

Planning (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

PART 1

DEVELOPMENT PLANNING

Development planning

- 1 National Planning Framework
- 2 Removal of requirement to prepare strategic development plans
- 3 Local development plans
- 4 Supplementary guidance
- 5 Key agencies
- 6 Delivery programmes
- 7 Amendment of National Planning Framework and local development plans
- 8 Development plan

Local place plans

- 9 Local place plans

PART 2

SIMPLIFIED DEVELOPMENT ZONES

- 10 Simplified development zone schemes
- 11 Bar to creation of new simplified planning zones

PART 3

DEVELOPMENT MANAGEMENT

Applications

- 12 Pre-application consultation
- 13 Regulations about procedure for certain applications
- 14 Removal of requirement to recover costs before determining certain applications

Delegation of development decisions

- 15 Delegation of development decisions
- 16 Schemes of delegation

Duration of planning permission

- 17 Duration of planning permission
- 18 Completion notices

Planning obligations

- 19 Planning obligations: financial agreements
- 20 Planning obligations: modification or discharge

PART 4

OTHER MATTERS

Charges and fees

- 21 Fees for planning applications etc.

Enforcement

- 22 Fines: increases and duty of court in determining amount
- 23 Liability for expenses under enforcement notice

Training for taking planning decisions

- 24 Power to impose training requirement
- 25 Power to transfer functions where insufficient trained persons

Performance of planning authorities

- 26 Performance of planning authorities

PART 5

INFRASTRUCTURE LEVY

- 27 Power to provide for levy
- 28 Guidance
- 29 Interpretation of Part and schedule
- 30 Power to change meaning of “infrastructure”

PART 6

FINAL PROVISIONS

- 31 Ancillary provision
- 32 Regulation-making powers
- 33 Minor and consequential amendments and repeals
- 34 Commencement
- 35 Short title

Schedule 1—Infrastructure-levy regulations

Schedule 2—Minor and consequential amendments and repeals

Part 1—Development planning

Part 2—Simplified development zones

Part 3—Development management

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 23-EN), a Financial Memorandum (SP Bill 23-FM), a Policy
Memorandum (SP Bill 23-PM) and statements on legislative competence (SP Bill 23-LC).**

Planning (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about how land is developed and used.

PART 1

DEVELOPMENT PLANNING

Development planning

- 5 **1 National Planning Framework**
- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 3A(2) (description of framework), for the words “in” to the end substitute “the Scottish Ministers’ policies and proposals for the development and use of land.”.
- (3) In section 3A(8) (publishing of revised framework)—
- 10 (a) for “revise the” substitute “prepare a revised”,
- (b) the words “as revised” are repealed.
- (4) In section 3A(9) (subsequent revisions of framework)—
- (a) for “5” substitute “10”,
- (b) in paragraph (a), for “revise the” substitute “prepare a revised”,
- 15 (c) in paragraph (b), for “revise it” substitute “prepare a revised framework”.
- (5) After section 3A(10) insert—
- “(11) It is the duty of a key agency (see section 23D) to co-operate with the Scottish
 Ministers in the preparation of the National Planning Framework and any
 revised framework.”.
- 20 (6) After section 3A insert—
- “3AA Information to assist preparation of National Planning Framework**
- (1) For the purposes of assisting the Scottish Ministers in preparing or revising the
 National Planning Framework, the Scottish Ministers may direct a planning
 authority, or two or more planning authorities, to provide information about the
25 matters set out in subsection (2) in relation to an area specified in the direction.

(2) The matters are—

- (a) the principal physical, economic, social and environmental characteristics of the area,
- (b) the principal purposes for which land in the area is used,
- 5 (c) the size, composition and distribution of the population of the area,
- (d) the infrastructure of the area (including communications, transport and drainage systems and systems for the supply of water and energy),
- (e) how that infrastructure is used,
- 10 (f) any change which the planning authority or authorities think may occur in relation to any of the matters mentioned in paragraphs (a) to (e), and
- (g) such other matters as are prescribed.

(3) Where a direction under this section requires two or more planning authorities to provide information in relation to the same area and the same matter, they are to co-operate with one another.”.

15 (7) In section 3B(2) (period for Parliamentary consideration), for “60” substitute “90”.

2 **Removal of requirement to prepare strategic development plans**

Sections 4 to 14 of the Town and Country Planning (Scotland) Act 1997 are repealed.

3 **Local development plans**

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

20 (2) In section 15 (form and content of local development plans)—

- (a) in subsection (1)(a), after “land” insert “taking account of the matters mentioned in subsection (5)”,
- (b) subsection (2) (vision statement) is repealed,
- (c) in subsection (5), for “(2)” substitute “(1)(a)”.

25 (3) In section 16 (preparation and monitoring of local development plans)—

- (a) in subsection (1)(a)(ii), for “five” substitute “10”,
- (b) in subsection (2)(a)—
 - (i) the words “the National Planning Framework” become sub-paragraph (i),
 - (ii) after sub-paragraph (i) so formed insert “, and
 - 30 (ii) any local outcomes improvement plan (within the meaning of section 6 of the Community Empowerment (Scotland) Act 2015) for the part of their district to which the local development plan relates.”,

(c) subsections (9) and (10) are repealed.

(4) After section 16 insert—

“16A Evidence report for preparation of local development plan

(1) Before preparing a local development plan, a planning authority are to prepare an evidence report.

(2) The evidence report is to—

(a) set out the planning authority’s view on the matters listed in section 15(5) for land in the part of the authority’s district to which the local development plan will relate,

(b) include such other matters as are prescribed.

(3) The planning authority are to submit the evidence report to the Scottish Ministers.

(4) On receiving an evidence report submitted under subsection (3), the Scottish Ministers are to appoint a person to assess whether the report contains sufficient information to enable the planning authority to prepare a local development plan.

(5) If, having completed the assessment, the appointed person is satisfied that the evidence report contains sufficient information to enable the planning authority to prepare a local development plan, the person is to notify the Scottish Ministers and the authority accordingly.

(6) In any other case, the appointed person is to—

(a) prepare a report (an “assessment report”) setting out the reasons for not being so satisfied and recommendations for improving the evidence report received under subsection (3),

(b) send a copy of the assessment report to the planning authority and the Scottish Ministers.

(7) On receipt of an assessment report the planning authority are to revise the evidence report submitted under subsection (3) and resubmit it to the Scottish Ministers.

(8) Subsections (4) to (7) apply to an evidence report submitted under subsection (7) as they do to an evidence report submitted under subsection (3).

(9) The Scottish Ministers may make regulations as to—

(a) meeting general administrative costs, staff costs and overheads incurred in relation to an assessment under subsection (4),

(b) the procedure to be followed in such an assessment (including by making provision that the procedure is to be at the discretion of the appointed person), and

(c) what is to be assessed and matters by reference to which the assessment is to be made.”.

(5) Section 17 (main issues report for preparation of local development plan) is repealed.

(6) In section 18 (preparation and publication of proposed local development plan)—

(a) in subsection (1), for “the date specified by virtue of subsection (8) of section 17” substitute “being notified under section 16A(5)”,

(b) for paragraph (a) of subsection (1) substitute—

“(a) having regard to the evidence report in relation to which notification under that section was received, to prepare and publish in such manner as is prescribed a proposed local development plan,

5 (aa) to publish the evidence report at the same time and in the same manner as the proposed local development plan.”,

(c) in subsection (1)(b), after “plan” insert “and the evidence report”,

(d) after subsection (1) insert—

10 “(1A) Before publishing a proposed local development plan under subsection (1), the planning authority must approve the plan.

(1B) Section 56 of the Local Government (Scotland) Act 1973 (arrangements for discharge of functions by local authorities) does not apply to the function of approving a proposed local development plan.”,

(e) in subsection (2), for “6” substitute “8”,

15 (f) after subsection (3) insert—

“(3A) Where the authority make modifications under subsection (3), the authority are to—

(a) prepare a report setting out the modifications made and the reasons for making them,

20 (b) publish the report in such manner as is prescribed.”,

(g) in subsection (4), the words from “Where” to “(8),” are repealed,

(h) subsections (5) to (9) are repealed.

(7) In section 20 (constitution of local development plan)—

(a) in subsection (3), for “28 days” substitute “8 weeks”,

25 (b) in subsection (5), for “consider modifying” substitute “modify”,

(c) after subsection (7) insert—

“(8) Where the Scottish Ministers make a direction under subsection (7), they may—

(a) modify the proposed plan before approving it,

30 (b) approve the plan in part only.

(9) The Scottish Ministers may—

(a) during the period mentioned in subsection (3),

(b) during the period specified in a direction under subsection (4), or

(c) after a direction is made under subsection (7),

35 appoint a person to report to them on any matter within the proposed local development plan or relating to it.

(10) The Scottish Ministers may make regulations as to the procedure to be followed by such a person (including by making provision that the procedure is to be at the discretion of the person).”.

4 Supplementary guidance

Section 22 of the Town and Country Planning (Scotland) Act 1997 and the italic heading immediately preceding it are repealed.

5 Key agencies

5 In section 23D of the Town and Country Planning (Scotland) Act 1997 (meaning of “key agency”), for “a body” substitute “a person (other than an individual) or an officeholder”.

6 Delivery programmes

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

10 (2) In section 21 (action programmes)—

(a) in subsection (2), for “an action” substitute “a delivery”,

(b) in subsection (3), for “the action” substitute “a delivery”,

(c) in subsection (4), for “action” substitute “delivery”,

(d) after subsection (4) insert—

15 “(4A) It is the duty of the head of the planning authority’s paid service (designated under section 4 of the Local Government and Housing Act 1989) to prepare the proposed delivery programme.

(4B) The planning authority must approve the proposed delivery programme before it is published.

20 (4C) Section 56 of the Local Government (Scotland) Act 1973 (arrangements for discharge of functions by local authorities) does not apply to the function of approving a proposed delivery programme.”,

(e) in subsection (5), for “action” in both places it occurs substitute “delivery”,

(f) in subsection (6), for “An action” substitute “A delivery”,

25 (g) in subsection (7), for “an action” substitute “a delivery”,

(h) in subsection (8), for “action” substitute “delivery”,

(i) in subsection (9), for “action” substitute “delivery”,

(j) in subsection (10), for “an action” substitute “a delivery”.

(3) The section title of section 21 becomes “**Delivery programmes**”.

30 (4) The italic heading immediately preceding section 20B becomes “*Development plan schemes and delivery programmes*”.

7 Amendment of National Planning Framework and local development plans

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After section 3C insert—

35 “**3CA Amendment of National Planning Framework**

(1) The Scottish Ministers may at any time amend the National Planning Framework.

(2) Sections 3A(11) and 3AA apply to amending the National Planning Framework as they apply to preparing or revising it.

(3) The Scottish Ministers may by regulations make further provision about amendments under subsection (1).

(4) Regulations under subsection (3) may in particular make provision—

(a) about the procedures to be followed,

(b) about the consultation to be undertaken on proposed amendments,

(c) about when the amendments take effect,

(d) about the publication of the amended framework,

(e) about the laying of the amended framework before the Scottish Parliament.”.

(3) After section 20A insert—

“20AA Amendment of local development plan

(1) A planning authority may at any time amend a local development plan constituted for their district.

(2) The Scottish Ministers may direct a planning authority to exercise their power under subsection (1) in relation to matters specified in the direction.

(3) A direction under subsection (2) must set out the Scottish Ministers’ reasons for requiring an amendment to the local development plan.

(4) In preparing an amendment to a local development plan, a planning authority—

(a) are to take into account—

(i) the National Planning Framework, and

(ii) any local outcomes improvement plan (within the meaning of section 6 of the Community Empowerment (Scotland) Act 2015) for the part of their district to which the local development plan relates,

(b) are to have regard to—

(i) any local place plan for the part of their district to which the local development plan relates, and

(ii) such information and considerations as are prescribed, and

(c) may have regard to such other information and considerations as appear to them to be relevant.

(5) The Scottish Ministers may by regulations make further provision about amendments under subsection (1).

(6) Regulations under subsection (5) may in particular make provision—

(a) about the procedures to be followed,

(b) about the consultation to be undertaken on proposed amendments,

(c) about when the amendments take effect,

(d) about the publication of the amended plan.

- (7) Regulations under subsection (5) may provide that sections 16A to 20A apply to an amendment to a local development plan as they apply to a local development plan subject to such modifications as are specified in the regulations.”.

8 Development plan

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 24 (meaning of “development plan”), for subsections (1) to (4) substitute—
- “(1) For the purposes of this Act, any other enactment relating to town and country planning and the Land Compensation (Scotland) Act 1963, the development plan for an area is to be taken as consisting of the provisions of—
- (a) the National Planning Framework, and
- (b) any local development plan for the time being applicable to the area.
- (2) A reference in subsection (1) to provisions of a framework or plan is to be construed as a reference to so much of the provisions as are applicable to the area.
- (3) In the event of any incompatibility between the National Planning Framework and a local development plan, whichever of them is the later in date is to prevail.
- (4) For the purposes of subsection (3)—
- (a) the date of the National Planning Framework is the latest date on which it was published under section 3A(6) or (8),
- (b) the date of a local development plan is the date on which it was constituted under section 20.”.
- (3) In section 25 (status of development plan)—
- (a) for paragraphs (a) and (b) of subsection (1), substitute “, to be made in accordance with that plan.”,
- (b) subsections (2) and (3) are repealed.
- (4) In section 237(1) (validity of development plans etc.), before paragraph (a) insert—
- “(za) the National Planning Framework and any revised framework or amendment to it, whether before or after the framework or revised framework is published.”.
- (5) In section 238 (proceedings for questioning validity of development plans etc.)—
- (a) before subsection (1) insert—
- “(A1) If any person aggrieved by the National Planning Framework desires to question the validity of the framework on the ground—
- (a) that it is not within the powers conferred by Part 1A, or
- (b) that any requirement of that Part or of any regulations made under that Part has not been complied with,
- the person may make an application to the Court of Session under this section.”,

(b) in subsection (5), before paragraph (a) insert—

“(za) in the case of an application in respect of the National Planning Framework—

(i) the date of its publication under section 3A(8), or

(ii) where the grounds of the application arise from an amendment to the National Planning Framework, the date on which the amendment took effect,”

(c) in subsection (5)(aa)—

(i) the words “the date of its publication under section 20A(1)(b)” become sub-paragraph (i), and

(ii) after sub-paragraph (i) so formed insert “, or

(ii) where the grounds of the application arise from an amendment to the local development plan, the date on which the amendment took effect.”.

Local place plans

9 Local place plans

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 16 (preparation and monitoring of local development plans), in subsection (2)(b)—

(a) after “regard to” insert—

“(i) any local place plan for the part of their district to which the local development plan relates, and”,

(b) the words “such information and considerations as may be prescribed” become sub-paragraph (ii).

(3) In section 277 (interpretation), in subsection (1), after the definition of “local developments” insert—

““local place plan” means a proposal as to the development or use of land which is prepared and submitted in accordance with schedule 19.”.

(4) After schedule 18 insert—

“SCHEDULE 19 (introduced by section 277(1))

LOCAL PLACE PLANS

Preparation of local place plans

1 (1) A community body may prepare a local place plan.

(2) In preparing a local place plan, a community body must—

(a) have regard to—

(i) the local development plan for the land, or any part of the land, to which the local place plan relates,

(ii) the National Planning Framework,

- (iii) such other matters (if any) as are prescribed, and
- (b) comply with any prescribed requirements as to—
 - (i) the form and content of the plan, and
 - (ii) steps which must be taken before preparing the plan.

5 *Submission of local place plans*

- 2 (1) A community body must comply with any prescribed requirements as to—
- (a) steps which must be taken before submitting a local place plan, and
 - (b) information which must be submitted alongside a local place plan.
- 10 (2) Having complied with any requirements under sub-paragraph (1), a community body may submit a local place plan to the planning authority for the district to which the plan relates.

Meaning of “community body”

- 3 In this schedule, “community body” means—
- (a) a community-controlled body within the definition given in section 19 of the Community Empowerment (Scotland) Act 2015, or
 - (b) a community council established in accordance with Part 4 of the Local Government (Scotland) Act 1973.”.

PART 2

SIMPLIFIED DEVELOPMENT ZONES

20 **10 Simplified development zone schemes**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) After section 54 insert—

“Simplified development zones

54A Making and alteration of schemes

25 Schedule 5A—

- (a) makes provision about the making and alteration of simplified development zone schemes (including the right to request that a scheme be made or altered), and
- (b) confers powers on the Scottish Ministers in connection with such schemes.

54B Scheme grants planning permission, etc.

- (1) A simplified development zone scheme acts as a grant of authorisation for carrying out, within the zone to which the scheme relates, development that—
 - (a) is either—
 - 35 (i) specified in the scheme, or

- (ii) of a description specified in the scheme, and
- (b) is begun before the end of the day on which the scheme ceases to have effect.
- (2) Authorisation granted by a scheme is subject to—
 - (a) any conditions, limitations and exceptions specified in the scheme, and
 - (b) any regulations made under paragraph 22 of schedule 5A (read with paragraph 23 of that schedule).
- (3) In this section, “authorisation” means—
 - (a) planning permission, and
 - (b) if the scheme so provides—
 - (i) consent to the construction of a new road or an extension of an existing road for the purposes of section 21(1) of the Roads (Scotland) Act 1984,
 - (ii) authorisation for works in relation to a listed building for the purposes of section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and
 - (iii) authorisation for works in relation to a building in a conservation area for the purposes of section 66(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and section 6 of that Act as applied by any regulations under section 66(3) of that Act.

54C Scheme may also control advertisements

- (1) A scheme, if it so provides, has the effect of—
 - (a) disapplying, in the zone to which the scheme relates, any regulations for restricting or regulating the display of advertisements made under section 182, and
 - (b) applying instead in that zone any provision included in the scheme that restricts or regulates the display of advertisements.
- (2) Provision regulating or restricting the display of advertisements included in a scheme is to be treated, for the purposes of sections 184, 185, 186 and 187, as though it were provision in regulations made under section 182.
- (3) Any provision regulating or restricting the display of advertisements included in a scheme must be provision that could be included in regulations made under section 182.

54D Effect of altering scheme

- (1) Alterations to a scheme have effect from the day they are made.
- (2) Subsection (3) applies where—
 - (a) development for which authorisation is granted by a scheme has begun, and
 - (b) the scheme is subsequently altered.

- 5
- (3) The authorisation that the scheme grants for the development is unaffected by the alteration, unless the scheme (as altered) provides otherwise.
 - (4) But the scheme may not provide that the alteration affects the authorisation for the development if the effect would be to remove authorisation for anything that was authorised by the scheme when the development began.

54E Further provision about effect of scheme

- 10
- (1) The right to carry out development in accordance with authorisation granted by a scheme is unaffected by any limitations or restrictions imposed in relation to any other grant of permission, consent or authorisation.
 - (2) Nothing in a scheme affects the right of any person to—
 - (a) do anything that is not development, or
 - (b) carry out development for which—
 - 15 (i) no permission, consent or authorisation which may be granted by a scheme is required, or
 - (ii) any such permission, consent or authorisation that is required is granted otherwise than under the scheme.

54F Interpretation of provisions about schemes

- 20
- (1) This section makes provision about the interpretation of sections 54B to 54E.
 - (2) References to a scheme are to a simplified development zone scheme.
 - (3) References to the authorisation granted by a scheme are to be construed in accordance with section 54B(3).
 - (4) References to development include any activity mentioned in section 54B(3)(b) (whether or not it otherwise falls to be regarded as development for the purposes of this Act).”.

- 25 (3) After schedule 5 insert—

“SCHEDULE 5A
(introduced by section 54A)
SIMPLIFIED DEVELOPMENT ZONES

PART 1

CONTENT OF SCHEMES

30 *General*

- 1 (1) A scheme is to consist of—
- 35 (a) a map,
 - (b) a written statement, and
 - (c) such diagrams, illustrations and other descriptive matter as the relevant planning authority think appropriate for explaining or illustrating the scheme’s provisions.

- (2) A scheme must specify—
- (a) the zone to which the scheme relates,
 - (b) the development, or descriptions of development, for which the scheme grants authorisation,
 - (c) the date on which the scheme comes into effect,
 - (d) the date on which the scheme ceases to have effect.
- (3) The Scottish Ministers may by regulations prescribe further information that must be included in a scheme.
- (4) A scheme may not specify as the date on which it ceases to have effect a date that falls more than 10 years after it comes into effect.
- (5) In sub-paragraph (1)(c), “the relevant planning authority” means the authority in whose district the zone to which the scheme relates lies.

Further provision about conditions, limitations and exceptions

- (1) A scheme may specify different conditions, limitations or exceptions to the authorisation it confers for different cases.
- (2) Obtaining a planning authority’s consent for development to begin may be specified as a condition of authorisation being conferred by a scheme.

Land that cannot be included in a scheme

- (1) A scheme may not include land that is, at the time the scheme is made, of a description specified by the Scottish Ministers in regulations under this paragraph.
- (2) A scheme may not be altered so as to include land that is, at the time the alteration is made, of a description specified by the Scottish Ministers in regulations under this paragraph.
- (3) For the avoidance of doubt, if—
- (a) land is included in a zone to which a scheme relates, and
 - (b) that land subsequently becomes land of a description specified in regulations under this paragraph,
- the land is not, as a result, excluded from the zone to which the scheme relates.

PART 2

MAKING AND ALTERING OF SCHEMES BY PLANNING AUTHORITIES

CHAPTER 1

PLANNING AUTHORITIES’ POWERS AND DUTIES

Power to make or alter scheme

- 4 At any time, a planning authority may (in accordance with Part 3)—
- (a) make a scheme for a part of their district, or
 - (b) alter a scheme that relates to a zone in their district.

Duty to periodically consider making scheme

- 5 (1) Each planning authority must, from time to time, consider the question of which part or parts of their district it would be desirable to make a scheme for.
- (2) After each occasion on which an authority consider that question in accordance with sub-paragraph (1), they must publish a statement setting out—
- 5 (a) what they decided, and
- (b) the reasons for their decision.
- (3) The Scottish Ministers may by regulations prescribe—
- 10 (a) how long a planning authority may go without considering the question mentioned in sub-paragraph (1), and
- (b) requirements in respect of the statement mentioned in sub-paragraph (2).
- (4) The requirements that may be specified under sub-paragraph (3)(b) include, in particular, requirements as to—
- 15 (a) what information a statement must contain,
- (b) how it is to be published, and
- (c) to whom copies of it are to be sent.

Duty to seek to make or alter scheme when directed to do so

- 20 6 (1) The Scottish Ministers may at any time direct a planning authority to—
- (a) make a scheme in such terms as the Scottish Ministers consider appropriate, or
- (b) alter a scheme in such manner as the Scottish Ministers consider appropriate.
- (2) It is the duty of a planning authority given a direction under this paragraph to seek to make or (as the case may be) alter a scheme in accordance with the direction.
- 25 (3) Sub-paragraph (2) does not relieve a planning authority from having to comply with the requirements for making or altering a scheme set out in Part 3.

Duty to consider making or altering scheme on request

- 30 7 (1) A planning authority must consider any valid request for them to—
- (a) make a scheme for a part of their district, or
- (b) alter a scheme that relates to a zone in their district.
- (2) A request is valid, for the purpose of sub-paragraph (1), if the requirements prescribed in regulations made by the Scottish Ministers under this sub-paragraph have been met in relation to the request.
- 35 (3) Regulations under sub-paragraph (2) may, in particular, include requirements as to—
- (a) how a request must be made, and
- (b) steps that must be taken before a request may be made.

CHAPTER 2

STEPS THAT MAY BE TAKEN WHERE SCHEME NOT MADE OR ALTERED ON REQUEST

Referral to Scottish Ministers

- 5 (1) In the circumstances described in sub-paragraph (2), a person who has requested that a planning authority make or alter a scheme may refer the question of whether the authority should do so to the Scottish Ministers.
- (2) The circumstances referred to in sub-paragraph (1) are—
- (a) the request referred to in that sub-paragraph is a valid request under paragraph 7,
- 10 (b) the authority have either—
- (i) refused the request, or
- (ii) not taken a decision on whether to grant or refuse the request before the end of the day falling 3 months after the day that the request was made, and
- 15 (c) the deadline for making a referral under this paragraph has not expired.
- (3) The Scottish Ministers—
- (a) are to prescribe by regulations the deadline referred to in sub-paragraph (2)(c), and
- 20 (b) may prescribe by regulations further requirements that anyone referring a question to the Scottish Ministers under this paragraph must comply with.

Scottish Ministers to consider giving direction following paragraph 8 referral

- 25 9 (1) Sub-paragraph (2) applies where the question of whether a planning authority should make or alter a scheme in accordance with a request is referred to the Scottish Ministers under paragraph 8.
- (2) The Scottish Ministers must consider the question, and in particular whether they should give the authority a direction under paragraph 6.
- (3) In considering the question, the Scottish Ministers—
- (a) must afford an opportunity to make written representations to—
- 30 (i) the person who made the request, and
- (ii) the authority,
- (b) must have regard to any such representations received, and
- (c) may consult any other person they choose.
- (4) Having considered the question, the Scottish Ministers must inform both—
- 35 (a) the person who made the request, and
- (b) the authority,
- of their decision and the reasons for it.
- (5) For the avoidance of doubt, sub-paragraph (2) does not apply where any requirements prescribed under paragraph 7(3)(b) have not been complied with.

PART 3

PROCESS FOR PLANNING AUTHORITY MAKING OR ALTERING SCHEME

CHAPTER 1

PROCESS FOR ALL CASES

5 *Outline of process*

- 10 (1) Before making or altering a scheme, a planning authority must—
- (a) formulate their proposals for the scheme or alteration to be made, having first consulted in accordance with paragraph 11, and
 - (b) consult on their proposals in accordance with paragraphs 12 and 13.
- 15 (2) Having considered any responses received to the consultation on their proposals (as paragraph 13 requires), the planning authority may (subject to any direction under paragraph 15 or Chapter 1 of Part 4)—
- (a) make the proposed scheme or alteration,
 - (b) make a scheme or alteration which, in light of the consideration given to responses received to the consultation and any other matters which appear to the authority to be material, differs from what they proposed, or
 - (c) decide not to make any scheme or alteration.
- 20 (3) If the planning authority wish to make an alteration that would have an effect described in sub-paragraph (1)(b) of paragraph 16, they must wait as required by that paragraph before making the alteration.

Consultation on possible proposals

- 25 11 (1) Before publicising, in accordance with paragraph 12, proposals for making or altering a scheme, a planning authority must—
- (a) comply with any requirements as to consultation prescribed in regulations under this paragraph, and
 - (b) have regard to any valid representations received from anyone consulted in compliance with those requirements.
- 30 (2) The Scottish Ministers are to prescribe by regulations requirements about—
- (a) who a planning authority must consult before determining the content of any proposals which may be publicised in accordance with paragraph 12,
 - (b) how that consultation is to be undertaken, and
 - (c) how representations to the planning authority must be made by anyone consulted if they are to be treated as valid representations for the purpose of sub-paragraph (1)(b).
- 35 (3) Without prejudice to the generality of sub-paragraph (2), regulations made under this paragraph may—
- (a) require a planning authority to consult the public (or a portion of the public), or
 - (b) empower the Scottish Ministers to direct an authority to do so in particular cases.
- 40

Publicity for proposals

- 12 (1) Before making or altering a scheme, a planning authority must—
- (a) comply with the requirements for publicising, and inviting representations in relation to, their proposals for making or altering the scheme, and
 - (b) wait until the period for representations has expired.
- (2) The Scottish Ministers are to prescribe by regulations—
- (a) the requirements for publicising and inviting representations in relation to proposals for making or altering a scheme, and
 - (b) the period for representations.

Consideration of representations

- 13 (1) Where a planning authority have received validly submitted representations in relation to their proposals for making or altering a scheme, they may not make the proposed scheme or alteration (whether in the terms proposed or otherwise) until they have considered the representations.
- (2) For the purpose of this paragraph, representations are validly submitted if—
- (a) they are submitted within the period for representations prescribed under paragraph 12(2), and
 - (b) they comply with any requirements prescribed by the Scottish Ministers in regulations under this sub-paragraph about how representations must be submitted.

CHAPTER 2

FURTHER PROCESS FOR SOME CASES

Requirement to hold hearings

- 14 (1) The Scottish Ministers may by regulations prescribe circumstances in which, to fulfil the requirement under paragraph 13(1), a planning authority must give a person of a description prescribed in the regulations an opportunity to appear before and be heard by a committee of the authority.
- (2) The requirement under paragraph 13(1) for a planning authority to consider representations includes any representations made at a hearing required by regulations under sub-paragraph (1).
- (3) Each planning authority is to make such rules as they consider appropriate in relation to—
- (a) the procedures in accordance with which any hearing required by regulations under sub-paragraph (1) is arranged and conducted (including, without prejudice to the generality of this sub-paragraph, procedures for ensuring relevance and avoiding repetition),
 - (b) any other procedures consequent upon such a hearing,
 - (c) any right of attendance at such a hearing (other than for the purpose of appearing before, and being heard by, a committee).

- (4) Any requirement to hold hearings created by regulations under sub-paragraph (1) is subject to paragraph 17(3)(b).

Requirement to notify Scottish Ministers of certain proposals

5 15 (1) The Scottish Ministers may direct a planning authority to notify them, as soon as reasonably practicable, of any proposals for making or altering a scheme that the authority have publicised in accordance with paragraph 12.

10 (2) Where a planning authority are required by a direction under this paragraph to notify the Scottish Ministers of their proposals, the authority may not make the proposed scheme or alteration (whether in the terms proposed or otherwise) until the standstill period provided for in the direction has ended.

(3) A direction under this paragraph may—

(a) be addressed to a particular authority or all authorities,

(b) require that the Scottish Ministers be notified of proposals if—

15 (i) the proposals are of a description specified in the direction, or

(ii) an event specified in the direction occurs in connection with the proposals,

(c) provide for its standstill period to be either—

(i) a specified period of time, or

20 (ii) an indefinite period that ends only when the Scottish Ministers tell the authority it has ended.

Pause before making certain alterations

16 (1) Sub-paragraph (2) applies where, having completed the consultation process in relation to their proposals for altering a scheme—

25 (a) a planning authority intend to alter the scheme (whether in the terms proposed or otherwise), and

(b) the intended alteration would have the effect of—

(i) excluding land from the zone to which the scheme relates,

(ii) withdrawing authorisation granted by the scheme, or

30 (iii) making the authorisation granted by the scheme subject to new or more stringent conditions, limitations or exceptions.

(2) The intended alteration may not be made before the end of the day that falls 12 months after the consultation process was completed.

(3) For the purpose of this paragraph, the consultation process in relation to proposals to alter a scheme is completed—

35 (a) on the last day of hearings in relation to the proposals required by regulations under paragraph 14(1), or

(b) if no such hearings are required in relation to the proposals, on the last day that representations in relation to the proposals could be validly submitted for the purpose of paragraph 13.

PART 4

SCOTTISH MINISTERS' POWERS TO MAKE AND ALTER SCHEMES AND STOP PROPOSALS

CHAPTER 1

CALLING IN PLANNING AUTHORITIES' PROPOSALS

5 *Power to call in proposals*

17 (1) For the purposes of this Chapter, a calling-in direction is a direction given to a planning authority by the Scottish Ministers in relation to the authority's proposals for making or altering a scheme.

10 (2) A calling-in direction may be given in relation to an authority's proposals at any time prior to the authority making the proposed scheme or alteration (whether in the terms proposed or otherwise).

(3) Once a planning authority have been given a calling-in direction, the authority—

15 (a) may not make the proposed scheme or alteration (whether in the terms proposed or otherwise), and

 (b) must not begin, or as the case may be proceed with, any hearings in relation to the proposals that would (but for this paragraph) be required by regulations under paragraph 14(1).

Powers after calling in

20 18 (1) Where a calling-in direction has been given in relation to a planning authority's proposals for making or altering a scheme, the Scottish Ministers may—

 (a) make the scheme or alteration proposed,

 (b) make a scheme or alteration that is different from what the authority proposed, or

25 (c) decline to make any scheme or alteration.

(2) In considering what to do under sub-paragraph (1), the Scottish Ministers may take matters into account despite their not having been taken into account by the planning authority in formulating their proposals.

30 (3) The Scottish Ministers may, for the purpose of deciding what to do under sub-paragraph (1), cause a local inquiry or other hearing to be held by a person appointed by them.

(4) If—

 (a) the Scottish Ministers decide to alter a scheme under sub-paragraph (1), and

35 (b) the alteration they intend to make would have one of the effects described in paragraph 16(1)(b),

they may not make the alteration until the end of the day that falls 12 months after the day on which they decided to make the alteration.

CHAPTER 2

MAKING OR ALTERING SCHEME FOLLOWING PARAGRAPH 6 DIRECTION

Power to make or alter scheme

- 5 19 (1) The Scottish Ministers may (in accordance with paragraph 20) make, or alter, a scheme if—
- (a) they have given a planning authority a direction under paragraph 6, and
 - (b) they are satisfied that the planning authority are not fulfilling the duty arising from that direction within a reasonable period.
- 10 (2) In order to satisfy themselves of the matter mentioned in sub-paragraph (1)(b), the Scottish Ministers must cause a local inquiry or other hearing to be held by a person appointed by them.

Process for making or altering schemes

- 15 20 (1) Unless stated otherwise, the enactments mentioned in sub-paragraph (2) apply to the making, or alteration, of a scheme by the Scottish Ministers under paragraph 19—
- (a) as they apply to the making or (as the case may be) alteration of a scheme by a planning authority, but
 - (b) subject to the modifications set out in sub-paragraphs (3) to (6).
- 20 (2) The enactments referred to in sub-paragraph (1) are—
- (a) Part 3, and
 - (b) any regulations made under—
 - (i) Part 3, or
 - (ii) paragraph 25.
- 25 (3) References to a planning authority are to be read as references to the Scottish Ministers.
- (4) References to a planning authority's district are to the district in which the zone to which the scheme relates lies (or would lie were the scheme or alteration in question made).
- (5) References to a committee of a planning authority are to—
- 30 (a) the Scottish Ministers, or
- (b) a person appointed by the Scottish Ministers to discharge the function in question on their behalf.
- (6) Requirements to—
- 35 (a) consult, and
- (b) send things to,
- the Scottish Ministers do not apply.

Recovery of costs

- 21 (1) Having incurred costs in complying with an enactment mentioned in paragraph 20(2) in connection with making or altering a scheme under paragraph 19, the Scottish Ministers may require the relevant planning authority to pay them—
- 5 (a) an amount equal to the costs they incurred, or
 (b) such lesser amount as they consider appropriate.
- (2) In sub-paragraph (1) “the relevant planning authority” is the authority in whose district the zone to which the scheme relates lies (or would have lain had it been made).

PART 5

FURTHER POWERS OF SCOTTISH MINISTERS

CHAPTER 1

EXCLUDING KINDS OF DEVELOPMENT FROM SCHEMES

Power to exclude kinds of development

- 15 22 (1) The Scottish Ministers may by regulations provide that no scheme grants authorisation in relation to development of a kind described in the regulations.
- (2) Regulations under this paragraph may describe a kind of development by reference to its being development of land that is specified, or of a description specified, in the regulations.
- 20 (3) Sub-paragraph (2) is not exhaustive of the ways in which kinds of development can be described in regulations under this paragraph.

Effect of exclusion on existing schemes

- 23 23 If a scheme has conferred authorisation in relation to development of a kind that regulations under paragraph 22 state cannot be granted authorisation by a
- 25 scheme—
- (a) the scheme ceases to have the effect of granting authorisation for any new development of that kind from the date the regulations prescribe, but
- (b) the authorisation granted by the scheme is unaffected by the regulations in relation to development begun before that date.

CHAPTER 2

POWERS IN RELATION TO PROCEDURE, ETC.

Directions about procedure and provision of information

- 24 (1) The Scottish Ministers may give a planning authority a direction—
- 35 (a) about how the authority are to formulate their procedures for carrying out their functions under this schedule,
 (b) requiring that the authority provide the Scottish Ministers with information specified in the direction.
- (2) A planning authority must comply with any direction given under sub-paragraph (1).

- (3) Information may not be specified under sub-paragraph (1)(b) unless it is information that the Scottish Ministers require for carrying out their functions under this schedule.

Regulations about form, content and procedure

- 5 25 (1) The Scottish Ministers may make regulations about—
- (a) the form and content of schemes, and
 - (b) the procedure to be followed in connection with making and altering schemes.
- 10 (2) Regulations under this paragraph may in particular—
- 15 (a) provide for the publicity to be given to—
 - (i) matters included, or proposed for inclusion in, a scheme,
 - (ii) the making or alteration of a scheme,
 - (iii) any procedural step in relation to the making or alteration of a scheme,
 - 20 (b) make provision with respect to the making and consideration of representations concerning—
 - (i) whether a scheme should be made,
 - (ii) what should be included in a scheme,
 - 25 (c) require, or authorise, consultation with persons identified in the regulations (by name or description) prior to the taking of steps in the process of making or altering a scheme,
 - 30 (d) require a planning authority, in circumstances prescribed in the regulations, to give anyone who requests them copies of documents which have been made public,
 - 35 (e) allow a planning authority to impose a reasonable charge on anyone given a copy of a document in accordance with provision made by virtue of paragraph (d),
 - (f) provide for the publication and inspection of—
 - (i) any scheme which has been made, or
 - (ii) a document setting out alterations that have been, or are to be, made to a scheme,
 - (g) provide for the sale of copies of—
 - (i) schemes, and
 - (ii) any document that sets out alterations that have been, or are to be, made to a scheme.

- (ii) in paragraph (b), for “that period”, substitute “the 12 months preceding the request”,
- (e) the italic heading preceding paragraph 3 becomes “*Power of Secretary of State to direct alteration of scheme*”,
- 5 (f) in paragraph 4(1)—
- (i) paragraph (a) is repealed,
- (ii) in paragraph (b), for “he considers” substitute “the Scottish Ministers consider”,
- (iii) the words “, in either case,” are repealed,
- 10 (iv) the words “making or, as the case may be,” are repealed,
- (g) in paragraph 4(2), for “sub-paragraph (1)(a) or (b), substitute “sub-paragraph (1)(b)”,
- (h) in paragraph 5(1), the words “make or” are repealed,
- (i) in paragraph 5(3)(a), the words “make or” are repealed,
- 15 (j) in paragraph 6—
- (i) the words “prepared a proposed simplified planning zone scheme, or” are repealed,
- (ii) in each place they occur, the words “scheme or” are repealed,
- (k) in paragraph 7(1), the words “scheme or” are repealed,
- 20 (l) in paragraph 11(1)—
- (i) for paragraph (a), substitute—
- “*(a) a planning authority are directed under paragraph 3 to alter a simplified planning zone scheme in such manner as the Scottish Ministers consider appropriate, and*”,
- 25 (ii) in paragraph (b), the words “making or, as the case may be,” are repealed,
- (iii) the words “a scheme or, as the case may be,” are repealed.

PART 3

DEVELOPMENT MANAGEMENT

Applications

30 **12 Pre-application consultation**

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 35A (pre-application consultation: preliminary)—
- (a) in subsection (1A)—
- (i) the words “to which section 42 applies” become paragraph (a),
- 35 (ii) after paragraph (a), insert “, or
- (b) in circumstances specified by the Scottish Ministers in regulations under this section.”,

(b) in subsection (3), for “the development is of a class prescribed under subsection (1)” substitute “compliance with section 35B is required”,

(c) in subsection (5), after “form” insert “, and have such content”,

(d) in subsection (9), for “the development is not of a class prescribed under subsection (1)” substitute “compliance with section 35B is not required”.

(3) In section 35B (pre-application consultation: compliance), in subsection (3), after “weeks” insert “, but no more than 18 months,”.

(4) In section 35C (pre-application consultation report), in subsection (2), after “form” insert “and include such content”.

13 Regulations about procedure for certain applications

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 42 (determination of applications to develop land without compliance with conditions previously attached), for subsection (3), substitute—

“(3) The Scottish Ministers may by regulations or a development order make special provision as regards the procedure to be followed in connection with such applications.”.

14 Removal of requirement to recover costs before determining certain applications

Section 34(4)(c) of the Town and Country Planning (Scotland) Act 1997 is repealed.

Delegation of development decisions

15 Delegation of development decisions

(1) Subsection (6A) of section 56 (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 is repealed.

(2) Subsection (2) of section 14 (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 is repealed.

16 Schemes of delegation

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) For section 43A substitute—

“43A Schemes of delegation

(1) A “scheme of delegation” is a scheme prepared by a planning authority by which an application falling within subsection (4) is to be determined by a person appointed by them (an “appointed person”).

(2) A planning authority must prepare and keep under review a scheme of delegation and, without limit to that generality, must review it—

(a) at such intervals as are provided in regulations made under section 43AB, and

(b) whenever required to do so by the Scottish Ministers.

- (3) A planning authority may make changes to their scheme of delegation following a review.
- (4) The applications falling within this subsection are—
- (a) an application for planning permission for a development within the category of local developments,
 - (b) an application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of local developments,
 - (c) an application for any approval of the planning authority required under a development order,
 - (d) an application for a certificate of lawfulness of existing use or development under section 150,
 - (e) an application for a certificate of lawfulness of proposed use or development under section 151,
 - (f) an application for advertisement consent required by virtue of regulations made under section 182.
- (5) References in subsection (4)(a) to a development do not include references to a development of a class mentioned in section 38A(1).
- (6) A planning authority may, if they think fit, decide to determine an application which would otherwise fall to be determined by the appointed person under the scheme of delegation.
- (7) Where the planning authority make such a decision they must—
- (a) include in the decision a statement of the reasons as to why it has been made, and
 - (b) serve a copy of the decision on the applicant.
- (8) A planning authority may not delegate the determination of applications falling within subsection (4) to an officer of the authority otherwise than in accordance with a scheme of delegation prepared under this section.

43AA Schemes of delegation: effect and operation

- (1) A determination of an appointed person is to be treated as that of the planning authority (other than for the purposes of section 43AC, section 47 and section 154).
- (2) Where an application for planning permission falls to be determined by an appointed person, sections 27A(2), 27B(2), 30(3), 32A, 37(1) to (3), 38, 39, 40, 41(1) and (2), 42, 43(1) to (2), 46, 58, 59 and 60 and Part 1 of schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (3)), as they apply to an application which falls to be determined by the planning authority.
- (3) The modification referred to in subsection (2) is that, in paragraph 1(6) of schedule 3, paragraph (b) is to be read as if there were substituted—
- “(b) is to be regarded for the purposes of section 43AC as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under section 43AC.”.

(4) Where an application for an approval of the planning authority required under a development order falls to be determined by an appointed person, the development order applies, with any necessary modifications, as it applies to an application which falls to be determined by the planning authority.

5 (5) Where an application for a certificate under section 150 or section 151 falls to be determined by an appointed person, section 150 or, as the case may be, section 151, and section 152 apply, with any necessary modifications, as they apply to an application which falls to be determined by the planning authority.

10 (6) In this section, “appointed person” is to be construed in accordance with section 43A(1).

43AB Schemes of delegation: further provision and guidance

(1) The Scottish Ministers may by regulations make provision about—

(a) the required form and content of a scheme of delegation, and

15 (b) the procedures for preparing, adopting, reviewing and changing such a scheme.

(2) Without limiting the generality of subsection (1), the regulations may require the planning authority to—

(a) provide the Scottish Ministers with a draft of a scheme of delegation or any proposed changes,

20 (b) make such modifications as are specified by the Scottish Ministers before adopting the scheme,

(c) comply with such directions as are given by the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation.

25 (3) A planning authority must have regard to any guidance issued by the Scottish Ministers when preparing, adopting, reviewing or changing a scheme of delegation.

43AC Review of decisions of appointed person

(1) Where an appointed person—

30 (a) refuses an application for planning permission or grants it subject to conditions,

(b) refuses an application for any consent, agreement or approval of the planning authority required by a condition imposed on a grant of planning permission or grants it subject to conditions,

35 (c) refuses an application for any approval of the planning authority required under a development order or grants it subject to conditions,

(d) refuses an application for a certificate under section 150 or 151 (in whole or in part), or

- (e) has not given notice of the appointed person’s decision within—
 - (i) such period as is prescribed by regulations or a development order, or
 - (ii) such extended period as may at any time be agreed upon in writing between the applicant and the appointed person,

the applicant may require the planning authority to review the case.

- (2) A requirement to review may not be made by virtue of paragraph (e) of subsection (1) if, within the period (or extended period) mentioned in that paragraph, notice has been given to the applicant that—

- (a) the power under section 39 to decline to determine the application has been exercised, or
- (b) the application has been referred to the Scottish Ministers in accordance with directions given under section 46.

- (3) Where a requirement to review is made by virtue of paragraph (e) of subsection (1), the appointed person is, for the purposes of the review, to be deemed to have decided to refuse the application.

- (4) On a review, the planning authority may—

- (a) in relation to a review of a decision required by virtue of paragraph (d) of subsection (1)—

- (i) grant or refuse the applicant a certificate under section 150 or 151 accordingly (in whole or in part),
- (ii) modify the certificate granted by the appointed person,
- (iii) uphold the determination to refuse the application (or to refuse it in part),

- (b) in relation to any other review—

- (i) uphold, reverse or vary any part of the determination (whether the review relates to that part of it or not), and
- (ii) deal with the application as if it had not been delegated to the appointed person.

- (5) Except as provided under section 239, the decision of a planning authority in a case reviewed by virtue of this section is final.

- (6) In this section, “appointed person” is to be construed in accordance with section 43A(1).

43AD Review of decisions of appointed person: further provision

- (1) The Scottish Ministers may by regulations or a development order make provision as to the form and procedures of any review conducted by virtue of section 43AC.

- (2) Without limiting the generality of subsection (1), the regulations or order may—

- (a) make different provision for different cases or types of case,
- (b) make different provision for different stages of a case,

(c) provide that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority,

5 (d) make provision in relation to oral or written submissions and to documents in support of such submissions (and also about the consequences of any failure to make such submissions),

(e) subject to section 43B, make provision about what matters may be raised in the course of the review,

10 (f) make provision in relation to time limits (including a time limit for requiring the review),

(g) require the planning authority to give notice to the person who has required the review about how the review has been dealt with.

(3) Any notice given by virtue of subsection (2)(g)—

15 (a) must include a statement of—

(i) the terms in which the planning authority have decided the case, and

(ii) the reasons on which the authority based that decision, and

20 (b) may include such other information as is prescribed by the regulations or the order.”.

(3) In section 47 (right to appeal against planning decisions and failure to take such decisions)—

(a) in subsection (2), after paragraph (a) insert—

25 “(aa) notice of their decision on a review required by virtue of paragraph (e) of section 43AC(1),”.

(b) after subsection (2) insert—

“(2A) Subsection (2)(a) does not apply where the applicant may require a review under section 43AC(1)(e).”.

30 (4) In section 154 (appeals against refusal or failure to give decision on application for certificates under section 150 and 151)—

(a) in subsection (1), after paragraph (b) insert “or

35 (c) the planning authority do not give notice to the applicant of their decision on a review required by virtue of paragraph (e) of section 43AC(1) within such period as is prescribed by regulations or a development order or within such extended period as may at any time be agreed in writing by the applicant and the authority,”.

(b) after subsection (1) insert—

“(1A) But—

40 (a) an appeal may not be made under subsection (1)(a) in relation to any such action on the part of the planning authority as is mentioned in section 237(3A),

(b) an appeal may not be made under subsection (1)(b) where the applicant may require a review under section 43AC(1)(e).”,

(c) in subsection (3)(b), after “(1)(b)” insert “or (c)”.

Duration of planning permission

17 Duration of planning permission

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 41 (conditional grant of planning permission), in subsection (1), after paragraph (b) insert—

“(c) for identifying (whether by means of a specified time period or otherwise) when the applicant may be required to—

(i) make an application for a consent, agreement or approval, or

(ii) carry out some other action in connection with the permission or development.”.

(3) In section 58 (duration of planning permission)—

(a) for subsections (1) to (3) substitute—

“(1) Where a planning permission to which this section applies is granted or deemed to be granted, it must be granted or, as the case may be, is to be deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of—

(a) 3 years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted, or

(b) such other period (whether longer or shorter) as the authority concerned may specify when granting the permission or, as the case may be, in making a direction under section 57.

(2) If planning permission is granted or is deemed to be granted without the condition required by subsection (1), the permission is deemed to be subject to the condition that the development to which it relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted.

(3) If development has not begun at the expiration of the period mentioned in paragraph (a) or (b) of subsection (1) or, as the case may be, subsection (2), the planning permission lapses.”.

(b) in subsection (3A)—

(i) in the opening words, for “(2)”, substitute “(1)(b)”,

(ii) for paragraph (a) substitute—

“(a) beginning with the date on which the planning permission is granted or deemed to be granted, and”.

(c) in subsection (4), paragraph (ca) is repealed.

(4) In section 59 (planning permission in principle), for subsections (2) to (8), substitute—

“(2A) Where planning permission in principle is granted, it must be granted subject to the condition that the development to which it relates must be begun not later than the expiration of—

- (a) 5 years beginning with the date on which the permission is granted, or
- (b) such other period (whether longer or shorter) as the authority concerned may specify when granting the permission.

(2B) If planning permission in principle is granted without the condition required by subsection (2A), the permission is deemed to be subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the date of the grant.

(2C) If development has not begun at the expiration of the period mentioned in paragraph (a) or (b) of subsection (2A) or, as the case may be, subsection (2B), the planning permission in principle lapses.

(2D) A period specified under subsection (2A)(b) is to be a period—

- (a) beginning with the date on which the planning permission in principle is granted, and
- (b) which the authority concerned consider appropriate having regard to the provisions of the development plan and to any other material considerations.”.

(5) In section 60 (provisions supplementary to sections 58 and 59), for subsection (2) substitute—

“(2A) Where a planning authority grants planning permission, the fact that any of the conditions of the permission are required by the provisions of section 58 or 59 to be imposed, or are deemed by those sections to be imposed, does not prevent the conditions being the subject of a review under section 43AC or an appeal under section 47.”.

18 Completion notices

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 61 (termination of planning permission by reference to time limit: completion notices), after subsection (3) insert—

“(3A) A completion notice must also—

- (a) state that a person on whom it is served may lodge an objection,
- (b) specify the date on which the notice will take effect if no objection is lodged before that date.

(3B) The date so specified must be a date at least 28 days after the date on which the notice is served.”.

(3) In section 62 (effect of completion notice)—

(a) in subsection (1), for the words from “shall” to the end substitute “takes effect—

- (a) on the date specified in it, unless before that date an objection is lodged under section 62A(1),

(b) where an objection is lodged under section 62A(1), only if and when the notice is confirmed by the Scottish Ministers.”,

(b) subsections (2) and (3) are repealed,

(c) in subsection (4)—

(i) for “Secretary of State” substitute “Scottish Ministers”,

(ii) for “subsection (2)” substitute “section 62A(5)”.

(4) After section 62, insert—

“62A Objection to completion notice

(1) A person on whom a completion notice is served may, prior to the date specified in it, lodge an objection to the notice with the planning authority which served it.

(2) Where an objection is lodged under subsection (1), the planning authority must give notice of the objection to—

(a) every person who was served with the completion notice, and

(b) the Scottish Ministers.

(3) Before confirming a completion notice, the Scottish Ministers must allow the following people the opportunity to make representations to a person appointed for the purpose by the Scottish Ministers—

(a) the person who lodged the objection, and

(b) the planning authority.

(4) The Scottish Ministers must give notice of their decision as to whether or not to confirm the completion notice to—

(a) every person who was served with the completion notice, and

(b) the planning authority.

(5) In confirming a completion notice, the Scottish Ministers may substitute a longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.”.

(5) In section 182 (regulations controlling display of advertisements), in subsection (3)(a), for “62” substitute “62A”.

(6) In section 237 (validity of certain decisions), in subsection (3)(c), for “62” substitute “62A”.

Planning obligations

19 Planning obligations: financial agreements

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 75 (planning obligations)—

(a) in subsection (1), for the words from “an obligation” to the end substitute “a planning obligation.”,

(b) after subsection (1), insert—

“(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.”,

(c) in subsection (2), for “subsection (1), the reference in that subsection” substitute “paragraph (a) of subsection (1A), the reference in that paragraph”,

(d) in subsection (3)—

(i) after paragraph (a), insert—

“(aa) impose a restriction or requirement either permanently or during such period as is specified in the relevant instrument.”,

(ii) paragraph (b) is repealed,

(e) in subsection (5)(a), for “(2) or (3)(b)” substitute “(1A)(b) or (2)”,

(f) after subsection 12, insert—

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

(3) In section 75C (planning obligations: continuing liability of former owner etc.), in subsection (3), for “(2) or (3)(b)” substitute “(1A)(b) or (2)”.

20 Planning obligations: modification or discharge

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 34 (notice by planning authority of certain applications made to them), in subsection (2)(d), for “agreement” substitute “modification or discharge of a planning obligation”.

(3) In section 43 (directions etc. as to method of dealing with applications), in subsection (4)—

(a) the words “the giving of any agreement under subsection (2) of section 75A or” are repealed,

(b) for “subsection (4) of that section” substitute “section 75A(4)”.

(4) In section 75A (modification and discharge of planning obligations)—

(a) in subsection (1)—

(i) paragraph (a) is repealed,

(ii) in paragraph (b), for “and” substitute “or”,

(b) in subsection (2)—

(i) for the words “their agreement that the obligation” substitute “the obligation to”,

(ii) in paragraph (a), for the words from the start to “be” substitute “be modified as”,

(c) subsection (3) is repealed,

(d) in subsection (4)(c), for “the modifications specified in the application” substitute “modifications”,

(e) after subsection (4), insert—

“(4A) Where the authority propose to make a determination under subsection (4)—

(a) discharging the planning obligation despite that not being sought in the application, or

(b) modifying the planning obligation in a way that is not sought in the application,

they must obtain the applicant’s consent before making the determination.

(4B) Where the authority propose to make a determination under subsection (4) modifying the planning obligation so as to put or increase a burden on any non-applicant, they must obtain that person’s consent before making the determination.

(4C) Where an application under subsection (2) relates to more than one planning obligation, the authority may make a separate determination in relation to each planning obligation.”,

(f) in subsection (5)—

(i) the words “the applicant” become paragraph (a),

(ii) after paragraph (a), insert “, and

(b) any non-applicant against whom the planning obligation is enforceable,”,

(iii) the words “within such period as is prescribed.” become the closing words,

(g) in subsection (9)—

(i) in paragraph (b), after “publication of” insert “or giving of”,

(ii) after paragraph (b), insert—

“(ba) the giving of notice of proposed determinations to which subsection (4A) applies,”,

(iii) in paragraph (c), after “application” insert “or proposed determination”,

(h) in subsection (10), after “(4)” insert “, (4A), (4B), (4C)”.

(5) In section 75B (appeals)—

(a) in subsection (4)(c), for “the modifications specified in the application” substitute “modifications”,

(b) after subsection (4), insert—

“(4A) Where the Scottish Ministers propose to make a determination under subsection (4)—

(a) discharging the planning obligation despite that not being sought in the application, or

(b) modifying the planning obligation in a way that is not sought in the application,

they must obtain the applicant’s consent before making the determination.

(4B) Where the Scottish Ministers propose to make a determination under subsection (4) modifying the planning obligation so as to put or increase a burden on any non-applicant, they must obtain that person’s consent before making the determination.

(4C) Where an application under subsection (2) relates to more than one planning obligation, the Scottish Ministers may make a separate determination in relation to each planning obligation.”,

(c) in subsection (5)—

(i) the words “the applicant” become paragraph (a),

(ii) after paragraph (a), insert “, and

(b) any non-applicant against whom the planning obligation is enforceable,”,

(iii) the words “within such period as is prescribed.” become the closing words.

PART 4

OTHER MATTERS

Charges and fees

21 Fees for planning applications etc.

(1) Section 252 of the Town and Country Planning (Scotland) Act 1997 (fees for planning applications etc.) is amended as follows.

(2) After subsection (1)(b) insert—

“(c) the performance by a person appointed by virtue of a scheme of delegation under section 43A of the person’s functions.”.

(3) After subsection (1) insert—

“(1ZA)The Scottish Ministers may by regulations make provision for the payment of a charge or fee to the Scottish Ministers in respect of—

(a) the performance by the Scottish Ministers of any of their functions under the planning Acts or any order or regulations made under them,

(b) anything done by the Scottish Ministers which is calculated to facilitate, or is conducive or incidental to, the performance of any such function,

(c) the performance by a person appointed by the Scottish Ministers under paragraph 1 of schedule 4 of the person’s functions.”.

(4) In subsection (1A), for “The regulations” substitute “Regulations under subsections (1) and (1ZA)”.

(5) In subsection (1A)(b), after “calculated” insert “(including conferring on a planning authority the power to determine how it is to be calculated)”.

(6) For subsection (1A)(e) substitute—

“(e) provide that a planning authority may waive or reduce the charge or fee,
(ea) specify circumstances in which a planning authority are or are not to
waive or reduce the charge or fee.”.

(7) After subsection (1B) insert—

“(1C) The power to make provision such as mentioned in subsection (1A)(e) and (ea)
includes the power to specify the steps a planning authority are to take before
or after waiving or reducing the charge or fee.

(1D) Regulations under subsections (1) and (1ZA) may provide for a surcharge to be
imposed in relation to an application for planning permission made after the
carrying out of the development to which it relates.”.

(8) Subsection (2) is repealed.

(9) In subsection (3)—

(a) in paragraph (a), for “subsection (1)” substitute “subsections (1) and (1ZA)”,

(b) paragraph (b) is repealed.

(10) In subsection (7), for “the regulations, the planning authority” substitute “regulations
under subsection (1A) or (1ZA), the planning authority or, as the case may be, the
Scottish Ministers”.

(11) After subsection (8) insert—

“(9) Subsection (7) does not apply in relation to surcharges imposed by virtue of
subsection (1D).”.

Enforcement

22 Fines: increases and duty of court in determining amount

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 126 (penalties for non-compliance with planning contravention notice)—

(a) in subsection (4), for “level 3” substitute “level 5”,

(b) in subsection (6), for “level 5 on the standard scale” substitute “the statutory
maximum”.

(3) In section 136 (offence where enforcement notice not complied with), in subsection
(8)(a), for “£20,000” substitute “£50,000”.

(4) In section 138 (enforcement notice to have effect against subsequent development)—

(a) in subsection (4), for “level 5 on the standard scale” substitute “the statutory
maximum”,

(b) after subsection (4), insert—

“(5) In determining the amount of the fine to be imposed under subsection (4), the
court is in particular to have regard to any financial benefit which has accrued
or appears likely to accrue to the convicted person in consequence of the
activity which constituted the offence.”.

(5) In section 144 (penalties for contravention of stop notice), in subsection (5)(a), for
“£20,000” substitute “£50,000”.

- (6) In section 144C (temporary stop notices: offences), in subsection (6)(a), for “£20,000” substitute “£50,000”.
- (7) In section 145 (enforcement of conditions)—
- (a) in subsection (12), for “level 3” substitute “level 5”,
- (b) after subsection (12), insert—
- “(12A) In determining the amount of the fine to be imposed under subsection (12), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.”.
- (8) In section 186 (enforcement of control as to advertisements), in subsection (3) for “level 3” in both places it occurs substitute “level 5”.

23 Liability for expenses under enforcement notice

- (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
- (2) In section 135 (execution and cost of works required by enforcement notice)—
- (a) in subsection (1)(b)—
- (i) the words “from the person who is then the owner or lessee of the land” are repealed, and
- (ii) after “so”, insert “from—
- (i) the person who is then the lessee of the land, or any part of the land,
- (ii) any person who is then or subsequently becomes the owner of the land, or any part of the land (whether or not that person remains the owner).”.
- (b) in paragraph (b) of subsection (4), the words from “in respect” to the end of that paragraph are repealed,
- (c) after subsection (4), insert—
- “(4A) The right of recovery that an owner, lessee or occupier of land has under subsection (4) applies whether or not that person remains the owner, lessee or occupier of the land.”.
- (3) After section 158A, insert—

“Charging orders

158B Liability under a charging order

- (1) Where—
- (a) a planning authority or the Scottish Ministers (“the charging body”) have taken action in relation to land under section 135(1), and
- (b) a person is liable under that section for the expenses reasonably incurred by the charging body in taking that action,
- the charging body may make a charging order and apply to register it in the appropriate land register.

- (2) Once the charging order is registered the amount payable under section 135(1)(b)—
- (a) becomes payable in instalments in accordance with section 158C, and
 - (b) includes the administrative expenses referred to in subsection (3)(a) and, if the order so provides, the interest charges referred to in subsection (3)(b).
- (3) The administrative expenses and interest charges referred to are—
- (a) any administrative expenses reasonably incurred by the charging body in connection with recovering the amount due under section 135(1)(b) (including the fees for registration and discharge of the charging order),
 - (b) if the charging order provides for it, interest—
 - (i) on the expenses mentioned in subsection (1)(b),
 - (ii) at the rate (which must be a reasonable rate) specified in the order,
 - (iii) in respect of the period beginning with the first demand for payment of the expenses mentioned in subsection (1)(b) and ending with payment of the amount payable under section 135(1)(b).
- (4) In this section and sections 158C to 158F, reference to section 135(1) includes reference to that section as applied by section 139(4) or 179(6).
- (5) A charging order may not be made or registered in connection with a liability under section 135(1) that was incurred before section 23 of the Planning (Scotland) Act 2018 came into force.

158C Payments under a charging order

- (1) A charging body which makes a charging order must specify in the order—
- (a) the number of annual instalments in which the amount payable under section 135(1)(b) is to be paid (which must be between 3 and 30), and
 - (b) the date on which each instalment falls due.
- (2) The date specified under subsection (1)(b) for the payment of the first instalment must fall at least 56 days after the date on which a copy of the charging order is served on a person from whom payment is sought.
- (3) A person may redeem the amount payable under section 135(1)(b) early by paying to the charging body—
- (a) the amount payable under section 135(1)(b), or
 - (b) such lower sum as the person agrees with the charging body.
- (4) For the avoidance of doubt, despite the terms of a registered charging order, the charging body may (at any time) waive or reduce the amount payable under section 135(1)(b).

158D Form of a charging order

- (1) A charging order may not be registered unless it is in the form prescribed by the Scottish Ministers in regulations.

- (2) Regulations under subsection (1) must require that a charging order contain at least the following information—
- (a) the land to which it relates,
 - (b) the action taken under section 135(1) in relation to the land,
 - 5 (c) the amount payable under section 135(1)(b), or a description of that amount,
 - (d) the number of annual instalments into which the amount payable under section 135(1)(b) is divided and the date on which each instalment falls due,
 - 10 (e) notice that an instalment which is not paid is recoverable as a debt.
- (3) On making a charging order, the charging body are to serve a copy of the order on the owner of the land to which it relates.

158E Discharge of charging order

The charging body must register a discharge of a registered charging order in the appropriate land register as soon as reasonably practicable after it has received payment in full of—

- (a) the amount payable under section 135(1)(b), or
- (b) such lower sum as the person agrees with the charging body under section 158C(3)(b).

158F Meaning of “register” and “appropriate land register”

- (1) In sections 158B to 158E, “register” means—
- (a) register the information contained in the order, discharge or notice in the Land Register of Scotland, or
 - (b) record the order, discharge or notice in the Register of Sasines,
- and “registered” is to be construed accordingly.
- (2) In sections 158B and 158E, “appropriate land register” means the Land Register of Scotland or the Register of Sasines.”.

- (4) In section 186(2) (enforcement of control as to advertisements), after “enforcement notices” insert “, charging orders”.
- (5) The modifications made by this section do not apply in relation to any liability under section 135(1) of the Town and Country Planning (Scotland) Act 1997 that was incurred before this section came into force.

Training for taking planning decisions

24 Power to impose training requirement

- (1) A member of a planning authority who has not fulfilled the specified training requirements is prohibited from—
- (a) exercising any of the authority’s specified functions on their behalf, or

(b) being involved in exercising any of those functions on the authority's behalf as a member of a committee or any other body.

(2) In this section—

(a) “specified” means specified by the Scottish Ministers in regulations under this section,

(b) “planning authority” means—

(i) local authority, and

(ii) National Park authority,

(c) the reference to a member of a planning authority includes a member of a committee of a National Park authority appointed under paragraph 16(1) of schedule 1 of the National Parks (Scotland) Act 2000.

(3) Regulations under this section specifying functions of a planning authority may only specify functions conferred by the planning Acts as defined by section 277 of the Town and Country Planning (Scotland) Act 1997.

(4) Regulations under this section may in particular—

(a) specify that either or both attendance on a training course, and the completion of an examination, are training requirements,

(b) specify training requirements on the basis that the content and provider of the training, and any examination, must be accredited by the Scottish Ministers.

(5) The Scottish Ministers may disapply subsection (1) in relation to a planning authority (or all authorities) by regulations under this section.

25 Power to transfer functions where insufficient trained persons

(1) Where a planning authority are unable to exercise a function because of the prohibition created by section 24(1), the Scottish Ministers may, by direction, allow the function to be exercised on the authority's behalf by—

(a) another planning authority, or

(b) the Scottish Ministers.

(2) A direction under subsection (1) is referred to in this section as a transfer of functions direction.

(3) The Scottish Ministers may, by direction, modify or revoke a transfer of functions direction.

(4) A transfer of functions direction, or a direction modifying or revoking one, may make different provision for different purposes.

(5) The Scottish Ministers may by regulations—

(a) provide for any enactment to apply subject to such modifications as the Scottish Ministers consider appropriate in connection with—

(i) a transfer of functions direction, or

(ii) a direction modifying or revoking a transfer of functions direction,

(b) enable a person who has exercised a function of a planning authority by virtue of a transfer of functions direction to recover from that authority any costs reasonably incurred in so doing.

- (6) In this section, “planning authority” has the meaning given in section 24.

Performance of planning authorities

26 Performance of planning authorities

- (1) After Part 12 of the Town and Country Planning (Scotland) Act 1997 insert—

“PART 12A

PERFORMANCE OF PLANNING AUTHORITY FUNCTIONS

Annual report

251A Annual report on performance of functions

- (1) As soon as reasonably practicable after the end of each financial year, a planning authority are to prepare a report on the performance of their functions (or such of their functions as are specified in regulations made by the Scottish Ministers) during that year.
- (2) The planning authority are to—
- (a) submit a copy of the report to the Scottish Ministers, and
 - (b) publish the report.
- (3) The Scottish Ministers may by regulations make provision about—
- (a) the form and content of the report,
 - (b) the process to be undertaken in preparing the report,
 - (c) how the report is to be published.
- (4) In this section a financial year is the period of 12 months beginning with 1 April.

National performance monitoring

251B National planning performance co-ordinator

- (1) The Scottish Ministers may appoint a person to—
- (a) monitor the performance by planning authorities of their functions, and
 - (b) provide advice to planning authorities as to how they may improve the performance of their functions.
- (2) A person appointed under subsection (1) must submit reports to the Scottish Ministers on—
- (a) the activities carried out under that subsection,
 - (b) any recommendations the person has in consequence of carrying out those activities.
- (3) The Scottish Ministers may by regulations make further provision about—
- (a) the appointment and functions of a person appointed under subsection (1),
 - (b) reports submitted under subsection (2).

Assessment and improvement of functions

251C Assessment of planning authorities' performance

(1) The Scottish Ministers may appoint a person to conduct an assessment of a planning authority's or planning authorities' performance—

- 5 (a) of their functions generally, or
(b) of particular functions.

(2) In appointing a person, the Scottish Ministers are to specify—

- 10 (a) the planning authority or authorities to which the assessment is to relate,
(b) the functions to be assessed,
(c) the period to which the assessment is to relate, and
(d) such other restrictions on the scope of the assessment as they consider appropriate.

(3) After appointing a person, the Scottish Ministers are to notify each relevant planning authority of—

- 15 (a) the appointment, and
(b) the scope of the assessment.

(4) In this section and sections 251D to 251F—

20 “appointed person” means a person appointed to conduct the assessment under subsection (1),

“relevant planning authority” means a planning authority to which the assessment relates.

251D Powers of appointed person etc.

(1) For the purposes of any assessment conducted under section 251C, the appointed person may require access at all reasonable times—

- 25 (a) to any premises of a relevant planning authority, and
(b) to any document relating to a relevant planning authority which appears to the appointed person to be necessary for the purposes of the assessment.

(2) The appointed person may require a person holding or accountable for a document required under subsection (1)—

- 30 (a) to give the appointed person such information and explanation as the appointed person thinks necessary for the purposes of the assessment, and
35 (b) to attend in person before the appointed person to give the information or explanation or to produce the document.

(3) A relevant planning authority must provide the appointed person with—

- (a) every facility, and
(b) all information,

which the appointed person reasonably requires to be provided for the purposes of the assessment.

- (4) The appointed person is—
- (a) to give 3 clear days' notice of any requirement under this section, and
 - (b) must, if reasonably required to do so, produce a document of identification.
- (5) A person who without reasonable excuse fails to comply with a requirement made of the person under subsection (1), (2) or (3) commits an offence.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In this section, “document” means anything in which information is recorded in any form (and references to producing a document are to be read accordingly).

251E Report of assessment

- (1) On completion of an assessment conducted under section 251C, the appointed person is to—
- (a) prepare a report,
 - (b) submit it to the Scottish Ministers,
 - (c) issue it to each relevant planning authority, and
 - (d) publish it.
- (2) A report prepared under subsection (1)(a) is in this section and sections 251F and 251G referred to as a “performance assessment report”.
- (3) The performance assessment report may recommend improvements which a planning authority should make as to how they carry out their functions under the planning Acts.

251F Response report

- (1) After receiving the performance assessment report, each relevant planning authority is to prepare and submit to the Scottish Ministers a report (in this section and section 251G referred to as a “response report”) as to—
- (a) the extent to which, the manner in which and the period within which they propose to implement the recommendations of the performance assessment report which relate to them,
 - (b) in so far as they decline to implement those recommendations, their reasons for so declining.
- (2) A relevant planning authority need not prepare a response report if there are no recommendations of the performance assessment report which relate to them.
- (3) A response report must be submitted within—
- (a) such period as is specified in the performance assessment report, or
 - (b) such longer period as may be agreed between the planning authority and the Scottish Ministers.

- (4) For the purposes of subsection (3)(a), different periods may be specified for different relevant planning authorities.
- (5) A planning authority who submit a response report to the Scottish Ministers are to publish it.

5 **251G Directions to planning authority**

- (1) The Scottish Ministers may issue a direction to a planning authority requiring them to take such action as is specified in the direction if—

 (a) the planning authority decline to implement recommendations of a performance assessment report,

10 (b) the Scottish Ministers are not satisfied that the planning authority's proposals in the response report will effectively implement the recommendations, or

 (c) it appears to the Scottish Ministers that the planning authority are not timeously carrying out such implementation as the authority proposed in the response report.

- (2) A direction under subsection (1) may, in particular, require the planning authority to prepare and submit a further response report under section 251F(1) within a period specified in the direction.

- (3) The Scottish Ministers may vary or revoke a direction issued under subsection (1).

- (4) The Scottish Ministers are to publish—

 (a) any direction issued under subsection (1), and

 (b) any variation or revocation of such a direction.

- (5) In this section and sections 251E and 251F, “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).”.

- (2) Section 30 of the Planning etc. (Scotland) Act 2006 (assessment of planning authority's performance or decision making) is repealed.

PART 5

INFRASTRUCTURE LEVY

30 **27 Power to provide for levy**

- (1) The Scottish Ministers may by regulations establish, and make provision about, an infrastructure levy.

- (2) An infrastructure levy (within the meaning of this Act) is a levy—

 (a) payable to a local authority,

 (b) in respect of development wholly or partly within the authority's area,

 (c) the income from which is to be used by local authorities to fund, or contribute towards funding, infrastructure projects.

- (3) Schedule 1 elaborates on the regulation-making power conferred by this section.

28 Guidance

- (1) The Scottish Ministers may issue guidance to local authorities dealing with—
- (a) how they are to discharge the infrastructure-levy functions conferred on them by regulations under section 27, and
 - (b) how infrastructure-levy income should be spent.
- (2) Local authorities must have regard to any guidance under subsection (1) that is addressed to them.
- (3) Guidance under subsection (1) may be addressed to—
- (a) an authority, or more than one authority, identified in the guidance, or
 - (b) all authorities.
- (4) The Scottish Ministers must make guidance issued under subsection (1) publicly available.
- (5) The power under subsection (1) to issue guidance includes the power to—
- (a) issue guidance that varies guidance issued under that subsection, and
 - (b) revoke guidance issued under that subsection.
- (6) In subsection (1)(b), “infrastructure-levy income” includes—
- (a) monies collected as financial penalties imposed by virtue of paragraph 8 of schedule 1, and
 - (b) monies distributed to local authorities by virtue of paragraph 14(1)(b) of schedule 1.

29 Interpretation of Part and schedule

In this Part and schedule 1—

“development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997,

“infrastructure” includes—

- (i) communications, transport, drainage, sewerage and flood-defence systems,
- (ii) systems for the supply of water and energy,
- (iii) educational and medical facilities, and
- (iv) facilities and other places for recreation,

“infrastructure project” means a project to provide, maintain, improve or replace infrastructure.

30 Power to change meaning of “infrastructure”

The Scottish Ministers may by regulations modify section 29 so as to change, or clarify, the meaning of “infrastructure” for the purposes of this Part and the schedule.

PART 6

FINAL PROVISIONS

31 Ancillary provision

The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.

32 Regulation-making powers

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes and areas.
- (2) Regulations under section 31—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
 - (b) otherwise are subject to the negative procedure.
- (3) Regulations under sections 24, 25, 27 and 30 are subject to the affirmative procedure.

33 Minor and consequential amendments and repeals

Schedule 2 makes provision for minor and consequential amendments and repeals.

34 Commencement

- (1) This section and sections 31, 32 and 35 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
 - (a) appoint different days for different purposes,
 - (b) contain transitional, transitory or saving provision.
- (4) Regulations under this section bringing section 23 into force may amend—
 - (a) section 158B of the Town and Country Planning (Scotland) Act 1997, and
 - (b) section 23(5) of this Act,

so that, instead of referring to the day on which section 23 came into force, it specifies the date on which section 23 actually came into force.

35 Short title

The short title of this Act is the Planning (Scotland) Act 2018.

SCHEDULE 1
(introduced by section 27)

INFRASTRUCTURE-LEVY REGULATIONS

General

- 5 1 In this schedule, “infrastructure-levy regulations” means regulations under section 27.
- 2 2 This schedule (apart from paragraphs 14(2), 16(2) and 17) is without prejudice to the
generality of the regulation-making power conferred by section 27.
- 3 3 Infrastructure-levy regulations may make incidental, supplementary, consequential,
transitional, transitory or saving provision.
- 10 4 Any provision which infrastructure-levy regulations may make may be made by the
regulations modifying another enactment.

Who is liable for what

- 5 5 Infrastructure-levy regulations may set out—
- 15 (a) the kinds of development in respect of which infrastructure levy is payable,
(b) who is liable to pay infrastructure levy in respect of a development,
(c) when liability to pay infrastructure levy in respect of a development arises, and
(d) the amount to be paid by way of infrastructure levy in respect of a development
(“the payable amount”) either by—
- 20 (i) stating the amount, or
(ii) setting out how it is to be calculated.

Local exemptions and discounts

- 6 6 Infrastructure-levy regulations may—
- 25 (a) confer on local authorities the power to waive or reduce infrastructure levy in
respect of development in their areas, and
(b) set conditions on the exercise of any power so conferred.

Collection and enforcement

- 7 7 Infrastructure-levy regulations may—
- 30 (a) make provision about the collection of—
(i) payable amounts, and
(ii) penalties imposed by virtue of paragraph 8,
(b) enable local authorities to confer—
- 35 (i) powers of entry (except in relation to a dwelling-house) for the purpose of
investigating liability for infrastructure levy, and
(ii) powers to seize things found in the course of investigating liability for
infrastructure levy,

(c) make it an offence to evade, or reduce liability to pay, infrastructure levy (or attempt to do so) by—

- (i) withholding information,
- (ii) providing information that is false or misleading,
- (iii) otherwise obstructing the investigation of someone's infrastructure-levy liability, or
- (iv) causing another person to do any of those things.

Financial penalty for late payment

8 (1) Infrastructure-levy regulations may allow, or require, local authorities to charge a financial penalty if the payable amount is not paid within a period specified in the regulations.

(2) The regulations may, in particular, provide for the charging of—

- (a) a penalty of a specified amount (or amounts),
- (b) a penalty that is calculated periodically as a proportion of the payable amount, or
- (c) both kinds of penalty.

Deferring planning permission

9 Infrastructure-levy regulations may preclude planning permission for the carrying out of development from being granted, or being deemed to have been granted, until there has been payment in full of—

- (a) the payable amount, and
- (b) any financial penalty imposed in connection with the development by virtue of paragraph 8.

Stopping development

10 (1) Infrastructure-levy regulations may—

(a) empower a local authority to direct that the carrying out of development stop until there has been payment in full of—

- (i) the payable amount, and
- (ii) any financial penalty imposed in connection with the development by virtue of paragraph 8, and

(b) prescribe the consequences of not stopping development when directed to do so.

(2) The regulations may, in particular, make it an offence not to stop development when directed to do so.

Remission and repayment

- 11 Infrastructure-levy regulations may provide for the remission or repayment (with or without interest) of the whole or part of—
- (a) the payable amount, and
 - 5 (b) any financial penalty imposed by virtue of paragraph 8.

Appeals

- 12 Infrastructure-levy regulations may—
- (a) establish a process for appealing against a decision—
 - (i) that infrastructure levy is payable, or
 - 10 (ii) about what the payable amount is,
 - (b) provide that such an appeal is to be made to—
 - (i) the Scottish Ministers, or
 - (ii) a person appointed by them,
 - 15 (c) enable the person to whom such an appeal is made to set rules (or further rules, in addition to those set by the regulations) about the conduct of the appeal,
 - (d) in respect of such appeals—
 - (i) prescribe fees, and
 - (ii) make provision allowing expenses to be awarded.

Accounting requirements

- 20 13 (1) Infrastructure-levy regulations may make provision about the accounts that local authorities are to keep in connection with—
- (a) the exercise of their functions under infrastructure-levy regulations, and
 - (b) their expenditure of infrastructure-levy income.
- (2) In sub-paragraph (1), “infrastructure-levy income” includes—
- 25 (a) monies collected as financial penalties imposed by virtue of paragraph 8, and
 - (b) monies distributed to local authorities by virtue of paragraph 14(1)(b).

Aggregating levy income

- 14 (1) Infrastructure-levy regulations may—
- 30 (a) require local authorities to transfer to the Scottish Ministers some or all of their infrastructure-levy income, and
 - (b) make provision about how, following the transfer to them of infrastructure-levy income, the Scottish Ministers are to distribute the monies received amongst local authorities.
- (2) If regulations are made by virtue of sub-paragraph (1), they must provide for all
- 35 infrastructure-levy income transferred to the Scottish Ministers to be distributed amongst local authorities.

- (3) In sub-paragraph (1), “infrastructure-levy income” includes monies collected as financial penalties imposed by virtue of paragraph 8.

Expenditure of levy income

5 15 (1) Infrastructure-levy regulations may make provision about the particular purposes for which local authorities may apply infrastructure-levy income.

- (2) In sub-paragraph (1), “infrastructure-levy income” includes—
- (a) monies collected as financial penalties imposed by virtue of paragraph 8, and
 - (b) monies distributed to local authorities by virtue of paragraph 14(1)(b).

Use of planning and development powers

10 16 (1) Infrastructure-levy regulations may make provision about how any of the following powers may or may not be exercised—

- (a) section 75 of the Town and Country Planning (Scotland) Act 1997 (planning obligations),
- 15 (b) section 53 of the Roads (Scotland) Act 1984 (agreements as to use of land near roads),
- (c) any other power relating to planning or development.

(2) But provision of the kind mentioned in sub-paragraph (1) may be made only if the Scottish Ministers consider it necessary or expedient for the purpose of—

- 20 (a) enhancing the effectiveness of infrastructure levy as a means of raising revenue to fund, or contribute towards funding, infrastructure projects, or
- (b) preventing or restricting the use of powers, other than the power to charge infrastructure levy, in circumstances in which the Ministers think using the power to charge infrastructure levy would be more appropriate.

Maximum penalties

25 17 (1) The maximum penalty that infrastructure-levy regulations can specify for an offence they create is—

- (a) for a summary-only offence—
 - (i) a fine not exceeding level 5 on the standard scale,
 - (ii) a term of imprisonment not exceeding 12 months, or
 - 30 (iii) both,
- (b) for an either-way offence—
 - (i) a fine, which may not exceed the statutory maximum on summary conviction,
 - (ii) a term of imprisonment not exceeding—
 - 35 (A) 12 months on summary conviction,
 - (B) 2 years on conviction on indictment, or
 - (iii) both.

(a) in subsection (1)(a)—

(i) the words “strategic development plan or” where they first occur are repealed,

(ii) the words “proposed strategic development plan or” are repealed,

(b) in subsection (2)(b), the words “strategic development plan or” are repealed,

(c) subsection (3) is repealed,

(d) subsection (4)(b) and the word “or” immediately preceding it are repealed,

(e) subsection (5)(b) and the word “and” immediately preceding it are repealed.

(8) In section 23C (reviews of plans in enterprise zones), paragraph (a) and the word “and” immediately following it are repealed.

(9) In section 237 (validity of development plans etc.), in subsection (1)(a), the words “strategic development plan or” are repealed.

(10) In section 238 (proceedings for questioning validity of development plans etc.)—

(a) in subsection (1), the words “strategic development plan or” are repealed,

(b) subsection (5)(a) is repealed.

(11) In section 255(2)(a) (contributions by local authorities and statutory undertakers), the words “a strategic development plan or” are repealed.

(12) In section 269(1)(a) (rights of entry), the words “strategic development plan or” are repealed.

(13) In section 277(1) (interpretation), the entries in the list for “strategic development plan”, “strategic development plan area” and “strategic development planning authority” are repealed.

(14) In schedule 14 (blighted land), paragraph 1 is repealed.

Local development plans

2 (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 18 (preparation and publication of proposed local development plan), subsection (1)(c) is repealed.

(3) In section 19 (examination of proposed local development plans), in subsection (2), the words “or (6)” are repealed.

(4) In section 19A (further provision as regards examination under section 19(4)), in subsection (10)(a), the words “or (6)” are repealed.

(5) In section 20A(1) (publication of and publicity for local development plans), in the opening words, after “20(1)” insert “or (7)”.

(6) In section 23(1)(b) (disregarding representations with respect to main issues report), sub-paragraph (i) and the “or” immediately following it are repealed.

(7) In section 23B(1)(a) (default powers of the Scottish Ministers), the words “any main issues report requires to be compiled or” are repealed.

Delivery programmes

- 3 (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
 (2) In section 18(4)(a)(ii) (submission of programme to Scottish Ministers), for “action” substitute “delivery”.

5 *Amendment of National Planning Framework and local development plans*

- 4 (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.
 (2) In section 3D(1) (sustainable development: exercise of functions by Scottish Ministers), for “and revising” substitute “, revising and amending”.

Development plan

- 10 5 (1) Schedule 1 of the Town and Country Planning (Scotland) Act 1997 is amended as follows.
 (2) For paragraph 1 substitute—
 “1 In this schedule “old development plan” means—
 (a) a local plan,
 15 (b) a strategic development plan,
 (c) supplementary guidance.”.
- (3) In paragraph 2, for “that section” substitute “section 8 of the Planning (Scotland) Act 2018”
 (4) Paragraphs 3 and 5, and the italic headings immediately preceding them, are repealed.
 20 (5) For paragraph 6 substitute—
 “6 On the publication of the revised National Planning Framework under section 3A(8) after the coming into force of section 8 of the Planning (Scotland) Act 2018, all strategic development plans and any supplementary guidance issued in connection with them cease to have effect.
 25 6A On the constitution of a local development plan for an area under section 20 after the coming into force of section 8 of the Planning (Scotland) Act 2018—
 (a) so much of any local plan in force by virtue of paragraph 2 as relates to the area to which the plan so adopted relates ceases to have effect, and
 30 (b) any supplementary guidance issued in connection with a local development plan for that area ceases to have effect.”.
- (6) The italic heading immediately preceding paragraph 6 becomes “Discontinuance of old development plans”.
 (7) For paragraph 7 substitute—
 35 “7 The Scottish Ministers may by regulations provide that any of the provisions of an old development plan are to continue in force in relation to an area despite paragraphs 6 and 6A.”
- (8) In paragraph 8, for the word “a” where first occurring substitute “an old”.
 (9) In paragraph 9, the words “and the strategic development planning authority for any strategic development plan area,” are repealed.

(10) For paragraph 10, substitute—

“10 In this schedule—

“local plan” is to be construed in accordance with section 11 as that section applied immediately before the coming into force of the Planning etc. (Scotland) Act 2006,

“strategic development plan” is to be construed in accordance with section 7 as it applied immediately before the coming into force of section 2 of the Planning (Scotland) Act 2018,

“supplementary guidance” means guidance issued under section 22 of this Act as it applied immediately before the coming into force of section 4 of the Planning (Scotland) Act 2018.”.

PART 2

SIMPLIFIED DEVELOPMENT ZONES

Simplified development zone schemes

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 27(3)—

(a) after “54(4),” insert “54B(1)(b), 54D(2),”,

(b) after “61” insert “and paragraph 23 of schedule 5A”.

(3) In section 29(1)—

(a) the word “or” at the end of paragraph (c) is repealed, and

(b) after paragraph (c), insert—

“(ca) by a simplified development zone scheme, or”.

(4) In section 36(1)—

(a) the word “and” at the end of paragraph (c) is repealed, and

(b) after paragraph (c), insert—

“(ca) simplified development zone schemes relating to zones in the authority’s area, and”.

(5) In section 58(4)—

(a) the word “or” at the end of paragraph (f) is repealed, and

(b) after paragraph (f), insert—

“(fa) any planning permission granted by a simplified development zone scheme, or”.

(6) In section 61(1)—

(a) the word “or” at the end of paragraph (b) is repealed, and

(b) after paragraph (b), insert—

“(ba) development has been begun in accordance with planning permission under a simplified development zone scheme but has not been completed by the time that the scheme ceases to have effect, or”.

5 (7) In section 237(1), after paragraph (b) insert—

“(ba) a simplified development zone scheme or any alteration of such a scheme,”.

(8) In section 238—

(a) in subsection (3)—

10 (i) for the words from “a simplified” to “230”, substitute “any of the following”,

(ii) at the end insert—

“(a) a simplified planning zone scheme or an alteration of such a scheme,

(b) a simplified development zone scheme or an alteration of such a scheme,

15 (c) an order under section 202, 203, 206, 207, 208 or 230.”.

(b) in subsection (5), after paragraph (b) insert—

“(ba) in the case of an application by virtue of subsection (3) in respect of a simplified development zone scheme or an alteration of such a scheme, the date that notice is first published (in accordance with regulations under paragraph 25 of schedule 5A) that the scheme has been made or (as the case may be) altered,”.

20

(c) after subsection (6) insert—

“(7) In their application to simplified development zone schemes and their alteration, subsections (1) and (2) have effect as if, instead of Part II, they referred to Part III and schedule 5A.”.

25

(9) In section 275, after subsection (7B) insert—

“(7C) Regulations under paragraph 3 of schedule 5A are subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).”.

30

(10) In section 277(1), after the definition of “road” insert—

““simplified development zone scheme” is to be construed in accordance with sections 54A to 54E,”.

PART 3

DEVELOPMENT MANAGEMENT

35 *Duration of planning permission*

7 (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 37 (determination of applications: general considerations), in subsection (1)(a), for “and 59(1)(b)” substitute “, 58 and 59”.

- (3) In section 60 (provisions supplementary to sections 58 and 59) in subsection (1), in the opening words, for “58(2) and (3A)(b) and 59(5)” substitute “58(1)(b) and (3A)(b) and 59(2A)(b) and (2D)(b)”.
- 5 (4) In section 71 (order requiring discontinuance of use or alteration or removal of buildings or works), in subsection (7), for “58(2) and (3A)(b) and 59(5)” substitute “58(1)(b) and (3A)(b) and 59(2A)(b) and (2D)(b)”.
- (5) In section 88 (circumstances in which purchase notices may be served), in subsection (5), for “provisions of” substitute “conditions referred to in”.
- 10 (6) In section 232 (right of compensation in respect of certain decisions and orders), in subsection (7), for “provisions of” substitute “conditions referred to in”.

Schemes of delegation and local review

8 (1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 39 (declining to determine an application), in subsection (2A)—

(a) in the opening words, for “43A(5)” substitute “43AA(2)”,

15 (b) in paragraph (a), for “43A(8)” substitute “43AC”,

(c) in paragraph (c), for “43A(8)(c)” substitute “43AC(1)(e)”.

(3) In section 43B (matters which may be raised in a review under section 43A(8)), in subsection (1), for “43A(8)” substitute “43AC (other than one required by virtue of paragraph (e) of subsection (1))”.

20 (4) The section title of section 43B becomes “**Matters which may be raised in a review under section 43AC**”.

(5) In section 46 (call-in of applications), in subsection (2)(ab), for “43A(8)” substitute “43AC”.

25 (6) In section 237 (validity of development plans and certain orders, decisions and directions), in subsection (3A)—

(a) the words “(other than a deemed decision)” are repealed,

(b) for “43A(8)” substitute “43AC”.

(7) In section 277 (interpretation), in subsection (5)—

(a) in paragraph (ba), for “43A(8)(a) or (b)” substitute “43AC(1)(a) to (d)”,

30 (b) in paragraph (ca), for “43A(8)(c)” substitute “43AC(1)(e)”,

(c) in paragraph (da)(i), for “43(8)(a) or (b)” substitute “43AC(1)(a) to (d)”,

(d) in paragraph (da)(ii)—

(i) for “43A(8)(c)” substitute “43AC(1)(e)”,

(ii) for “43A(9)” substitute “43AC(3)”.

Planning (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about how land is developed and used.

Introduced by: Angela Constance
Supported by: Kevin Stewart
On: 4 December 2017
Bill type: Government Bill

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents