement, we envisage that GNAs will most likely be applied in the case of large scale or 'bad neighbour' developments and therefore it would be unlikely that a development undertaken by a small/micro firm would be affected. It should also be borne in mind that there is no obligation on a firm to enter into

a GNA; it is an entirely voluntary agreement. The introduction of provisions to modify or discharge obligations or GNAs would potentially benefit a firm in that they offer a formal process by which an obligation may be altered to reflect changing circumstances.

### **Legal Aid Impact Test**

The legal Aid Test looks at an individual's right to access to justice through availability of legal aid and possible expenditure from the legal aid fund.

We do not believe that the proposed regulations would create additional pressures on legal aid resources.

ISBN: 978-0-7559-9300-0



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