

Modification or Discharge of a Planning Obligation



The Town and Country Planning (Modification and Discharge of Planning Obligations (Scotland) Regulations 2010 came into force on 1 February 2011. These regulations apply to applications made under Section 75A of the Act and to appeals made under Section 75B of the Act. The regulations amend the term legal agreements to planning obligations.

The changes establish a formal procedure to allow a planning obligation to be either modified or discharged. A formal right of appeal to Scottish Ministers has also been introduced where the Council refuses the application or fails to determine the application within the statutory 2-month period.

The regulations apply to all planning obligations even if they were concluded before 1 February 2011.

Form and Content of Application

An application for modification or discharge of a planning obligation must be submitted in writing. [Forms](#) are available from ePlanning Scotland and must include the following:

- 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,
- Be accompanied by a plan sufficient to identify the land,
- Be accompanied by a copy of the planning obligation to which the application relates, or

otherwise contain sufficient information to identify the planning obligation.

- 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;
- 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;
- State whether the applicant seeks the modification or discharge of the planning obligation and if modification of the obligation is sought set out the changes which the applicant wishes to be made to the obligation;
- Set out the grounds on which the applicant seeks modification or discharge of the planning obligation;
- Be accompanied by a statement setting out (to the extent known to the applicant)
 - The names of other parties to the planning obligation and of other interested parties and
 - The addresses at which such parties may be contacted.

We may, in addition to the particulars, documents and materials submitted with the application require additional information that we consider is necessary to enable us to deal with your application.

Determination of the Application

The Planning Authority has 2 months to deal with the application and cannot determine the application until the expiry period has ended for representation of interested parties which is 21 days after the service of the notice. The Planning Authority is responsible for notifying every interested party of the receipt of the application. Interested parties are owners of the land and/or any other person against whom the planning obligation is enforceable.

In coming to its decision, the Planning Authority may determine that the obligation be discharged or that the proposed modification to the obligation may be made. The Planning Authority may also determine that the obligation should continue in its current form. The legislation does not permit the Council to determine that the obligation should be subject to any modification other than the modifications as set out in the application.

Where a planning obligation has been registered in the General Register of Sasines or in the Land Register of Scotland and determination to modify or discharge the obligation does not take effect until the determination is also registered in the appropriate register. It is a matter of the applicant to ensure this is done in order that the determination can take effect.

Reviewed January 2021