

EXPLANATORY NOTES

Planning (Scotland) Act 2019 (asp 13)

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These notes relate to the Planning (Scotland) Act 2019 (asp 13)
which received Royal Assent on 25 July 2019

PLANNING (SCOTLAND) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Planning (Scotland) Act 2019. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE ACT

3. The Act is part of a wider programme of reforms to the planning system as a whole, responding to the independent review of planning, which includes changes to secondary legislation made under existing powers as well as non-legislative changes. Some of the key aspects of the Act are its provisions in relation to the system of development plans; the opportunities for community engagement in planning; the effective performance of planning authorities' functions; and a new way to fund infrastructure development.

4. Many of the provisions of the Act amend the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"). The sections are arranged into Parts as follows:

- **Part 1** – Development planning. This Part sets out the purpose of planning. It makes changes to the system of development plans, amending the procedures for producing plans and the required content of those plans. It introduces local place plans, prepared by community bodies. This Part also requires planning authorities to produce open space strategies and the Scottish Ministers to report to the Scottish Parliament on how the planning system is operating to meet the housing needs of older people and disabled people.
- **Part 2** – Masterplan consent areas. This Part introduces provisions and a new Schedule 5A to the 1997 Act, providing a replacement for simplified planning zones, which grant planning permission for specified types of development within the zone.
- **Part 3** – Development management. This Part makes various amendments to provisions relating to planning applications, planning permission and planning obligations.
- **Part 4** – Other matters. This Part requires the Scottish Ministers to issue guidance in relation to the promotion and use of mediation in planning. It broadens the scope of regulation-making powers on planning fees and makes amendments in relation

to fines and recovery of expenses for enforcement activity. It introduces requirements in relation to the training of elected members on planning matters and reporting of planning authorities' performance, and makes provision for a planning improvement co-ordinator to be appointed. It clarifies that regulations may make different provision for different areas; requires the Scottish Ministers to publish all directions made under the 1997 Act and their reasons for making them; requires each planning authority to have a chief planning officer; amends provisions on National Scenic Areas, makes provision about notification of applications for listed building consent, under the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 and requires planning authorities to prepare forestry and woodland strategies.

- **Part 5** – Infrastructure levy. This Part gives the Scottish Ministers a power to make regulations to introduce a levy in respect of development to fund infrastructure, and introduces a schedule giving more detail about such regulations.
- **Part 6** – Final provisions. This Part makes provision about regulations made under the Act, about provisions that refer to dates, about the Act's commencement, and about its short title.

PART 1 – DEVELOPMENT PLANNING

Development planning

5. Sections 1 to 13 of the Act change the procedures for preparing the development plans and associated documents, and the content required to be included in them.

Section 1: Purpose of planning

6. Section 1 of the Act inserts Part 1ZA, comprising section 3ZA, into the 1997 Act. This provides that the purpose of planning is to manage the development and use of land in the long term public interest. Subsection (2) states that anything that contributes to sustainable development or achieves the national outcomes is to be considered to be in the long term public interest.

7. Subsection (3) of section 3ZA states that the purpose applies only to the Scottish Ministers' and planning authorities' functions under parts 1A and 2 of the 1997 Act. Part 1A of the 1997 Act deals with the National Planning Framework and Part 2 deals with local development plans and other aspects of the development plan.

8. Subsection (3) of section 1 of the Act repeals sections 3D and 3E of the 1997 Act, which relate to sustainable development and are now superseded by the purpose.

Section 2: National Planning Framework

9. Section 2 of the Act amends section 3A of the 1997 Act, which requires there to be a spatial plan for Scotland to be known as the National Planning Framework ("the Framework").

10. Section 2(2) of the Act amends the description of what is to be set out in the Framework in section 3A(3) of the 1997 Act to specify that it is to be the Scottish Ministers' policies and proposals for the development and use of land.

11. Section 2(3) of the Act amends the description in section 3A(3) of the 1997 Act of what the Framework is to contain. After the requirements for a strategy for Scotland's spatial development and priorities for that development, it adds the following requirements:

- a statement about how development under the Framework will contribute to the outcomes listed in new subsection (3A);
- targets for the use of land for housing;
- an assessment of the each proposed national development's lifecycle greenhouse gas emissions and their impact on achieving emissions reduction targets.

12. Section 2(4) of the Act introduces new subsection 3A(3A) to the 1997 Act, setting out outcomes to which development under the Framework is to contribute. These cover housing; health and wellbeing; repopulation of rural areas; equalities; reducing greenhouse gas emissions; and biodiversity.

13. Section 2(5) of the Act amends section 3A(4) of the 1997 Act, which sets out additional material which the Framework may contain. It inserts a new paragraph (aa) adding reference to such visual and descriptive material relating to rural areas which have become depopulated as may set out in regulations made under the 1997 Act.

14. Section 2(6) of the Act inserts a new subsection 3A(4A) into the 1997 Act. This requires the Scottish Ministers when preparing the Framework to have due regard to any National Scenic Areas report under section 263B of the 1997 Act. These reports are introduced by section 51 of the Act.

15. Section 3A(4)(b) of the 1997 Act provides that the Framework may designate "national developments". Subsection (7) of section 1 of the Act inserts a new paragraph (za) into section 3A(5) of the 1997 Act, stating that if the Framework contains a designation under subsection (4)(b), it must have regard to an infrastructure investment plan published by the Scottish Ministers, and include a statement setting out the ways the plan has been taken into account in preparing the Framework.

16. New section 3A(5A) of the 1997 Act, inserted by section 2(8) of the Act, clarifies that the Scottish Ministers may set out policies or proposals relating to the development or use of land outwith the National Planning Framework (and therefore without needing approval from the Scottish Parliament – see subsection 2(13)). New section 3A(5B) provides a definition of biodiversity.

17. Subsections (6) to (10) of section 3A of the 1997 Act, which deal with preparing, publishing and reviewing the Framework, are repealed.

18. Section 2(11) of the Act inserts new sections after section 3A of the 1997 Act.

19. New section 3AA requires the Scottish Ministers to keep the Framework under review. Subsection (2)(a) requires a review no later than 23 June 2024, which is 10 years from the date of the publication of the last national planning framework (NPF3). Subsection (2)(b) requires a 10 year review period thereafter. Subsection (3) requires that after a review of the Framework, the Scottish Ministers are to either (a) prepare a revised framework or (b) publish an explanation of why they have decided not to revise it.

20. New section 3AB of the 1997 Act sets out further detail on preparing a revised Framework. Subsection (2) requires the Scottish Ministers to prepare and publish a participation statement. This is defined in subsection (4) as an account of when consultation is likely to take place, with whom consultation will be undertaken, the steps taken to involve the public and likely form of the review. Consultation must include planning authorities, key agencies, the "appropriate body" on climate change (as defined in subsection (5)) and any other persons who have a role in the delivery of the outcomes to which the framework must contribute. Subsection (3)(a) requires the Scottish Ministers to have regard to relevant policies and strategies, setting out a list covering transport, land use, marine, infrastructure, climate change adaptation and housing. Subsection (3)(b) includes new policy objectives to which the Scottish Ministers must have regard in preparing the Framework, namely: resettling previously populated rural areas, preserving disused railway lines for future public transport use; and protecting peatland.

21. New section 3AC(1) allows the Scottish Ministers to direct a planning authority, or two or more planning authorities, to provide information to assist in the preparation or revision of the Framework. Subsections (2) and (3) define the matters about which the authorities may be required to provide information and includes additional matters that may be prescribed in regulations made under the 1997 Act. Subsection (4) requires that, where the direction relates to two or more planning authorities, they are to co-operate with one another.

22. Subsection (13) of section 1 of the Act introduces section 3CA into the 1997 Act, setting out the procedure for consultation and parliamentary scrutiny of a revised Framework. This replaces sections 3B and 3C of the 1997 Act, which are repealed by section 1(12) of the Act. Section 3CA requires the Scottish Ministers to consult in accordance with their participation statement (as defined in new section 3AA, lay a copy of the draft revised Framework before the Scottish Parliament, allowing 120 days for representations (excluding periods of parliamentary recess of more than 4 days or where the Parliament is dissolved). The Scottish Ministers must have regard to any representations, and if they make any changes as a result of the consultation, they must undertake such further consultation on those changes as they consider appropriate. Following the consultation, the Scottish Ministers must lay an explanatory document before the Parliament, setting out the consultation undertaken, a summary of representations received, and any changes made as a result of the consultation. Having completed these steps, the Scottish Ministers may lay the draft revised Framework before the Parliament, which must be approved by resolution of the Parliament before it can be brought into effect.

23. New section 3CB places a duty on key agencies to co-operate with the Scottish Ministers in the review of the Framework and preparation of any revised framework or amendment to the framework. Key agencies are specified by regulations under section 23D of the 1997 Act.

Section 3: Open space strategy

24. Section 3 of the Act introduces section 3G into the 1997 Act, which requires a planning authority to prepare and publish an open space strategy, as defined in section 3G(2), (3) and (4). Section 3G(5) gives the Scottish Ministers powers to make further provision in regulations about how planning authorities are to discharge these functions, and the meaning of certain terms. Section 3G(6) provides that a national park authority is not a planning authority for the purposes of this section (and so is not required to prepare and publish an open space strategy).

Section 4: Housing needs of older people and disabled people: parliamentary report

25. Section 4 of the Act introduces section 3CD into the 1997 Act. This requires the Scottish Ministers to lay before the Scottish Parliament, and publish, a report on how the planning system is operating to help ensure that the housing needs of older people and disabled people are met. This must be done as soon as practicable after the end of the period of two years from the day on which section 4 of the Act comes into force, and every two years thereafter. Section 3CD(2) sets out what the report must contain information about, and subsection (3) sets out who the Scottish Ministers must consult in preparing the report.

Sections 5 & 6: Strategic development: regional spatial strategies and removal of requirement to prepare strategic development plans

26. Section 5 of the Act inserts sections 4ZA to 4ZE into the 1997 Act, introducing the requirement for a planning authority, or two or more authorities acting jointly, to prepare and adopt a regional spatial strategy. These replace strategic development plans, which are removed by section 6 of the Act and its repeal of sections 4 to 14 of the 1997 Act. Paragraph 1 of schedule 2 of the Act sets out minor amendments consequential on the removal of strategic development plans.

27. New section 4ZA(1) sets out the requirement for planning authorities to prepare and adopt regional spatial strategies. Subsection (2) states that a regional spatial strategy is a long term spatial strategy and sets out what the strategy should cover, including setting out the area (or areas) to which it relates ('the region') and identifying the need for strategic development, the outcomes, priorities and proposed locations (to be shown in the form of a map or diagram).

28. Subsection (3) requires authorities to publish a draft of the strategy, a summary of information taken into account in preparing the draft strategy, and a statement inviting representations on the draft. Authorities are also required to send the draft strategy to other relevant authorities who may be significantly impacted by the strategic development that the strategy covers, the key agencies and any others as appropriate. Under subsection (4) authorities are also required to publish the adopted strategy, and to submit it to Ministers.

29. Subsection (5) defines strategic development as development that is likely to have a significant impact on future development within the area of more than one planning authority.

30. New section 4ZB sets out that the Scottish Ministers must have regard to regional spatial strategies in preparing, revising or amending the National Planning Framework, and planning authorities must have regard to their regional spatial strategy in preparing, revising or amending a local development plan.

31. New section 4ZC sets out arrangements for the first strategies to be prepared and for how strategies are to be reviewed and revised. Subsection (1) requires regional spatial strategies to be prepared as soon as reasonably practicable after section 5 of the Act comes into force. Subsection (2) requires planning authorities to keep their adopted regional spatial strategy under review, and allows them to prepare and adopt a replacement strategy if they consider it appropriate at any time. Subsection (3) requires a review at least once every 10 years, following which (subsection (4)) authorities either have to prepare and adopt a replacement strategy, or to publish an explanation of why they have decided not to do so.

Subsection (5) makes it clear that a replacement strategy is to be prepared and treated in the same way as the original strategy.

32. New section 4ZD allows the Scottish Ministers to direct a planning authority or authorities to prepare and adopt a regional spatial strategy, or to review an adopted strategy. Any such direction can specify the matters that authorities should take into account in preparing or reviewing the strategy. Subsection (3) requires authorities to co-operate with one another when such a direction is made.

33. New section 4ZE(1) makes provision for Scottish Ministers to issue guidance on the preparation, adoption, review and content of regional spatial strategies. Subsection (2) requires planning authorities to have regard to any such guidance when preparing or adopting a regional spatial strategy. Before issuing such guidance, subsection (3) requires the Scottish Ministers to consult each planning authority and any other persons as appropriate. Subsection (4) requires that the guidance is made publicly available. Under subsection (5) the guidance can be varied or revoked.

Section 7: Local development plans

34. Section 7 of the Act amends the provisions of the 1997 Act which set out the procedures for preparing and adopting a local development plan. Minor and consequential amendments to other sections of the 1997 Act are set out in paragraph 2 of schedule 2 of the Act.

35. Section 15(1) of the 1997 Act provides that a local development plan is a plan in which is set out a spatial strategy for the development and use of land in the area, such other matters as may be prescribed, and any other matters the planning authority consider appropriate. Section 7(2)(a) of the Act adds wording to paragraph (a) of section 15(1) of the 1997 Act, requiring the strategy to take account of the matters mentioned in section 15(5). This wording is moved from section 15(2) of the 1997 Act, which required local development plans outwith strategic development plan areas to set out a vision statement. Section 7(2)(c) of the Act repeals section 15(2) of the 1997 Act.

36. Section 7(2)(d) of the Act inserts new subsections (2A) and (2B) into section 15 of the 1997 Act requiring a local development plan to include statements on the provision of public conveniences and water refill locations.

37. Section 15(5) of the 1997 Act sets out a list of matters which a planning authority must take account of in setting out its spatial strategy. This is currently attached to the vision statement required by section 15(2), but section 7(2)(a) of the Act moves it to the spatial strategy, as section 15(2) is repealed by section 7(2)(c). Sections 7(2)(e) and 7(3) of the Act amend the list of matters in section 15(5) that are to be taken into account.

38. Section 7(4) of the Act amends section 16 of the 1997 Act, dealing with the preparation and monitoring of the local development plan. Paragraph (a) amends the time period within which local development plans must be prepared, from intervals of no more than five years as set out in the 1997 Act, to intervals of no more than 10 years.

39. Paragraph (b) requires the planning authority to take into account any local outcomes improvement plan for the part of the district to which the local development plan relates, in addition to the existing requirement to take into account the National Planning Framework.

Section 14(4) of the Act also adds any registered local place plan for the area. Paragraph (c) requires them to have regard to preserving disused railway infrastructure for future public transport requirements, and to the list published under section 16E (inserted by section 8 of the Act) of persons seeking land for self-build housing.

40. Section 7(4)(d) of the Act repeals sections 16(9) and (10) of the 1997 Act. This removes the requirement to publish a statement about the monitoring of changes in the characteristics of the district and the impact of policies and proposals in the local development plan. However, the requirement to monitor those matters will continue in place, as section 16(8) of the 1997 Act is not being amended.

41. Section 7(5) of the Act introduces section 16A into the 1997 Act, requiring planning authorities to make appropriate arrangements to promote and facilitate participation by children and young people in the preparation of the local development plan, and to publish information about those arrangements.

42. Section 7(6) introduces sections 16B, 16C and 16D into the 1997 Act.

Evidence report for preparation of local development plan

43. New section 16B introduces the evidence report and "gatecheck" process for local development plans. It requires an evidence report to be prepared, covering the matters specified in section 15(5) of the 1997 Act and other such matters as may be prescribed. The evidence report must also set out information on action taken by the planning authority in relation to meeting the housing needs of older people and disabled people, meeting the accommodation needs of Gypsies and Travellers, and inviting and supporting local communities to prepare local place plans.

44. Subsection (2) of new section 16B sets out groups the planning authority must consult with in preparing the evidence report, and subsection (4) requires the evidence report to include a statement on the consultation undertaken (with a different list of groups).

45. Under subsections (5) and (6), the evidence report must be approved by the full planning authority, before being submitted to the Scottish Ministers under subsection (7). These subsections do this by requiring the planning authority to approve the proposed evidence report before submitting it and then disapplying section 56 of the Local Government (Scotland) Act 1973 to the function of approving the proposed report (which means that the task cannot be delegated to, for example, a committee or an officer of the authority).

46. Subsections (8) to (12) provide for the Scottish Ministers to appoint a person to assess the report and sets out the process which applies depending on whether or not the appointed person is satisfied with the report. Subsection (13) allows for regulations to cover costs, procedure and what is to be assessed. Subsection (14) and (15) set out definitions for section 16B, including that the meaning of "Gypsies and Travellers" is to be specified in regulations. The Scottish Ministers must consult before making such regulations.

47. New section 16C provides that the Scottish Ministers may issue guidance to planning authorities about undertaking effective community engagement in relation to the local development plan. A planning authority must have regard to any such guidance.

48. New section 16D requires a planning authority to carry out a play sufficiency assessment in preparing an evidence report. The Scottish Ministers must make regulations about the form and content of this assessment, who must be consulted in relation to the assessment and about its publication.

49. Section 7(7) of the Act repeals section 17 of the 1997 Act. This removes the requirement for a main issues report to be prepared for a local development plan. Additional consequential changes to remove reference to main issues reports are also made in schedule 2 of the Act.

Preparation and publication of proposed local development plan

50. Section 7(8) of the Act amends section 18 of the 1997 Act to require planning authorities to prepare a proposed local development plan when they are notified that the appointed person is satisfied that the evidence report is sufficient, as per paragraph 46 above. The planning authority are required to have regard to the appointed person's report in preparing the proposed plan. The provisions also require the appointed person's report and the proposed local development plan to be published at the same time and in the same manner.

51. Paragraph (d) of section 7(8) of the Act introduces a new subsection (1A) to section 18 of the 1997 Act, which requires a planning authority within the relevant area to consult the Central Scotland Green Network Partnership on the proposed local development plan (for as long as it is included in the National Planning Framework as a national development). This paragraph was inserted by amendment and does not correctly identify the development or the body responsible for it. However, despite these deficiencies, the intention of requiring planning authorities to consult the Central Scotland Green Network in appropriate cases is clear.

52. Paragraph (d) also introduces subsections (1B) and (1C) into section 18 of the 1997 Act, which require the proposed plan to be approved by the full council of the planning authority before the plan is published. This is done in the same way as for the proposed evidence report under section 7(6) of the Act (new section 16B(5) and (6) of the 1997 Act).

53. Section 7(8)(e) of the Act amends the minimum time period for representations to be received once the proposed plan is published, from not less than six weeks as set out in the 1997 Act, to not less than twelve weeks.

54. Section 7(8)(f) of the Act repeals wording relating to where an authority decides to make no or only a certain type of modifications, meaning that the requirement to submit the proposed plan to the Scottish Ministers applies to all proposed local development plans, instead of a different approach being taken depending on whether or not (or what type of) modifications have been made. Paragraph (g) adds a requirement that where modifications are made to the proposed plan, the planning authority must prepare a report setting out the modifications made and the reasons for making them, and submit this to the Scottish Ministers with the proposed plan.

55. Section 7(8)(h) of the Act removes the requirements to publish the proposed plan and to advertise the authority's intention to adopt the plan if there is to be no examination. These are replaced by new arrangements in the subsequent subsections.

56. Section 7(8)(i) of the Act repeals subsections (5) to (9) of section 18 of the 1997 Act. This removes the requirement for a modified proposed plan or new proposed plan and for those to be published and representations allowed on them. This enables changes to be made to the proposed plan without requiring a further stage of plan preparation.

Examination of proposed local development plan

57. Subsections (9) to (14) of section 7 of the Act remove the Scottish Ministers' ability to intervene in local development plans (LDPs) at the end of the plan preparation process, prior to its adoption; adjust requirements relating to publication and notification requirements to prevent duplication of process due to the changes; and introduce new powers for the appointed person where they find the proposed plan is not satisfactory.

58. At present, if a proposed plan is unsatisfactory (for example by failing to allocate sufficient land for housing) the Reporter is expected to make recommendations for modifications, which the planning authority must implement. The Scottish Ministers may also direct the authority to consider modifying the plan, and may prevent the plan being adopted until they approve it. The new provisions place the responsibility back on the planning authority to address any failures in the plan, either before or immediately after the plan is adopted.

59. Section 19 of the 1997 Act relates to examination of the proposed local development plan. Section 7(9)(a) of the Act inserts a new subsection (5A) into section 19. This requires that when an examination of a plan is to take place, either at the request of the authority or by Ministers, the planning authority must publish the proposed plan and a report setting out any modifications made and the reasons for them. The change to section 19(9), made by paragraph (e), is in consequence of this and by reference to the new subsection (5A), allows publication to include publication by electronic means.

60. Section 7(9)(f) of the Act repeals paragraphs (b) to (d) in section 19(10) of the 1997 Act. This removes the requirements for the planning authority, following the examination, to publish the plan and modifications made to it, to advertise their intention to adopt the plan and to notify those who made representations on it. This avoids duplication with the publicity requirements when the plan is constituted, set out in section 20A of the 1997 Act.

61. Section 7(9)(g) of the Act removes section 19(12) of the 1997 Act. This removes the requirement for planning authorities to send copies of various documents to the Scottish Ministers, including the modifications made, any reasons for not modifying the plan as recommended, the proposed plan, the examination report, environmental assessment undertaken and details of the advert of their intention to adopt the plan.

62. Section 7(9)(d) of the Act introduces new subsections (8A) and (8B) into section 19 of the 1997 Act. Subsection (8A)(a) replaces provisions (removed by section 7(9)(c)) which enable recommendations to be made to modify the proposed local development plan. Subsection (8A)(b) introduces a new power for the appointed person (Reporter) to recommend that the plan is amended following its adoption. If a recommendation is made under subsection (8A)(b) new subsection (8B) requires that the report submitted to the planning authority including that recommendation is also sent to the Scottish Ministers.

63. Section 7(9)(b) of the Act broadens otherwise mandatory requirements of section 19(8) of the 1997 Act to allow for the new section 19ZA, inserted by section 7(10).

64. New section 19ZA gives the appointed person a new power, if they are not satisfied that the amount of land allocated is sufficient to meet the targets that are set in the plan, to issue a notice to a planning authority to require it to prepare another proposed local development plan. Subsection (3) sets out what the notice must include and subsection (4) sets out requirements to notify Ministers and those who have made representations, and to publish it (electronically). If the planning authority receives such a notice, under subsection (5) they must prepare another proposed local development plan. Subsection (6) allows this to be done on the basis of the existing evidence report, rather than having to start from the beginning of the process (although it does not prevent the authority for preparing a new evidence report if it considers it appropriate to do so).

65. Section 19A of the 1997 Act deals with whether the planning authority's consultation and public involvement with respect to the proposed plan has conformed with their participation statement in place at the time. The appointed person must consider this before carrying out the examination. If the appointed person is not satisfied, the Scottish Ministers may direct the authority to undertake further consultation, after which the authority may modify and must resubmit the proposed plan. Section 7(11) of the Act removes the separate requirements to publish the modified plan and advertise that a proposed plan has been resubmitted in these circumstances, and instead applies the requirement to publish the proposed plan and report on modifications under new section 19(5A).

66. Section 7(12) of the Act amends section 20 of the 1997 Act, which provides for the local development plan to be constituted when it is adopted by the planning authority. In particular, it removes subsections (2) to (7), which allow the Scottish Ministers to direct that modifications are to be made to the proposed plan, extend the time before which the plan may not be adopted, or require that the plan is to be constituted when it is approved by the Scottish Ministers, rather than when it is adopted by the planning authority. In place of these, the Act inserts new subsections (1A) and (1B) into section 20.

67. New subsection (1A) provides that planning authorities cannot adopt their plan until 28 days have passed following submission of the proposed local development plan to the Scottish Ministers. This allows Ministers 28 days within which they can either appoint a person to examine the plan, or decide not to. New subsection (1B) requires, where an examination has taken place, for the examination report to have been received by the planning authority before they can proceed to adopt the plan.

68. Section 7(13) of the Act inserts new subsections (1A) to (1E) into section 20A of the 1997 Act, which deals with publication and publicity for the local development plan.

69. New subsection (1A) provides that in certain circumstances, as soon as reasonably practicable after the local development plan is constituted, the planning authority must publish either (a) a "recommended-modification statement" or (b) a "report on modifications".

70. New subsection (1B) defines the circumstances where a recommended-modification statement is required – this being where a planning authority has declined to follow a recommendation in an examination report. New subsection (1E)(a) provides that the statement must set out the modification and explain why it was not made.

71. New subsection (1C) sets out where a report on modifications is required – this is where the constituted plan is different to the proposed plan as a result of modifications from earlier stages. New subsection (1D) provides that if a report on modifications was published at the examination stage, only new modifications need to be included in the report following constitution of the plan; if no new modifications were made no report need be published.

72. Section 7(14) of the Act inserts a new subsection (4A) into section 20B of the 1997 Act relating to development plan schemes. A development plan scheme is a document setting out the authority's programme for preparing and reviewing their plan. The development plan scheme is currently required to include a participation statement, which is an account of when consultation is likely to take place, with whom, its likely form, and steps to be taken to involve the public at large. New subsection (4A) requires that when the planning authority is preparing a development plan scheme, they must seek the views of, and have regard to any views expressed by, the public at large on the content of the participation statement. This will allow interested stakeholders to have a say in how they can be most effectively consulted, so that authorities can tailor their approach to improve its effectiveness.

Section 8: List of person seeking self-build land for housing

73. Section 8 of the Act inserts section 16E into the 1997 Act, requiring a planning authority to prepare, maintain and publish a list of people who have registered with the authority that they are interested in acquiring land in the area for self-build housing. The authority are to have regard to this list in preparing their local development plan, under section 16(2)(ab) inserted by section 7(4)(c) of the Act.

Section 9: Supplementary guidance

74. Section 9 of the Act repeals section 22 of the 1997 Act. This removes the ability for supplementary guidance to be prepared, adopted and issued in connection with the development plan which then forms part of the development plan.

Section 10: Key agencies

75. Section 10 of the Act amends section 23D of the 1997 Act so that references to a key agency as "a body" are replaced with "a person (other than an individual) or an officeholder". This broadens the ability to designate key agencies, as the current reference to "a body" would not allow an officeholder to be so designated.

Section 11: Delivery programmes

76. Section 11 of the Act amends section 21 of the 1997 Act so that references to "action" are replaced with "delivery". This is done to more accurately describe and emphasise the purpose of the document, which is to deliver the plan and achieve its outcomes, rather than its current focus of monitoring specific actions. Subsection (2)(d) introduces section 21(4A) into the 1997 Act, which places the duty to prepare the proposed delivery programme on the head of the planning authority's paid service. Subsection (2)(d) also introduces sections 21(4B) and (4C) into the 1997 Act, which require the proposed delivery programme to be approved by the full council of the authority (without delegating that function) before it is published. Minor and consequential amendments to other sections of the 1997 Act are set out in schedule 2 of the Act.

Section 12: Amendment of National Planning Framework and local development plans

77. Section 12 of the Act introduces sections 3CC and 20AA into the 1997 Act. New section 3CC(1) enables the Scottish Ministers to amend the National Planning Framework at any time. New section 3CC(2) provides that Ministers may direct planning authorities to provide specified information to them for the purpose of preparing the amendments. New section 3CC(3) requires the Scottish Ministers to set out in regulations circumstances in which they consider that an amendment would result in a significant change to the National Planning Framework such that a full revision should be carried out in line with the procedures set out in sections 3AA to 3CA. New section 3CC(4) and (5) allow the Scottish Ministers to make further provision about the amendment process in regulations, including the procedure to be followed, the required consultation, the effective date of the amendments, publication of the amended framework and laying of it before the Scottish Parliament.

78. New sections 20AA(1) to (3) of the 1997 Act enable planning authorities to amend a local development plan for their district at any time and allow the Scottish Ministers to direct a planning authority to amend a plan in relation to matters set out in the direction. The Scottish Ministers are required to set out the reasons for their direction.

79. New section 20AA(4) provides that in preparing an amendment to a local development plan, a planning authority are to take into account the National Planning Framework and any local outcomes improvement plan for the area. Section 14(6) of the Act also adds any registered local place plan. They must also have regard to such information and considerations as are prescribed, and to any other information and considerations as appear to them to be relevant.

80. New sections 20AA(5) and 20AA(6) allow the Scottish Ministers by regulations to make further provision about amending a plan and set out that regulations may in particular include the procedure to be followed, the consultation to be undertaken, when the amendments will take effect, and what the publication arrangements are to be. New section 20AA(7) allows regulations to apply sections 16A to 20A of the 1997 Act so that those sections apply equally to the process for amendments to a plan, with any modifications to those sections being set out in the regulations.

Section 13: Development plan

81. Section 13(2) of the Act amends section 24 of the 1997 Act, which sets out what constitutes the development plan for any area. It adds the National Planning Framework, and removes reference to the planning authority's resolution of adoption of, or the Scottish Ministers' notice of approval of, a local development plan, and supplementary guidance issued in connection with a local development plan. Note that the references to a strategic development plan and associated documents will cease to have effect once section 6 of the Act is fully implemented. Subsection (3) of the amended section 24 provides that in the event that any provisions of the National Planning Framework and the local development plan are incompatible, whichever provision is the later in date is to prevail. New subsections (2) and (4) of section 24 are intended to aid the interpretation of the provisions, however the references in subsection (4)(a) are incorrect as these subsections are repealed by section 2(9) of the Act. The National Planning Framework is now to be adopted and published under new section 3CA(1) and (7) of the 1997 Act.

82. Section 13(3) of the Act amends section 25 of the 1997 Act in consequence of the changes made to section 24 of the 1997 Act. Paragraph (a) requires that, as now, decisions under the planning Acts are to be made in accordance with the development plan unless material considerations indicate otherwise. This paragraph also, together with paragraph (b), repeals references to national developments and the National Planning Framework which currently exist within sections 25(1), (2) and (3) of the 1997 Act.

83. Sections 13(4) and (5) of the Act introduce new sections 237(1)(za), 238(A1) and 238(5)(za) into the 1997 Act. These provisions set out when legal proceedings may be brought to question the validity of the National Planning Framework and confirm the relevant date from which the period for applications for challenge runs (again there is an incorrect reference to section 3A(8)). A consequential change is also made to section 238(5)(aa) of the 1997 Act to reflect the fact that challenges to the local development plan may now arise from an amendment being made under the new procedure introduced by section 20AA of the 1997 Act (as inserted by section 7(3) of the Act).

Local place plans

Section 14: Local place plans

84. Section 14 of the Act inserts schedule 19 into the 1997 Act. This provides that a community body may prepare a local place plan, and sets out details about their preparation and submission and keeping a register and map of local place plans within a local authority area.

85. Section 14(2) of the Act inserts a new section 15A into the 1997 Act. This requires a planning authority, before preparing a local development plan, to publish an invitation to local communities to prepare local place plans, with information on the assistance available to do so, and on the manner in which and date by which local place plans must be prepared in order to be taken into account in the preparation of the local development plan.

86. Section 14(3) of the Act inserts a new section 15B into the 1997 Act, which requires the Scottish Ministers to carry out a review of local place plans within 7 years after the Act receives Royal Assent (by 25 July 2026). The review must cover: the number of local place plans submitted to and registered by planning authorities, with the names of the bodies that submitted them; a summary of the people who participated in preparing local place plans; the support given to community bodies; and assessments of how local place plans have influenced local development plans and planning decisions, and of their impact and effectiveness and whether further support is needed. The Scottish Ministers may require planning authorities to provide information for the report. The conclusions of the review must be set out in a report which is published and laid before the Scottish Parliament.

87. Section 14(4) of the Act amends section 16 of the 1997 Act to provide that where a planning authority are preparing their local development plan, they must take account of any registered local place plans within their district. Section 14(5) makes provision in case amendments made to section 16 of the 1997 Act by different parts of the Act come into force at different times. Section 14(6) of the Act amends section 20AA of the 1997 Act, inserted by section 11(3) of the Act, to provide that local place plans must be taken into account when a planning authority is amending its local development plan. Section 14(7) of the Act inserts schedule 19 (local place plans) into the 1997 Act.

Preparation of local place plans

88. Paragraph 1(1) of new schedule 19 to the 1997 Act states that a community body may prepare a local place plan. Sub-paragraph (2) states that a local place plan is a proposal as to the development and use of land. Sub-paragraph (3) provides that it may also identify land and buildings that the community body considers to be of particular significance to the local area. Sub-paragraph (2)(a) sets out the matters which the community body must have regard to when preparing the local place plan, namely the local development plan for the land to which the local place plan relates, the National Planning Framework and such other matters as may be prescribed. Sub-paragraph (2)(b) sets out that a community body, when preparing a local place plan, must set out reasons for considering that the local development plan should be amended, and sub-paragraph (2)(c) that they must comply with any prescribed requirements as to the form and content of the plan and any steps which must be taken before preparing the plan.

Submission of local place plans

89. Paragraph 2 sets out the requirements for the submission of a local place plan. The community body must comply with any prescribed requirements as to the steps to be taken before submitting a plan and information to be provided alongside the plan, as well as how the views of local councillors are to be taken into account. "Prescribed" is defined in section 277 of the 1997 Act and means prescribed in regulations made by the Scottish Ministers. Having complied with any prescribed requirements, a community body may submit a local place plan to the local planning authority.

Register and map of local place plans

90. Paragraph 3 provides that every planning authority must keep a register of local place plans. When a valid local place plan (that is, one in relation to which the requirements of paragraph 1(4) and 2(1) have been complied with) is submitted to them, a planning authority must include it in their register and inform the community body that it has been registered. Under sub-paragraph (3), if the planning authority consider the local place plan is not valid and therefore decide not to register it, they must give their reasons to the community body. Sub-paragraph (5) allows the Scottish Ministers to make regulations about the register, including when a local place plan may or must be removed from it. This will enable arrangements to be made for local place plans to expire after a period of time or to be superseded by a more recent version. Paragraph 4 requires each planning authority to make available a map of the land covered by registered local place plans in their district.

Meaning of 'community body'

91. Paragraph 4 defines a 'community body' which can prepare a local place plan. A community body may be (a) a community controlled body (as defined 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 – MASTERPLAN CONSENT AREAS

Section 15: Masterplan consent area schemes

92. Section 15 of the Act amends the 1997 Act to insert new sections 54A-F and schedule 5A, which relate to masterplan consent areas (MCAs). Consequential changes in respect of

other references within the Act which now also need to refer to masterplan consent areas are made in paragraph 5 of schedule 2 of the Act.

Making and alteration of schemes

93. New section 54A introduces new schedule 5A which provides detail on the process for making and altering MCA schemes, and gives the Scottish Ministers powers in connection with such schemes, including regulation-making powers to allow the Scottish Ministers to provide further detailed requirements and direction-making powers for various purposes.

Scheme grants planning permission, etc.

94. Under subsection (1) of new section 54B, an MCA scheme can grant authorisation for the type of development set out in the scheme, within the geographic location (area) to which the scheme relates. In setting out the type of development that the scheme authorises, this can be either expressly specified or described as type of development that is specified in the scheme. To be authorised by the scheme, the development must be started before the scheme ceases to have effect.

95. Subsection (2) states that the authorisation given by an MCA scheme is subject to any conditions, limitations or other exceptions that are specified in the scheme itself, or any regulations made by the Scottish Ministers restricting the type of development that may be authorised by a scheme.

96. Subsection (3) covers the types of consent that an MCA scheme can provide. Paragraph (a) provides that schemes act as a grant of planning permission and paragraph (b) allows schemes also to serve as roads construction consent, listed building consent and conservation area consent if these are specified in the scheme.

Content of schemes: self-build housing

97. New section 54C confirms that self-build housing may specified as a development or description of development authorised by an MCA scheme.

Effect of altering scheme

98. The Act provides the potential for a planning authority to make alterations to an MCA scheme. New section 54D(1) means that a scheme's alterations take effect from the day they are made. New sections 54D(2) and (3) make savings provision and provide that where development has already begun under the terms of the MCA scheme, it is not to be affected by a subsequent alteration to the scheme unless the scheme as altered so provides. However, section 54D(4) prevents an altered scheme from removing an authorisation for development which has already begun.

Further provision about effect of scheme

99. New section 54E provides in subsection (1) that the MCA scheme operates on a stand-alone basis. This means that any restrictions on development authorised by the scheme must be included within the scheme itself. The authorisations in a scheme are not to be impeded by any restrictions in any other grant of permission, consent or authorisation. For example, this means that if a particular development has been granted planning permission on a more restricted basis but an MCA scheme is then granted which authorises the development without

restriction, the developer who is about to carry out the development is entitled to do so in accordance with the terms of the MCA.

100. New section 54E confirms in subsection (2) that nothing in a scheme can restrict anyone's rights to do anything that is not development (and therefore does not require planning permission) or to carry out development for which planning permission is not required or has been otherwise granted (e.g. existing permitted development rights).

Interpretation of provisions about schemes

101. Section 54F explains how "scheme", "authorisation" and "development" are to be interpreted in relation to MCAs.

Schedule 5A of the 1997 Act: Masterplan consent areas

Part 1: Content of schemes

General

102. Paragraph 1 of new schedule 5A sets out that a scheme must include a map, a written statement, and any other graphic material, diagrams etc. that the planning authority consider appropriate for illustrating the scheme's provisions. It must specify the area to which it relates, the development or descriptions of development for which it grants authorisation, and the time frame for which the scheme will have effect (which must not be longer than a 10-year period). The Scottish Ministers may make regulations requiring further information to be included in a scheme.

Further provision about conditions, limitations and exceptions

103. Paragraph 2 of schedule 5A allows schemes to specify different conditions for different cases, which could cover different parts of the scheme's area or in relation to different types of development. It also allows the planning authority to include conditions that require the planning authority's agreement to certain matters as a condition of authorisation.

Land that cannot be included in a scheme

104. Paragraph 3 of schedule 5A imposes restrictions on places that can be included in a scheme. The list provided in subsection (4) covers places subject to various national or international environmental or heritage designations, and it may be modified by regulations. Schemes cannot include such places or be altered to include such places. However, paragraph 3(3) provides that if a place is already included within a scheme and benefits from the authorisations the scheme gives, it will not be removed from the scheme by the Scottish Ministers subsequently making regulations which provide that the land is of a type that may no longer be included in such schemes.

Part 2: Making and altering of schemes by planning authorities

Power to make or alter scheme

105. Paragraph 4 of schedule 5A allows planning authorities to make or alter a scheme for part of their area at any time.

Duty to periodically consider making scheme

106. Paragraph 5 of schedule 5A places a duty on planning authorities to consider, at least once every five years, which part(s) of their area it would be desirable to make a scheme for and to publish a statement setting out details of their decision and reasons. The Scottish Ministers may use regulations to set out requirements about the statement including its content, publication and circulation.

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

107. Paragraph 6 of schedule 5A means that the Scottish Ministers can at any time direct that, and set out the terms by which, a planning authority must make or alter a scheme. The direction must be in writing and be published. Under sub-paragraphs (2) and (3), a planning authority given such a direction is under a duty to seek to make or alter a scheme in accordance with the direction, but must comply with the process for making or altering a scheme set out in Part 3 of the schedule.

Part 3: Process for planning authority making or altering scheme

Chapter 1: Process for all cases

108. Paragraph 7 of new schedule 5A sets out the outline of the process for making or altering a scheme, as follows:

- The planning authority must consult as required by any regulations made under paragraph 8(2), and have regard to any valid representations made through that consultation. Following that consultation, they must come up with proposals.
- Then the planning authority must publicise the proposals in accordance with paragraph 9, and consider any representations received in accordance with paragraph 10 (including holding any hearings required under paragraph 11).
- The planning authority may then decide to make the proposed scheme or alteration, make an alternative scheme or alteration in light of the results of the consultation or any other material considerations, or decide not to make any scheme or alteration.
- If the planning authority propose to make an alteration that would exclude land from a scheme, withdraw authorisation granted by a scheme, or impose more stringent conditions or restrictions on any such authorisation, they must wait 12 months before making the alteration, as required by paragraph 13.

Consultation on possible proposals

109. Paragraph 8 requires the Scottish Ministers (sub-paragraph (2)) to prescribe in regulations who a planning authority must consult before determining the content of any proposals, how such consultation is to be undertaken, and how representations must be made by those consulted in order for those representations to be treated as valid representations. These regulations may require a planning authority to consult the public (or a portion of the public), or allow the Scottish Ministers to direct the planning authority to do so in particular cases. The planning authority must comply with the consultation requirements set out in the regulations and have regard to any valid representations received.

Publicity for proposals

110. Paragraph 9 provides that the Scottish Ministers are to set out by regulations the requirements for publicising and inviting representations on the proposals for making or altering any scheme; and the period in which representations may be made. Before making or altering a scheme, a planning authority must comply with the prescribed requirements and wait until the period for representations has expired.

Consideration of representations

111. Under paragraph 10, a planning authority may not make a proposed scheme or alteration until they have considered any representations which are validly submitted (that is, if they are submitted within the period prescribed in regulations under paragraph 9(2) and comply with any requirements that may be prescribed in regulations about how representations must be submitted).

Chapter 2: Further process for some cases

112. Paragraph 11 makes provision for holding hearings on the proposals in certain cases. The Scottish Ministers may make regulations setting out circumstances in which the planning authority must give certain persons (as specified in the regulations) an opportunity to appear before and be heard by a committee of the authority. Any representations made at such a hearing must be considered under paragraph 10 before any scheme or alteration is made.

113. Each planning authority is to make rules for the procedures for such hearings, including procedures to ensure the relevance of proceedings and avoid repetition, and rules about the right of anyone other than a person being heard to attend the hearing.

114. However, if the proposal is called-in by the Scottish Ministers under paragraph 14, the planning authority are not to hold or continue with such hearings.

115. Paragraph 12 allows the Scottish Ministers to direct a planning authority to notify them of any proposals for making or altering a masterplan consent area scheme that the authority has publicised in accordance with paragraph 12. The direction may be addressed to one, various or all authorities and may require the Scottish Ministers to be notified of particular types of proposals, or if a particular event occurs in connection with the proposals (for example if a key agency submits an objection). The planning authority may not make the proposed scheme or alteration (or any variant of it) until the period provided for in the direction has ended. This period may be a specified period of time, or may last indefinitely until the Scottish Ministers tell the authority it has ended.

116. Paragraph 13 imposes a requirement on the planning authority not to make certain alterations to schemes until 12 months after the completion of the consultation process. This applies where the alteration they intend to make would exclude a place from the scheme, withdraw authorisation granted by the scheme or make the authorisation granted by the scheme subject to new or more stringent conditions, limitations or exceptions.

117. Sub-paragraph (3) sets out that the consultation process is completed on the last day of hearings required under paragraph 11(1) or, where no such hearing was required, the last day that a representation could be validly submitted.

Part 4: Scottish Ministers' powers to make and alter schemes and stop proposals

Chapter 1: Calling in planning authorities' proposals

118. Under paragraph 14(2), the Scottish Ministers may give a call-in direction to a planning authority at any time before a proposed scheme or alteration is made. Having received a call-in direction, the planning authority may not make their proposed scheme or alteration and must not begin or proceed with any hearings in relation to the proposals. This overrides the requirement for hearings under paragraph 13(1).

119. Paragraph 15 sets out details of Ministers' powers after calling in. It provides that, having given a call-in direction, the Scottish Ministers may themselves make the proposed scheme or alteration, may make a scheme or alteration that is different from what the planning authority proposed, or may decline to make any scheme or alteration. In deciding which of these options to take, the Scottish Ministers may take matters into account that were not taken into account by the planning authority in drawing up their proposals, and may arrange for a local inquiry or other hearing to be held. If the Scottish Ministers decide to alter a scheme in a way that has any of the effects described in paragraph 13(1)(b), they are bound by the same rule as planning authorities and must not make the alteration until 12 months after making that decision.

Chapter 2: Making or altering scheme following paragraph 6 direction

120. Under paragraph 16, in cases where the Scottish Ministers have given the planning authority a direction under paragraph 6 to make or alter a scheme, and they are satisfied the planning authority are not fulfilling their duty to do so within a reasonable time period, Ministers may directly make or alter the scheme. The Scottish Ministers are required to have a local inquiry or other hearing held by a person appointed by them in order to satisfy themselves as to whether or not the planning authority are fulfilling their duty within a reasonable period.

121. Unless otherwise stated, the provisions about making or altering schemes apply to the Scottish Ministers when making or altering a scheme as they would normally apply to a planning authority. Paragraph 17 sets out how references to the planning authority, the planning authority's district, and a committee of the planning authority are to be read in cases where the Scottish Ministers are directly making or altering schemes. It also confirms that in such cases there is no requirement to consult or send things to the Scottish Ministers.

122. In cases where the Scottish Ministers have themselves had to make or alter a scheme directly (as per paragraph 16) because the planning authority were not fulfilling their duty to prepare a scheme following a direction received under paragraph 6, paragraph 18 provides that the Scottish Ministers may require the relevant planning authority to pay the Scottish Ministers the costs they incurred or such lesser amount as they consider appropriate.

Part 5: Further powers of Scottish Ministers

Chapter 1: Excluding kinds of development from schemes

123. Paragraph 19 gives the Scottish Minsters the power to make regulations setting out types of development for which schemes may not grant authorisation. These restrictions can be imposed by virtue of the development being development of land or a type of land that is specified, or by describing the type of development but, as set out in sub-paragraph 19(3), these

two types are not to be seen as the only ways in which types of development to be restricted can be made subject to the regulations.

124. Paragraph 20 covers circumstances where there is an existing scheme in place which has authorised a kind of development that is subsequently excluded from being able to be included in schemes as a result of regulations made under paragraph 19. The regulations will include a prescribed date. Development that is started before that prescribed date will not be affected by the restriction in the new regulations, and will remain authorised by the scheme. However, the scheme will cease to grant authorisation for such development from the prescribed date.

Chapter 2: Powers in relation to procedure, etc.

125. Paragraph 21 gives the Scottish Ministers power to make directions about how the authority are to formulate their procedures for carrying out their functions under schedule 5A, and provides that planning authorities must comply with any such direction. Scottish Ministers may also make a direction specifying information that the planning authority are to provide to the Scottish Ministers, provided that information is required to allow the Scottish Ministers to carry out their functions in relation to MCAs under schedule 5A.

126. Paragraph 22 gives the Scottish Ministers powers to make regulations about the form and content of schemes, and the procedure to be followed in making or altering a scheme. The regulations may (amongst other things) set out requirements in relation to: publicity requirements; consultation, including specifying who should be consulted; and representations and how these should be made and considered. Regulations may also set out requirements in relation to the publication and inspection of any scheme that has been made, or to a document setting out alterations that have been made, or are to be made, to a scheme.

127. The regulations can also make provision in relation to copies of documents. Sub-paragraphs (d) and (e) of paragraph 22(2) require a planning authority, in circumstances prescribed in the regulations, to give copies of documents which have been made public to anyone who requests those documents, and allows for the possibility of permitting the authority to impose a reasonable charge for providing such copies. Under paragraph 25(2)(g), regulations can also provide for the sale of copies of schemes, and any document that sets out details of alterations to a scheme.

Part 6: Interpretation

Application of section 54F

128. Paragraph 23 applies the interpretation set out in section 54F, in relation to the shorthand reference to some key terms, to schedule 5A.

Calculation of periods

129. Paragraph 24 explains how periods described in the schedule as ending after a specified number of months or years are to be calculated. There are two such references, to months or years, within Schedule 5A:

- Paragraph 1(4) – which means schemes cannot cover a period longer than 10 years.

- Paragraph 13(2) – which bars the planning authority from making certain restrictive alterations to schemes until 12 months after the completion of the consultation process.

130. In calculating these periods, paragraph 24(1) means that the end of the period of however many months will fall, within the final month, on the same day of the month as it started on, unless the final month has fewer days than the month it began, in which case it would be the last day of that calendar month.

131. Paragraph 27(3) provides a worked example to show when a six month period from a set date would be calculated to finish.

Section 16: Bar to creation of new simplified planning zones

132. The intention is that once the new provisions around masterplan consent areas are in place, existing simplified planning zones will be allowed to run their course but there will be a bar to the creation of new simplified planning zones, as the new MCA tool should be used instead. Therefore section 16 of the Act repeals various references to making or preparing simplified planning zone schemes, while leaving in place (for the duration of their existing term) the ability to alter any such schemes which are already up and running.

PART 3 – DEVELOPMENT MANAGEMENT

Meaning of "development"

Section 17: Meaning of "development": use of dwellinghouse for short term holiday lets

133. Section 26 of the 1997 Act defines "development" as "the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of any buildings or other land", followed by various exemptions, inclusions and clarifications. Section 28 of the 1997 Act states that (subject to exemptions) "planning permission is required for the carrying out of any development of land".

134. Section 17 inserts a new section 26B into the 1997 Act. This allows a planning authority to designate all or part of their area as a 'short-term let control area'. In designated areas, the use of a dwellinghouse for providing short-term lets would be a material change of use of the dwellinghouse and would require planning permission. Subsection (4) provides that the planning authority can vary or cancel a designation as a short-term letting control area.

135. Section 26B(3) establishes that a private residential tenancy in terms of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 does not constitute a short-term let, nor does a tenancy of a dwellinghouse or part of it where the dwellinghouse is the only or principal home of the landlord or occupier.

136. Subsection (5) provides regulation-making powers for the Scottish Ministers to make further provision regarding the procedure for making, varying or cancelling a short-term letting control area, which may include the approval of Scottish Ministers, and the form of a designation as a short-term letting control area. Regulations may also set out what constitutes providing a short-term let and any circumstances in which, or descriptions of dwellinghouse to which section 26B does not apply. Under subsection (6) the Scottish Ministers are required to

consult with planning authorities and such other persons as they consider appropriate before making any regulations under section 26B.

Applications

Section 18: Pre-application consultation

137. Section 18 of the Act amends sections 35A, 35B and 35C of the 1997 Act on pre-application consultation (PAC).

138. Section 35A (pre-application consultation: preliminary) of the 1997 Act requires that, before submitting an application for planning permission for a prescribed class of development, the prospective applicant has to comply with section 35B (pre-application consultation: compliance). Section 35A of the 1997 Act goes on to specify a screening procedure whereby a prospective applicant can ask the planning authority for their opinion on whether the proposal falls within a class of development requiring pre-application consultation (PAC).

139. Section 35B of the 1997 Act requires the prospective applicant to give a notice (a proposal of application notice) to the planning authority that an application for planning permission to which PAC applies will be made. Such an application cannot be submitted within 12 weeks from the giving of this notice. Section 35B goes on to make provision about the content of the notice, who is to be consulted and how the consultation is to be carried out.

140. Section 35C (pre-application consultation report) of the 1997 Act requires that if an application is to be submitted, a report must be prepared of what was done to comply with the PAC requirements. This section also allows for the form of such a report to be prescribed.

141. Section 35A(1A) of the 1997 Act contains an exception to the requirement for PAC in relation to applications for planning permission under section 42 of the Act. Section 18(2)(a) of the Act amends section 35A(1A) of the 1997 Act to add a new paragraph (b) allowing the Scottish Ministers to make regulations specifying circumstances in which an application for planning permission does not require PAC. This power will be in addition to the existing power under section 35A which allows Ministers to prescribe classes of development to which PAC requirements apply.

142. Sections 35A(3) and (9) of the 1997 Act relate to the screening process for prospective applicants on the need for PAC. At the moment, these provisions are framed on the basis of the existing rules about when PAC applies. Sections 18(2)(b) and (d) of the Act update that reference, in light of the fact that whether or not the development is of a prescribed class will now no longer be the only factor in determining whether PAC is required. The replacement form of words allows the screening opinion to consider both the current test for PAC (whether the proposal relates to a prescribed class of development to which PAC applies) and also the new test (whether it is covered by any prescribed circumstances where PAC does not apply).

143. Section 18(2)(c) of the Act also amends section 35A(5) of the 1997 Act so that regulations may prescribe the content, and not just the form, of a notice requesting screening.

144. Section 18(3) of the Act amends section 35B(3) of the 1997 Act so that an application for planning permission must be submitted within a maximum of 18 months of the date of submission of the proposal of application notice. This runs concurrently with the existing

minimum period, which provides that the application cannot be submitted until at least 12 weeks after the giving of this notice.

145. Section 18(4) of the Act amends section 35C(2) of the 1997 Act so that regulations can prescribe not only the form but also the content of a PAC report.

Section 19: Assessment of health effects

146. Section 19 of the Act introduces a new section 40A into the 1997 Act, which requires the Scottish Ministers to make regulations about the consideration to be given to the likely health effects of any national or major development, before planning permission is granted. Under paragraph 9 of schedule 2 of the Act, the regulations are to be subject to affirmative procedure.

Section 20: Regulations about procedure for certain applications

147. Section 20 of the Act replaces subsection (3) of section 42 (determination of applications to develop land without compliance with conditions previously attached) of the 1997 Act – see paragraph 172 below. Subsection (3) currently allows special provision to be made in a development order about the procedure to be followed in an application under section 42 of the 1997 Act. The revised text allows for such provision to also be made in regulations.

Section 21: Removal of requirement to recover costs before determining certain applications

148. Section 34(4)(c) of the 1997 Act requires an applicant to pay the planning authority a fee to cover the costs incurred in giving notice to interested parties of the application before the authority can issue a decision on that application. Section 21 of the Act repeals this requirement as the intention is to change the approach to recovering such costs upfront through the application fee. Currently the advertising costs are not collected at point of application, but before decision notice is issued which may lead to applicants refusing to pay such costs if they know the application is to be refused.

Section 22: Declining to determine an application

149. Section 39 of the 1997 Act sets out the discretionary powers for planning authorities to refuse to accept planning applications (decline to determine), where permission was previously refused for a 'similar application', i.e. where the development and the land are the same or substantially the same. Different criteria apply depending whether there has been an appeal or local review, but in each case the authority may decline to determine an application if the criteria were met within the previous two years. Section 14A of the Act amends this to be five years in each case. Section 38 of the Act inserts a new section 39A requiring the Scottish Ministers to publish guidance on what constitutes a "similar application" and a "significant change" for the purposes of declining to determine an application.

Notice by planning authority of certain applications made to them

Section 23: Notice by planning authority of certain applications made to them

150. Section 23 of the Act amends section 34 of the 1997 Act to require that a planning authority must give notice of any application for planning permission for a major development to each local councillor, MSP and MP representing the district to which the application relates.

Assessment of environmental effects

Section 24: Assessment of environmental effects

151. Section 40 of the 1997 Act gives the Scottish Ministers powers to make regulations about the assessment of environmental effects of any development before planning permission is granted. Section 24 of the Act amends section 40 so that "environmental effects" explicitly includes effects on biodiversity, including the net positive effects on biodiversity likely to result from the development.

Conditional grant of planning permission: noise-sensitive developments

Section 25: Conditional grant of planning permission: noise-sensitive developments

152. Section 25 inserts a new section 41A into the 1997 Act intended to implement the "agent of change" principle to protect existing activities that create significant noise. Subsection (1) defines a "noise-sensitive development" and a "noise source". Subsection (2)(a) provides that where an application is made for planning permission for a noise sensitive development the planning authority must take particular account of whether the development includes sufficient measures to deal with the effect of noise between the development and existing dwellings or businesses, with particular emphasis on live music venues and other cultural venues. Subsection (2)(b) states that the authority may not set conditions on the grant of such planning permission that impose additional costs on a noise source, relating to acoustic design measures to manage the effects of noise.

Conditional grant of planning permission: provision of toilet facilities within certain large developments

Section 26: Conditional grant of planning permission: provision of toilet facilities within certain large developments

153. Section 26 inserts a new section 41B into the 1997 Act. This requires that a planning authority may only grant planning permission for certain types of development on condition that it includes at least one toilet facility meeting specified standards. The section is intended to provide that "Changing Places" toilets suitable for adults with complex disabilities are included in the development of large public buildings. The list of developments to be covered is set out in subsection (2), and the specification for the required facility is in subsection (3). Subsection (4) provides that the Scottish Ministers may amend these by regulations, in order to ensure the requirements are appropriate and keep up with changing standards. Under section 275(7BA) of the 1997 Act, such regulations are subject to the affirmative procedure.

Delegation of development decisions

Section 27: Delegation of development decisions

154. Section 27 of the Act repeals section 56(6A) (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 ("the 1973 Act") and section 14(2) (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 ("the 2006 Act"). Section 56 of the 1973 Act deals with the delegation of functions within local authorities. Section 14 of the 2006 Act introduced subsection (6A) to section 56 of the 1973 Act which specifies that: "A local authority's function of determining an application for planning

permission for a development of a class mentioned in section 38A(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8) shall be discharged only by the authority."

155. Section 38A(1) of the 1997 Act provides that a pre-determination hearing before a committee of the authority must be offered to the applicant (and prescribed parties) in relation to an application for planning permission for a prescribed class of development. Therefore, the local authority currently cannot delegate to a committee or to officials the decision on whether or not to grant planning permission in a case where a pre-determination hearing has to be offered.

156. Section 27 of the Act removes the requirement for such applications to go to full council for decision, and leaves the authority free to delegate the decision on such applications as it sees fit. For example, since the pre-determination hearing is before a committee of the authority, it might be considered appropriate for that committee to make the decision on the application.

Section 28: Schemes of delegation

157. Section 28 of the Act substitutes new sections 43A, 43AA, 43AB, 43AC and 43AD for section 43A of the 1997 Act. Section 43A of the 1997 Act currently requires each planning authority to prepare a scheme of delegation for the determination by an appointed person of various applications. The applications in question are applications for planning permission in relation to local development, and applications for consent, agreement or approval where that is required by conditions attached to such planning permission. An appointed person is distinct from an elected member of the authority and is usually an officer of the authority. Where applications are so delegated, rather than a right of appeal to the Scottish Ministers, the applicant has a right to a review by the planning authority of the appointed person's decision, or failure to make a decision, on the application. The main effect of the new provisions is to extend such schemes of delegation to other types of application under the 1997 Act; they also expand the content of the current section 43A to set it out more clearly.

158. New sections 43A(1) – (3) restate the basic specification of a scheme of delegation and the requirements to review and update the scheme which are currently in existing section 43A(1) of the 1997 Act. As all planning authorities already have schemes of delegation, the current requirement for each planning authority to prepare one as soon as possible after the provision comes into force has been removed.

159. New section 43A(4) sets out the applications to which a scheme of delegation applies. As well as covering those applications which are currently covered (paragraphs (a) and (b)), new section 43A(4) extends the range of applications to which such schemes apply. It adds applications for approval required by a development order (paragraph (c)), applications for certificates of lawful use or development (CLUD) (paragraphs (d) and (e)) and applications for advertisement consent (paragraph (f)). New section 43(5) restates the current section 43A(3) which prevents the delegation to an appointed person of applications for planning permission for which a pre-determination hearing before committee is required (section 38A(1) of the 1997 Act). New section 43A(6) restates current section 43A(6) which allows a planning authority to remove an application from the scheme of delegation and determine it themselves; and new section 43A(7) restates current section 43A(7) which requires them to produce a statement of reasons for doing so, which must be copied to the applicant. New section 43A(8) contains a new provision which clarifies that applications covered by a scheme of delegation under the

1997 Act cannot be delegated to an officer of the planning authority through section 56 of the Local Government (Scotland) Act 1973.

160. New section 43AA(1) restates the current provisions of section 43A(2) of the 1997 Act. This provides that the determination of any person appointed is to be treated as the determination of the planning authority, except for the purposes of triggering a right of review under section 43AC or a right of appeal to the Scottish Ministers under section 47 or section 154 of the 1997 Act. The inclusion of a reference to section 154 of the 1997 Act (which deals with CLUD appeals) is new, and is added alongside the reference to section 47 which deals with planning permission appeals. New section 43AA(1) means that although the applicant can require a review of the decision of the appointed person, they cannot appeal to the Scottish Ministers against such a decision. New section 43AA(2) restates the current section 43A(5), which lists provisions of the 1997 Act that place requirements on the planning authority when dealing with a planning application and applies them to an appointed person in delegated cases. New sections 43AA(4) and (5) are new provisions which similarly apply a development order and relevant parts of the 1997 Act to the appointed person when dealing with delegated applications for, respectively, the consent, agreement or approval required by a development order and with CLUDs.

161. New section 43AB(1) restates the current requirements of section 43A(4) of the 1997 Act, which allows the Scottish Ministers to make regulations setting out the form and content of schemes of delegation and the procedures for their preparation and adoption (with this being extended by new section 43AB(1) to also cover changes to schemes). New section 43AB(2) is a new provision which makes it clear that the regulations may require the planning authority to provide the Scottish Ministers with a draft of a scheme of delegation and may also require the authority to make such modifications as specified by the Scottish Ministers before adopting the scheme. It also allows regulations to require compliance with directions issued by the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation. New section 43AB(3) contains a new requirement for planning authorities to have regard to any guidance issued by the Scottish Ministers when authorities are preparing, adopting, reviewing or changing a scheme of delegation.

162. New sections 43AC and 43AD for the most part simply restate the current requirements of sections 43A(8) to 43A(17) of the 1997 Act. Those sections cover the procedure under which the applicant can require the planning authority to review a delegated decision – either where an application was refused or granted subject to conditions, or where the appointed person failed to determine the application within the prescribed time period. The exception to this (as at present) is that an applicant cannot require the planning authority to hold a review on the basis of the application not being determined timeously if the formal power in section 39 of the 1997 Act to decline to determine an application in certain circumstances has been exercised, or if the Scottish Ministers have called-in the application under section 46 of the 1997 Act. The form and procedure of such a review may be set out in regulations or a development order.

163. Subsections (1) and (4) of new section 43AC, on, respectively, the right to review and determining a review, reflect the wider range of applications to which the schemes of delegation and review procedures now apply under new section 43A(4). New section 43AC(1)(e), together with 43AC(7), provide that a review may be requested if notice of the decision has not been given within "the relevant period", which may be as prescribed or such

other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a "fast track" service attracting a higher fee. New section 43AC(4) sets out the determinations available to a planning authority in dealing with a review. New section 43AC(5) restates section 43A(16) which stipulates that planning authority decisions on reviews are final, subject only to section 239 of the 1997 Act (proceedings for questioning the validity of other orders, decisions and directions).

164. New section 43AD makes provision as to what the Scottish Ministers may specify in regulations or a development order with regard to the form and procedures of any review by the planning authority. This largely replicates existing sections 43A(10) to (14) of the 1997 Act.

165. Section 28(3) of the Act replaces the existing provisions in section 43A(17) of the 1997 Act. Those sections both deal with an applicant's right of appeal to the Scottish Ministers in cases where a planning authority fail to determine a local review which was requested by an applicant on the grounds that the appointed person had failed to determine a delegated application. Currently, where the planning authority fail to determine a local review in such cases, the application is deemed to have been refused and the applicant can then appeal to the Scottish Ministers under section 47(1) of the 1997 Act against that deemed refusal. Section 28(3) of the Act amends section 47(2) of the 1997 Act (which deals with appeals to the Scottish Ministers where the planning authority have failed to determine an application) to grant a right of appeal in a case where a local review requested on the grounds of non-determination is itself not determined timeously. However, paragraph (b) (which inserts section 47(2A) into the 1997 Act) makes it clear that a right of appeal does not arise under section 47(2)(a) where it is only the appointed person who has not determined the application timeously. In such a case the applicant should instead use the right of review under new section 43AC(1)(e). Section 28(4) of the Act makes equivalent provision in relation to appeals against a planning authority's failure to determine a review that is requested on the grounds of non-determination of a delegated CLUD decision. Schedule 2 of the Act contains various minor and consequential amendments and repeals in connection with these amendments to schemes of delegation and local reviews.

Call-in of applications by Scottish Ministers: further provision

Section 29: Call-in of applications by Scottish Ministers: further provision

166. Section 29 inserts a new section 46A into the 1997 Act. This requires the Scottish Ministers to lay before the Scottish Parliament and publish a statement setting out the circumstances in which they consider it appropriate to give directions under section 46(1) requiring planning applications to be referred ("called-in") to be determined by Ministers rather than the planning authority. The statement may be revised or replaced from time to time.

Determination of applications: statement to accompany notification

Section 30: Determination of applications: statement to accompany notification

167. Section 30 amends section 37 of the 1997 Act. It inserts a new subsection (2A) which requires the planning authority to include in the decision notice for a planning application a

statement as to whether they consider the development to be in accordance with the development plan, and their reasons for reaching that view.

Agreements relating to period before which an appeal may be made

Section 31: Agreements relating to period before which an appeal may be made

168. Section 31 amends section 47 of the 1997 Act (right to appeal against planning decisions and failure to take such decisions). This currently provides that an applicant may appeal if an application has not been determined within a period prescribed in regulations, or an extended period agreed between the applicant and the planning authority. The amendments alter this to provide that an appeal may be brought if notice of the decision has not been given with "the relevant period", which may be as prescribed or such other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a "fast track" service attracting a higher fee.

Duration of planning permission

Section 32: Duration of planning permission and planning permission in principle

169. Section 32 of the Act amends section 58 (duration of planning permission) and section 59 (planning permission in principle) of the 1997 Act and makes related amendments to section 41 (conditional grant of planning permission) and section 60 (provisions supplementary to sections 58 and 59) of the 1997 Act.

170. Section 58 of the 1997 Act currently specifies that, except in the cases set out in section 58(4), planning permission will lapse after a period of 3 years from the date planning permission is granted, unless the development to which the permission relates has been started before then. It allows the authority when determining the application to direct that a different period, longer or shorter than three years, applies. This section and the amendments to it also apply to where planning permission is deemed to be granted under section 57 of the 1997 Act, which applies where government authorisation is given for certain projects.

171. Section 59 of the 1997 Act specifies what constitutes planning permission in principle: broadly speaking, planning permission granted in accordance with regulations or a development order for various operations and subject to a condition that certain matters have to be approved by the planning authority before the work begins. Like section 58 of the 1997 Act, it specifies a period within which development must be started or the permission lapses. In addition, section 59 specifies a time frame for applying for approval of matters specified in conditions (AMSC).

172. This time frame for applying for AMSC sets out a default period of three years from the grant of planning permission in principle. Where it would result in the calculation of a later deadline, six months is allowed for making such an application as calculated from the date of a previous application being refused, or from the date of an appeal against such refusal itself being dismissed. Only one such application can, however, be made after the three year period. Development must be begun within two years of the date that the last required approval is granted, or else the permission lapses.

173. Section 59(5) of the 1997 Act allows directions to be made specifying, instead of both the three year period and the two year period, different periods for different phases of the development.

174. Section 32(3) of the Act amends section 58 of the 1997 Act so that the duration of planning permission is to be specified as a condition to which the planning permission is subject. In the event that the planning authority does not include such a condition, the legislation provides that such a condition is deemed to have been included. This also applies where government authorisation is given for certain projects and the authorisation is to be treated as the grant of planning permission. As is the case presently, the default duration will be three years, but the planning authority or the Scottish Ministers, when determining a planning application, can specify a longer or shorter duration in their condition. The amendments also remove the exemption for planning permission granted for a limited time (subsection (4)(c) of section 58), which exemption prevents certain planning permissions from lapsing if development has not begun within the specified period.

175. Currently, if it is not challenged on local review or appeal at the time permission is granted, there is no mechanism for changing the duration of planning permission. Section 42 (determination of applications to develop land without compliance with conditions previously attached) of the 1997 Act allows an application to be made for a new permission for the same development but with different conditions – with a lower application fee and limiting the planning authority's consideration to the issue of conditions – to address, for example, changes in circumstances that mean that the original conditions have unintended consequences. In future, therefore, such a 'section 42' application could be used to apply for a new permission with a different condition as to duration, provided the original permission had not already expired.

176. Section 32(4) of the Act amends section 59 of the 1997 Act to simplify arrangements for the duration of planning permission in principle. As with the amendment to section 58 of the 1997 Act, the total period within which development must be started will be specified as a condition. In this case the default period will be five years from the grant of planning permission in principle unless the planning authority specify a different duration; this reflects the need to apply for and obtain approval of matters specified in conditions (the detail of the proposal) before development can be started.

177. The changes made by section 32(4) of the Act also remove the default framework for applying for approval of matters specified in conditions attached to planning permission in principle that is described in paragraph 123 above. Instead, section 32(2) of the Act amends section 41 of the 1997 Act to make it clear that it will be possible for the planning authority to add conditions about the timing of applications for approval of such matters, and to set different timings for different phases of development.

178. Section 32(5) of the Act amends section 60 of the 1997 Act to add a provision making clear that conditions on duration that are imposed, or deemed to be imposed, under sections 58 or 59 can, like other conditions, be appealed to the Scottish Ministers or be subject to a review by the planning authority.

Section 33: Completion notices

179. Section 61 of the 1997 Act allows the planning authority, where they consider that development will not be completed within a reasonable period, to serve a notice (a completion notice) stating that, once the notice is confirmed, planning permission will cease to have effect at the expiration of a period specified in the notice (to be not less than 12 months from either the date specified in the notice as the date the notice takes effect or, if the notice is objected to, from the date the Scottish Ministers confirm the notice). The loss of planning permission will affect only the elements of the permission unimplemented by the end of this period. The notice is served on any owner or occupier of the land to which permission relates and any other person who in the opinion of the planning authority will be affected by the notice. Section 62(1) of the 1997 Act provides that a completion notice will not take effect unless confirmed by the Scottish Ministers. Section 62(3) of the 1997 Act provides that the completion notice must specify a period of not less than 28 days within which any person served with a completion notice can require the Scottish Ministers to give that person an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers before a notice is confirmed.

180. Section 33 of the Act amends sections 61 and 62 of the 1997 Act and introduces a new section 62A to the 1997 Act to remove the requirement for the Scottish Ministers to confirm every completion notice, while giving recipients of a notice a right to object which would trigger the need for the Scottish Ministers to confirm the notice.

181. Section 33(2) of the Act adds new subsections (3A) and (3B) to section 61 of the 1997 Act. The first of these inserted subsections requires the completion notice to indicate that the recipient has a right to lodge an objection and specify the date on which the notice will take effect unless an objection is lodged before that date. New subsection (3B) restates a rule currently in section 62(3) of the 1997 Act that at least 28 days must elapse following the date of service of the notice before it can take effect (which also means that the objection period must be at least 28 days). Section 33(3)(a) of the Act amends section 62(1) of the 1997 Act so that a completion notice takes effect on the date specified in the notice unless a recipient of the notice makes an objection prior to that date; where an objection is so made, the notice only takes effect if confirmed by the Scottish Ministers. Section 33(3)(b) of the Act deletes subsections (2) and (3) of section 62 of the 1997 Act which dealt with, respectively, the Scottish Ministers' power to set a longer period for compliance with the notice when confirming it, and for giving any recipient of the notice the right to appear before a person appointed by the Scottish Minsters before they confirm a notice. Equivalent rules are instead now provided for in, respectively, inserted section 62A(5) and inserted section 62A(3). Section 33(3)(c) of the Act makes some minor and consequential amendments.

182. Section 33(4) of the Act introduces a new section 62A (objection to completion notice) to the 1997 Act. It in essence deals with the matters previously contained in sections 62(2) and (3) of the 1997 Act. New section 62A(1) specifies the right of a recipient to object to the planning authority about the service of the completion notice. The provisions in new sections 62A(2) and (3) of the 1997 Act on handling objections are different from existing provisions in that they, respectively, require that the planning authority give notice to the Scottish Ministers and all the recipients of the notice of the fact that objections have been made, and allow the Scottish Ministers to decide any further procedure for considering objections – e.g. whether written submissions, a hearing or an inquiry is needed. New section 62A(4) contains a new requirement for the Scottish Ministers to tell those served with the completion notice

and the planning authority of their decision on whether or not to confirm the notice. New section 62A(5) restates the existing provision mentioned above that allows Scottish Ministers to set a longer period when they confirm a notice.

183. Sections 33(5) and (6) of the Act make consequential amendments to other sections of the 1997 Act as a result of the amendments to the provisions on completion notices.

Planning obligations

Section 34: Planning obligations: financial agreements

184. Section 34 of the Act amends section 75 of the 1997 Act to modify the description of a planning obligation.

185. Subsection (2) broadens the scope of what a planning obligation can comprise.

186. Subsection (2)(b) inserts a new subsection (1A) into section 75 of the 1997 Act which defines a planning obligation so that it can be an obligation which restricts or regulates the use of land, and can also be an obligation which requires the payment of a specified amount or periodical sums. This is not a brand new provision, but represents a reframing of the existing provisions; new subsection (1A) replaces text removed by subsection (2)(a) of the Act.

187. Subsection (2)(d)(i) inserts paragraph (aa) into section 75(3) of the 1997 Act and so retains the current flexibility which allows planning obligations to be imposed either permanently or during such a period as is specified in the relevant instrument.

188. The remaining provisions of section 34 of the Act reflect the restructuring of the section.

189. The effect of these changes is to alter the definition of a planning obligation so as to include the restriction or regulation of the development or the use of land, **and** the requirement for the payment of a specified amount or periodical sums. The existing section 75 allows for such payments, but only as part of an obligation which also restricted or regulated the development or use of land.

Section 35: Planning obligations: publication

190. Section 35(2) inserts a new subsection (4A) into section 75 of the 1997 Act, which requires the planning authority to publish a planning obligation in such a manner as they consider sufficient to ensure it is brought to the attention of residents of the area or district to which it relates. Section 35(3) inserts a new subsection (5A) into section 75A of the 1997 Act, requiring similar publication of any agreement or determination modifying or discharging a planning obligation.

Section 36: Planning obligations: annual report

191. Section 36(2) introduces new subsections (5) and (6) into section 36 of the 1997 Act (registers of applications etc.). These require a planning authority to publish an annual report on planning obligations that have either been entered into in that year, or were entered into in a previous year and have not yet expired or have not been complied with. The report must include the development to which each planning obligation relates and the name of the person who has entered into the obligation.

Section 37: Planning obligations: modification or discharge

192. Section 37 of the Act amends the provisions of sections 75A and 75B of the 1997 Act which relate to the modification or discharge of a planning obligation. Section 75A of the 1997 Act currently provides that a person against whom a planning obligation is enforceable may apply to the planning authority to have the obligation modified or discharged. The planning authority may determine that the obligation is to continue without modification, is to be discharged, or is to have effect subject to the modifications specified in the application. Section 75B of the 1997 Act provides that the applicant may appeal to the Scottish Ministers if the planning authority determine that the obligation is to continue without modification, or fail to give notice of their determination of the case within the time specified. The Scottish Ministers have the same options for determining the appeal as the planning authority have for determining the original application.

193. Section 37(4)(a) of the Act amends section 75A to provide that a modification or discharge of a planning obligation may be made either by means of an application under section 75A or following an appeal to the Scottish Ministers, or by a simple agreement between the planning authority and the person or persons against whom the obligation is enforceable. The remainder of section 75A applies only to a modification or discharge made by a formal application under subsection (2).

194. Section 37(4)(c) of the Act repeals section 75A(3) of the 1997 Act and so removes the restriction that modifications cannot impose an obligation on a non-applicant. This is, however, made subject to protections included by section 37(4)(e) of the Act, for a modification or discharge made following an application under subsection (2). Specifically, new subsection (4B) of section 75A of the 1997 Act requires the consent of any non-applicant to the imposition of any increased burden on them. Section 37(4)(f) of the Act ensures that non-applicants against whom the planning obligation is enforceable will be notified of the decision.

195. Section 37(4)(e) of the Act also inserts new subsections (4A) to (4C) into section 75A of the 1997 Act. Together with the amendment to subsection (4)(c) (made by section 37(4)(d) of the Act), new subsection (4A) enables the planning authority to propose an alternative modification that was not expressed in the applicant's original application. However, the planning authority cannot make such a change without the applicant's consent. Similarly, if the planning authority consider it appropriate to discharge the planning obligation but the applicant did not request that, the planning authority cannot discharge it without the applicant's consent. In terms of new subsection (4C), if an application seeks to modify more than one planning obligation, the planning authority can decide on each obligation separately.

196. Section 37(5) of the Act makes comparable changes to section 75B (appeals) of the 1997 Act to reflect the changes to section 75A. In particular, subsections (5)(a) and (b) amend section 75B(4) of the 1997 Act and insert new subsections (4A) to (4C), so that the Scottish Ministers also have the full range of options available to them: granting the application, rejecting it, or proposing an alternative outcome (subject, in that instance, to the agreement of the applicant). Changes made by subsection (5)(c) of the Act expand the notification requirements to provide for any non-applicant against whom the obligation is enforceable to be notified of the outcome.

197. Sections 37(2), (3) and (4)(g) and (h) make minor or consequential modifications as a result of the changes set out above.

Declining to determine an application: further provision

Section 38: Declining to determine an application: further provision

198. Section 38 introduces a new section 39A into the 1997 Act, which provides that the Scottish Ministers must publish guidance outlining what constitutes a "similar application" and a "significant change" for the purposes of section 39 of the 1997 Act.

Development orders

Section 39: Withdrawal of planning permission granted by development order

199. Section 30(2) of the 1997 Act enables planning permission to be granted by a development order in relation to land specified in the order. This power is now rarely if ever used but a number of old "special development orders" made under previous versions of the legislation are still in effect.

200. Part IV of the 1997 Act deals with compensation for the effects of certain orders, notices etc. Section 77 currently sets out provisions for the payment of compensation if planning permission granted by a development order is withdrawn or modified. This includes the circumstances where a development order is revoked (section 77(1)(a)). If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the order, then compensation is payable by the planning authority if that planning permission is refused (or granted subject to different conditions than those included in the development order). In such cases section 76 applies as it does where a planning permission (not granted by a development order) is revoked or modified.

201. Section 39 of the Act repeals section 77 of the 1997 Act and introduces instead a power for the Scottish Ministers to make regulations concerning the compensation that may be payable on revocation of an order. The effect of this provision is to enable the Scottish Ministers to use regulations to :

- set out the circumstances in which compensation may be payable;
- set out what the compensation is to cover;
- set out the manner in which the level of compensation is to be calculated;
- require a claim for such compensation to be made within a certain period and specify how such a claim should be made and the information which should be included;
- apply or disapply any of the provisions of Part IV of the 1997 Act with or without modifications.

202. Provisions in schedule 2 repeal various references to section 77 elsewhere in the 1997 Act.

PART 4 – OTHER MATTERS

Promotion and use of mediation etc.

Section 40: Promotion and use of mediation etc.

203. Section 40 of the Act inserts new section 268A into the 1997 Act. This provides that the Scottish Ministers may prepare guidance on the promotion and use of mediation in the circumstances of: the preparation of local development plans and related evidence reports; pre-application consultation; assisting in the determination of an application for planning permission; and any other matter related to planning that Ministers consider appropriate. The guidance may include provision about the form of mediation that is to be used in a particular circumstance, and. the procedure to be followed in any such mediation. Ministers may also vary and revoke such guidance.

204. Local authorities must have regard to any guidance issued under this section. Ministers must consult planning authorities, and such other persons as they consider appropriate, before issuing any guidance, and must make it publicly available.

205. Subsection (7) of new section 268A provides a definition of "mediation" which includes any means of exploring, resolving or reducing disagreement between persons involving an impartial person that the Scottish Ministers consider appropriate.

206. Subsection (8) requires Ministers to publish the guidance within two years of the date on which the Bill for the Act received Royal Assent (by 25 July 2021).

Charges and fees

Section 41: Fees for planning applications etc.

207. Section 41 of the Act amends section 252 of the 1997 Act, which gives the Scottish Ministers powers to make regulations providing for the payment of fees and charges to planning authorities.

208. Section 41(2) inserts a new paragraph into section 252(1) of the 1997 Act, which sets out the activities in respect of which fees or charges may be payable to a planning authority. New paragraph (c) makes it clear that the regulations can make provision for a fee or charge to be payable in respect of the performance of functions by a person appointed by virtue of a scheme of delegation.

209. Section 41(3) of the Act introduces section 252(1ZA) into the 1997 Act, which enables the Scottish Ministers to provide by regulations for the payment of a charge or fee to the Scottish Ministers for their activities in relation to planning. Fees or charges may be specified in respect of the performance by the Scottish Ministers, or a person appointed by them under schedule 4 of the 1997 Act, of functions under the planning Acts and any associated subordinate legislation, including anything which facilitates, is conducive or incidental to the performance of those planning functions. This could include where the Scottish Ministers, in performance of their planning functions, deliver a service for the benefit of local authorities or where the Scottish Ministers have a role in dealing with planning casework. Subsection (4) makes a consequential modification so that section 252(1A) of the 1997 Act, which clarifies what

provision regulations may make, applies to regulations about fees payable to the Scottish Ministers too, instead of only applying to fees payable to planning authorities.

210. Section 41(5) of the Act adjusts section 252(1A)(b) of the 1997 Act so as to provide that this regulation-making power includes the ability to make provision allowing a planning authority to determine how the fee or charge is to be calculated.

211. Section 41(7) substitutes paragraph (e) of section 252(1A) of the 1997 Act and adds a further paragraph (ea). These paragraphs allow the Scottish Ministers to make provision within the regulations permitting a planning authority or the Scottish Ministers to decide whether to charge an applicant the full fee, a reduced fee or waive the fee entirely. They also allow the Scottish Ministers to set limits on that discretion. Further provision is made in subsections inserted by section 41(10). New section 252(1C) allows the regulations to set out steps the authority would be required to take before or after reducing or waiving a fee; for example, they might be required to publish a statement of the circumstances in which they would do so. New subsections (1E) and (1F) of section 252 provide that regulations may allow for fees and charges to be waived for developments that contribute to a social enterprise or not for profit enterprise, or are likely to contribute to improving the health of residents in the area.

212. Section 41(6) of the Act repeals subsection (1A)(da) of section 252 of the 1997 Act, and subsection (8) repeals subsections (1AA) and (1AB) of section 252 of the 1997 Act. These currently allow regulations to make provision for different levels of fees or charges to be payable to different planning authorities, and subsection (1AA) makes clear this may be done where the Scottish Ministers are satisfied that a particular authority is not, or has not been, performing its planning functions satisfactorily. Subsection (9) inserts a new section 252(1AC) which prevents similar provision being made in future on the basis of performance.

213. Section 41(10) introduces new subsections (1C), (1D), (1E) and (1F) into section 252 of the 1997 Act. Subsections (1C), (1E) and (1F) are described in paragraph 211 above. New section 252(1D) allows regulations to make provision for a surcharge to be imposed for retrospective planning applications. The surcharge may not be more than the fee that would be payable for the same application if it was not retrospective, that is, the total retrospective fee may not be more than twice the standard fee.

214. Section 41(11) repeals section 252(2) of the 1997 Act, which made provision for the Secretary of State (now the Scottish Ministers) to make regulations providing for a fee to be paid to him for any planning application deemed to be made to him. This power is replaced by new section 252(1ZA).

215. Section 41(12) of the Act amends section 252(3) of the 1997 Act, which allows regulations to provide for the remission or refunding of fees. The amendments are consequential on the inclusion of fees to be paid to the Scottish Ministers and the repeal of section 252(3).

216. Section 41(13) amends section 252(7) of the 1997 Act. That section currently provides that where a fee is calculated in pursuance of the regulations, planning authorities may only recover the cost of actually providing the function for which the fee is charged. In light of the insertion of section 252(1ZA) (which allows regulations to make provision for the payment of a fee to the Scottish Ministers), section 21(10) of the Act amends this rule so that it applies equally to the Scottish Ministers.

217. As discussed at paragraph 213 above, new section 252(1D) (as inserted by section 21(7) of the Act) enables the regulations to impose a surcharge in the case of applications for retrospective planning permission. Subsection (14) of section 21 of the Act inserts new section 252(9) to make it clear that the restriction in section 252(7) of the 1997 Act would not apply in this situation.

Enforcement

Section 42: Fines: increases and duty of court in determining amount

218. Section 42 of the Act sets out increases in the levels of maximum fine that may be imposed by the courts on conviction for various planning offences and, for certain offences, introduces a requirement for the courts to take account of financial benefit when setting amounts of fines.

219. Subsection (2) makes provision that the maximum penalties for non-compliance with a planning contravention notice set out in sections 126(4) and 126(6) of the 1997 Act are increased. Where the offence is failure to comply with the requirements of a planning contravention notice within 21 days of the date of service, the maximum penalty on summary conviction is increased by section 42(2)(a) of the Act from level three on the standard scale to level five on the standard scale. Where the offence is to knowingly or recklessly make a false or misleading statement in response to a planning contravention notice, the maximum penalty on summary conviction is increased by section 42(2)(b) of the Act from level five on the standard scale to the statutory maximum.

220. Subsection (3) provides that the maximum penalty on summary conviction for the offence of failure to comply with an enforcement notice, set out in section 136(8)(a) of the 1997 Act, increases from £20,000 to £50,000.

221. Subsection (4) relates to an offence where buildings or works have been removed in order to comply with an enforcement notice and subsequently reinstated at a later date (section 138(4) of the 1997 Act). The maximum penalty on summary conviction for this offence is increased from level five on the standard scale to the statutory maximum. Paragraph (b) inserts new section 138(5) which provides that, when a person is convicted of such an offence, the court is to have regard to any financial benefit or likely financial benefit that the convicted person may accrue in consequence of the activity which constituted the offence. This is intended to help ensure that the fine is set at a level that is a genuine deterrent.

222. Subsection (5) increases the maximum penalty on summary conviction for contravention of a stop notice, set out in section 144(5)(a) of the 1997 Act, from £20,000 to £50,000. Subsection (6) similarly increases the maximum penalty for contravention of a temporary stop notice to the same amount (section 144C(6)(a) of the 1997 Act).

223. Subsection (7) provides that the maximum penalty on conviction for the offence of not complying with a breach of condition notice, set out in section 145(12) of the 1997 Act, is increased from level three on the standard scale to level five on the standard scale. Paragraph (b) inserts new section 145(12A) which provides that, when a person is convicted of such an offence, the court is to have regard to any financial benefit or likely financial benefit that the convicted person may accrue in consequence of the activity which constituted the offence. This is intended to help ensure that the fine is set at a level that is a genuine deterrent.

224. Subsection (8) provides that the maximum penalty on summary conviction for the offence of displaying an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 as amended (or any replacement regulations) increases from level three on the standard scale to level five on the standard scale. In the case of a continuing offence, the penalty increases from one-tenth of level three on the standard scale to one-tenth of level five on the standard scale for each day the offence continues after conviction.

225. 'The standard scale' refers to the standard scale set out in the Criminal Procedure (Scotland) Act 1995. Level three is currently set at £1,000 and level five currently at £5,000 (see section 225(2) of that Act). 'The statutory maximum' is also set out in the Criminal Procedure (Scotland) Act 1995, as amended, and is currently set at £10,000 (see section 225(8) of that Act, as read with the definition of "statutory maximum" in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 43: Liability for expenses under enforcement notice

226. Section 43 of the Act amends section 135 of the 1997 Act and inserts new sections 158B to 158F into the 1997 Act to extend liability for the cost of direct action taken under section 135(1) of the 1997 Act in connection with an enforcement notice in order to remedy a breach of planning control, and to introduce powers for planning authorities to make charging orders to assist the recovery of those costs.

227. Section 43(2)(a) of the Act amends section 135(1)(b) of the 1997 Act to the effect that liability for the cost of direct action attaches to any person who is then or who subsequently becomes the owner of the land or any part of the land, whether or not that person remains an owner. This extension of the existing rule (that is, the addition of subsequent owners) will only apply to expenses for which an owner becomes liable on or after the date on which section 43 comes into force (see subsection (5)). Liability also attaches, just as it does under the existing provisions of the 1997 Act, to any lessee of the land at the time that the planning authority carry out the work, but that liability does not transmit under the statute to future lessees. Section 43(2)(b) and (c) of the Act together provide that an owner, lessee or occupier can recover any sums paid from the person who committed the breach of planning control, and can do so regardless of whether or not that person remains the owner, lessee or occupier.

228. Section 43(3) inserts new sections into the 1997 Act. New section 158B(1) sets out that where a planning authority or the Scottish Ministers ("the charging body") have taken action in relation to land under section 135(1), they may make a charging order and apply to register it against the land with Registers of Scotland.

229. New section 158B(2) sets out that once a charging order is registered, the amount payable under section 135(1)(b) of the 1997 Act (i.e. the costs of direct action taken by the planning authority or the Scottish Ministers) becomes payable in instalments instead and can include administrative expenses and, where the charging order provides for it, interest charges. New section 158B(3) sets out what the administrative expenses and interest may cover.

230. Under new section 158C, the charging order must set out the number of instalments in which the total amount is to be paid and the date on which each instalment falls due. The date on which the first instalment is due must be at least 56 days after the date on which the charging order is served, and the number of annual instalments must be between three and 30. New

section 158C(3) provides that the charging order may be paid off at any time, either in full or as a lower sum agreed with the charging body. New section 158C(4) establishes that the charging body may at any time waive or reduce the amount payable.

231. New section 158D sets out that a charging order may not be registered unless it is in the form prescribed by the Scottish Ministers in regulations. New section 158D(2) lists information that the regulations must require a charging order to contain. New section 158D(3) requires the charging body to serve a copy of the order on the owner of the land to which it relates.

232. New section 158E requires the charging body to register the discharge of a charging order in the appropriate land register as soon as reasonably practicable after receiving payment in full of the required amount. As with the original order, a discharge of a charging order may not be registered unless it is in the form prescribed.

233. New section 158F provides definitions of various terms in the other inserted sections.

234. Section 43(4) of the Act ensures that the rules in the 1997 Act dealing with restrictions on the display of advertisements can also apply the new provisions on charging orders to liabilities arising under those rules. The rules on display of advertisements are dealt with in section 186 of the 1997 Act and the current position is to allow the rules relating to enforcement notices to be applied with modifications.

235. Section 43(5) provides that the charging order provisions, as well as the amendments to section 135 of the 1997 Act, only apply to liabilities incurred after the date that section 43 comes into force.

Section 44: Enforcement charters: statement on major developments

236. Section 158A of the 1997 Act requires each planning authority to produce an enforcement charter, setting out their policies on enforcement, how breaches of planning control can be brought to their attention and how any complaints about enforcement action can be made and will be dealt with. Section 44 of the Act inserts a new subsection (1A) into section 158A of the 1997 Act, providing that the charter must also contain a statement about how the authority will monitor compliance with planning permissions for major developments, and how they will record such monitoring and make the records available to the public. Such monitoring is particularly important in relation to conditions placed on ongoing operations and restoration, such as for open-cast mining.

Training for taking planning decisions

Section 45: Power to impose training requirements: planning authorities

237. Section 45(1) of the Act provides that where a member of a planning authority has not undertaken the required training, as specified in regulations, they may not perform any function that is specified in the regulations on the planning authority's behalf, either on their own or as a member of a committee or any other decision making body (such as a local review body).

238. Section 45(2)(a) provides that specification of training requirements and the functions to which the prohibition applies will be set out by the Scottish Ministers in regulations. Paragraph (b) clarifies that 'planning authority' means either a local authority or a National

Park authority, and paragraph (c) sets out what a "member of a planning authority" means in relation to a National Park authority.

239. Section 45(3) restricts the functions that may be specified in regulations to those conferred by the planning Acts.

240. Section 45(4) provides that any regulations made under this section can specify that training requirements may mean attendance on a training course, and that the Scottish Ministers may specify that the content and provider of the training must be accredited by them.

241. Section 45(5) makes provision that regulations may disapply the requirement for training in relation to either a particular planning authority or all authorities.

Performance of planning authorities

Section 46: Annual report by planning authorities on performance

242. Section 46 of the Act inserts a new Part 12A into the 1997 Act. The new Part 12A comprises new sections 251A, inserted by section 46 of the Act, and 251B, inserted by section 47, and deals with the performance of planning authority functions.

243. New section 251A(1) requires planning authorities to prepare a report on the performance of their functions (or such of their functions as the Scottish Ministers specify) on an annual basis. The report should be submitted as soon as reasonably practicable after the end of the financial year. New section 251A(2) requires the planning authority to submit a copy of the report to the Scottish Ministers and to publish the report.

244. New section 251A(3) makes provision for the Scottish Ministers to set out in regulations the form and content of the report, how it is to be prepared and how it is to be published. The regulations may include what quantitative and qualitative information is to be included in the report, and what outcomes are to be used to assess planning authorities' performance.

Section 47: National performance monitoring

245. New section 251B of the 1997 Act, inserted by section 47 of the Act, makes provision in subsection (1) for the Scottish Ministers to appoint a "national planning improvement co-ordinator" who will monitor the performance by of planning authorities of their functions, as well as providing advice to authorities and other persons on ways in which they may improve their performance. Subsection (2) allows the Scottish Ministers to make further provision by regulations about the appointment and functions of the co-ordinator.

Regulations

Section 48: Regulations

246. Section 275 of the 1997 Act makes general provisions about regulations. Subsection (2A) of that section states that regulations may make different provision for different purposes. Section 48 of the Act adds that they may make different provision for different areas.

Ministerial directions

Section 49: Publication of directions

247. Section 49 inserts a new section 275B into the 1997 Act, requiring the Scottish Ministers to publish any directions made under that Act and their reasons for making them. There are exceptions for: directions given in the form of a regulation or order, which will be published automatically as statutory instruments: directions given before this provision comes into force, and directions given under section 265A of the 1997 Act.

248. Section 265A relates to planning inquiries. It allows the Scottish Ministers or the Secretary of State to direct that evidence to an inquiry may only be heard or inspected by specified persons, if it relates to national security or the security arrangements for any premises or property, and disclosing it in a public inquiry would be contrary to the national interest. It follows that the direction describing such evidence should not be required to be published.

Chief planning officers

Section 50: Chief planning officers

249. Section 50 inserts a new section 1A into the 1997 Act, which requires each planning authority to have a chief planning officer to advise the authority about their functions under the planning Acts and any other functions relating to development. When appointing a chief planning officer, the planning authority must be satisfied that the officer has appropriate qualifications and experience, having regard to any guidance on that matter issued by the Scottish Ministers.

National Scenic Areas

Section 51: National Scenic Areas

250. Section 263A of the 1997 Act provides for the designation of National Scenic Areas, which are areas of outstanding scenic value in a national context. In exercising planning powers with respect to land in any such area, special attention is to be paid to the desirability of safeguarding or enhancing its character or appearance. Section 51(2) of the Act removes the words "the desirability of" from that provision.

251. Subsection (6) of section 263A of the 1997 Act requires the Scottish Ministers, before issuing a direction designating a National Scenic Area, to consult with Scottish Natural Heritage and such other persons as are prescribed. Section 51(3) of the Act adds new paragraphs to require consultation also with residents in and adjacent to the proposed area, and any community body with an interest in the area. Section 51(4) inserts a new section 263B to the 1997 Act, which requires the Scottish Ministers to produce a report on the consultation undertaken, in any year they have designated a new National Scenic Area. This must include the ways in which any views expressed were taken into account, and how the Scottish Ministers will improve their consultation process before issuing any future directions. Under section 3A(4A) of the 1997 Act, inserted by section 2(6) of the Act, the Scottish Ministers must have regard to any such report when preparing the National Planning Framework.

Notice by planning authority of applications for listed building consent

Section 52: Notice by planning authority of applications for listed building consent

252. Section 52 amends section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Section 9 deals with the making of applications for listed building consent, and subsection (3) enables regulations to make provision about how such applications are to be made, the manner in which they are to be advertised and how they are to be dealt with by planning authorities. The current regulations are the Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (SSI 243/2015) and the advertisement of applications is dealt with in regulation 8. For planning applications, section 34 of the 1997 Act makes provision for regulations setting out how and to whom notice of applications is to be given, and the current requirements are set out in regulations 18 and 20 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (SSI 155/2013).

253. Section 52(2) inserts new paragraphs into section 9(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. These provide more detail about how the regulations may address the issue of giving notice and information about the application, and are in line with the powers relating to planning applications. This would allow Ministers, if they wish, to impose the same notification requirements on applications under both Acts.

Forestry and Woodland Strategy

Section 53: Forestry and woodland strategy

254. Section 53 of the Act adds a new section A159 to the 1997 Act, requiring planning authorities to prepare and publish a 'forestry and woodland strategy'. Subsection (2) of new section A159 sets out what the strategy must cover, subsection (3) provides for consultation requirements, and subsections (4) and (7) requires the strategy to be published (including by electronic means). Subsection (5) and (6) provide that two or more planning authorities may act jointly to prepare a forestry and woodland strategy across their combined area.

PART 5 – INFRASTRUCTURE LEVY

255. Sections 54 to 58 and schedule 1 of the Act set out powers to introduce an infrastructure levy, and to issue associated regulations and guidance.

Section 54: Power to provide for a levy

256. Section 54(1) of the Act makes provision allowing the Scottish Ministers to establish and make provisions about an infrastructure levy by making regulations. Any regulations made under this section will be subject to affirmative parliamentary procedure (see section 61(3)). Section 61(4) also provides that before making regulations under section 54(1), the Scottish Ministers must consult any local authority that may be affected by the regulations and any other persons they consider appropriate.

257. Section 54(2) defines an infrastructure levy. It is a levy payable to a local authority, in respect of development wholly or partly within the authority's area, the income from which must be used to fund, or contribute to the funding of, infrastructure projects.

258. Subsection (3) introduces schedule 1 of the Act, which gives more detail on the regulation-making powers provided for in subsection (1).

Schedule 1: Infrastructure-levy regulations

259. Schedule 1 of the Act makes more detailed provision about what may be included in regulations on the infrastructure levy made under section 54.

260. Paragraph 2 notes that the schedule (apart from specified exceptions) does not limit what may be included in regulations made under section 54, although it makes specific provision to allow various matters to be covered. The specified exceptions are paragraph 15(2), which sets limits on when the Scottish Ministers may restrict powers relating to planning or development, and paragraph 16, which relates to maximum penalties on the creation of an offence. Paragraphs 3 and 4 state that the regulations may include incidental, supplementary, consequential, transitional, transitory or saving provisions, and may modify other legislation.

Who is liable for what

261. Paragraph 5 specifies that infrastructure-levy regulations may set out the kinds of development for which the infrastructure levy is payable, who is liable to pay, and when liability arises. The regulations may also set out the amount to be paid in respect of a development either by stating the amount or by setting out how it is to be calculated.

Relief where relevant planning obligations

262. Paragraph 6 enables the infrastructure-levy regulations to include provisions to allow planning authorities to grant relief from payment of the infrastructure levy in circumstances where a planning obligation has been entered into for a development and where the authority considers that also requiring payment of the infrastructure levy would result in a duplication of payments by the liable person(s).

Local exemptions and discounts

263. Paragraph 7(a) allows the regulations to give local authorities the power to waive or reduce the infrastructure levy for development in their areas and paragraph 7(b) allows for this power to be made subject to conditions set by the regulations.

Collection and enforcement

264. Paragraph 8 deals with collection and enforcement of the levy. Paragraph 8(a) makes provision for infrastructure-levy regulations to set out how the levy and any penalties for late payment can be collected. Paragraph 8(b) allows the regulations to enable local authorities to give powers to officers of the authority or others to enter premises (other than dwelling houses) and to seize items as part of investigating liability for the levy. Paragraph 8(c) allows the regulations to make it an offence to evade the infrastructure levy or reduce the liability to pay (or attempt to do so) by withholding information, providing false or misleading information, obstructing the investigation of liability to pay the levy or causing another person to do these things. The maximum penalties that would apply to an offence established in accordance with paragraph 8 are set out in paragraph 16.

Financial penalty for late payment

265. Paragraph 9 states that infrastructure-levy regulations may allow or require local authorities to charge a financial penalty if the payable amount for the infrastructure levy is not paid within the period specified in the regulations. The penalty may be in the form of a specified amount, a proportion of the payable amount calculated periodically (which would also allow for the charging of interest), or both.

Stopping development

266. Paragraph 10 makes provision in sub-paragraph (1)(a) allowing the regulations to empower a local authority to direct that the carrying out of development must stop until there has been payment in full of (i) the payable amount and (ii) any financial penalty for late payment under paragraph 9. In the event of regulations requiring payment to be made prior to commencement of development then, in the event that this requirement is not adhered to, stopping development would be a lever to encourage payment. This would avoid the situation of the development being completed and sold on and the authority then having to pursue payment. Under paragraph 10(1)(b), regulations can prescribe the consequences of not stopping development when directed to do so. Paragraph 10(2) sets out in particular that regulations may make it an offence not to stop development when directed to do so. The maximum penalties that would apply to such an offence are set out in paragraph 16.

Remission and repayment

267. Paragraph 11 makes provision allowing the regulations to provide for the remission or repayment (with or without interest) of the whole or part of the payable amount of the infrastructure levy or any associated financial penalty for late payment under paragraph 9. An example where this power could be used may be to ensure amounts that have been overpaid are returned, or to facilitate the remission of a payment in the case of a successful appeal.

Appeals

268. Paragraph 12 makes provision for the regulations to establish a process for appealing against a decision that the levy is payable, or about what the payable amount is. The regulations may provide for appeals to be made to the Scottish Ministers or to a person appointed by them, and the regulations may also allow the person to whom an appeal is made to set the rules about the conduct of the appeal. Regulations could also prescribe fees for such appeals and make provision allowing expenses to be awarded.

Accounting requirements

269. Paragraph 13 allows the regulations to make provision about the accounts that must be kept by local authorities in connection with the carrying out of their functions under the regulations and expenditure of the income generated by the infrastructure levy (and any associated financial penalties).

Expenditure of levy income

270. Paragraph 14 makes provision for the regulations to specify the purposes for which income from the infrastructure levy (including financial penalties) can be applied.

Use of planning and development powers

271. Paragraph 15 makes provision allowing the regulations to define how additional, related powers, may or may not be exercised. This includes section 75 of the Town and Country Planning (Scotland) Act 1997 (which relates to planning obligations), section 53 of the Roads (Scotland) Act 1984 (agreements as to the use of land near roads), or any other power relating to planning or development. Sub-paragraph (2) makes it clear that any such provision can only be made if the Scottish Ministers consider it is necessary or expedient in order to make the infrastructure levy more effective in raising revenue to fund or support the funding of infrastructure projects, or to prevent or limit the use of other powers in circumstances where the Scottish Ministers consider that the power to charge the infrastructure levy would be more appropriate.

Maximum penalties

272. Paragraph 16 makes provision in sub-paragraph (1) for the maximum penalty which may be specified for any offence created in the regulations. For a summary-only offence, the maximum penalties are (i) a fine not exceeding level 5 on the standard scale (currently £5,000), (ii) imprisonment for a period not exceeding 12 months or (iii) both the fine and the term of imprisonment. For an offence that can be prosecuted either on summary complaint or on indictment, the maximum penalties are (i) a fine, which on summary conviction may not exceed the statutory maximum (currently £10,000), (ii) imprisonment for a period not exceeding 12 months on summary conviction or 2 years on conviction on indictment or (iii) both the fine and the term of imprisonment.

Section 55: Guidance

273. Section 55(1) of the Act makes provision allowing the Scottish Ministers to issue guidance to local authorities that deals with how the infrastructure-levy functions conferred on them by regulations are to be discharged, and how the income from the infrastructure levy should be spent. Subsection (2) sets out that local authorities must have regard to any such guidance and subsection (3) allows the guidance to be addressed to: an individual local authority; more than one local authority identified in the guidance; or to all local authorities. Subsection (4) requires the Scottish Ministers to make any such guidance publicly available. Subsection (5) makes provision allowing the Scottish Ministers to vary the guidance or revoke it.

274. Subsection (6) clarifies that income from an infrastructure levy, for the purposes of the guidance, includes income from financial penalties charged for late payment.

Section 56: Interpretation of Part and schedule

275. Section 56 of the Act provides definitions of "development", "infrastructure", "green and blue infrastructure" and an "infrastructure project" for the purposes of this Part and schedule 1.

Section 57: Power to change meaning of "infrastructure"

276. Section 57 of the Act gives the Scottish Ministers the power to make regulations to vary the meaning of "infrastructure" for the purposes of this Part and schedule 1. Any regulations made under this section will be subject to affirmative parliamentary procedure (see section 61(3)).

Section 58: Lapsing of power to provide for levy

277. Section 58 of the Act provides that the power to make regulations to establish an infrastructure levy ceases to be exercisable if no regulations have been made within 7 years after the Bill for the Act received Royal Assent (that is, by 25 July 2026) – this is known as a "sunset clause". If that happens, the Scottish Ministers may repeal Part 5 of the Act and schedule 1 by regulations.

PART 6 – FINAL PROVISIONS

Section 59: Ancillary provision

278. Section 59 of the Act gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act.

Section 60: Power to replace descriptions with actual dates

279. Section 60 provides for a power to make regulations to amend provisions which refer to a date when a provision comes into force so that instead it includes the actual date on which the provision in question came into force. This avoids the reader having to separately ascertain the date on which the provision came into force. Subsection (1) relates to the date of liability for expenses in relation to enforcement notices (section 158B of the 1997 Act inserted by section 43(3) of the Act). Subsection (2) relates to the date from which all directions are required to be published in accordance with the new section 275B of the 1997 Act inserted by section 49 of the Act, and subsection (3) refers to the infrastructure levy "sunset clause" in section 58 of the Act.

Section 61: Regulation-making powers

280. Subsection (1) of section 61 of the Act provides that the powers of the Scottish Ministers to make regulations under this Act include the power to make different provision for different purposes and areas. Subsection (2) provides that ancillary regulations made under section 59 are subject to the affirmative parliamentary procedure if they amend any part of any Act, but otherwise are subject to the negative parliamentary procedure. Subsection (3) specifies the procedure to be applied to regulations made under the free-standing provisions in the Act, in sections 54 and 57. Subsection (4) provides that before making regulations on the infrastructure levy, the Scottish Ministers must consult any local authority that may be affected by them, and any other persons the Ministers consider appropriate.

281. Where the Act inserts a regulation-making power into the 1997 Act, the procedure that applies is automatically governed by section 275 of the 1997 Act (as read with section 118(2) of the Scotland Act 1998). Accordingly, unless otherwise specified, the regulation-making powers that the Act inserts into the 1997 Act are subject to the negative parliamentary procedure. Paragraph 9 of schedule 2 of the Act amends section 275 of the 1997 Act and provides that the following new regulation-making powers are subject to the affirmative procedure:

- New section 3CC, inserted by section 12 of the Act – Amendment of National Planning Framework

- New section 3G, inserted by section 3 of the Act – Open space strategy
- New section 26B, inserted by section 17 of the Act – Material change of use, short-term lets
- New section 40A, inserted by section 19 of the Act – Assessment of health effects
- New section 41B, inserted by section 26 of the Act – Conditional grant of planning permission: provision of toilet facilities within certain large developments
- New section 77A, inserted by section 39 of the Act – Compensation for withdrawal of planning permission granted by development order
- New section 251B, inserted by section 47 of the Act – National planning improvement co-ordinator
- Paragraph 3 of new schedule 5A, inserted by section 15 of the Act – places that cannot be included in a scheme for a masterplan consent area

Section 62: Minor and consequential amendments and repeals

282. Section 62 of the Act introduces schedule 2, which makes provision for amendments and repeals which follow from the main provisions of the Act. These are largely consequential changes to references and terminology throughout the 1997 Act. However, paragraph 4 of schedule 2 of the Act amends schedule 1 of the 1997 Act. This provides for a transitional regime which, in broad terms, allows existing development plans to remain in force until the relevant element of it falls away on the National Planning Framework or an authority's local development plan first being revised following the Act's enactment.

Section 63: Commencement

283. Section 63 of the Act provides in subsection (1) that this section and sections 58, 59, 60, 61 and 64 come into force on the day after Royal Assent. The remainder of the Act, once enacted, comes into force on the day or days appointed by the Scottish Ministers in regulations made under subsection (2). Subsection (3) allows different days to be appointed for different purposes, and for the commencement regulations to contain transitional, transitory or saving provision.

Section 64: Short title

284. Section 64 of the Act provides that the Act will be known as the Planning (Scotland) Act 2019.

PARLIAMENTARY HISTORY

285. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
Introduction	
Bill as introduced	SP Bill 23 - Session 5 (2017)
Spice Briefing: How the Scottish Planning System Currently Operates	SB-18/01
Spice Briefing: The Planning (Scotland) Bill	SB 18/08
Spice Briefing: Planning (Scotland) Bill: Proposed Infrastructure Levy	SB 18/13
Spice Briefing: Planning (Scotland) Bill: Understanding Planning Jargon	SB 18/28
Stage 1	
Local Government and Communities Committee	
7 February 2018	Official Report, col 30-36
28 February 2018 (evidence)	Official Report, col 1-70
7 March 2018 (evidence)	Official Report
14 March 2018 (evidence)	Official Report
21 March 2018 (evidence)	Official Report, col 1-60
25 April 2018	In private
2 May 2018	In private
9 May 2018	In private
Stage 1 Report on the Planning (Scotland) Bill - 17 May 2018	Report
Delegated Powers and Law Reform Committee	
30 January 2018	In private
20 February 2018 (evidence)	Official Report col 2-25
27 February 2018	In private
13 March 2018	In private
Planning (Scotland) Bill at Stage 1 - 13 March 2018	Report
22 May 2018	Official Report, col 4
Finance and Constitution Committee	
28 February 2018 (evidence)	Official Report

Proceedings and reports	***Reference***
21 March 2018	In private
Consideration by the Parliament	
Stage 1 debate, 29 May 2018	Official Report, col 11-68, 70-71
Stage 2	
Local Government and Communities Committee	
12 September 2018	Official Report, col 6-70
19 September 2018	Official Report, col 3-56
26 September 2018	Official Report col 2-56
24 October 2018	Official Report
31 October 2018	Official Report, col 2-60
7 November 2018	Official Report, col 2-61
14 November 2018	Official Report
Bill as amended at Stage 2	SP Bill 23A, session 5 (2018)
Delegated Powers and Law Reform Committee	
19 February 2019	In private
2 April 2019	In private
30 April 2019	In private
Planning (Scotland) Bill as amended at stage 2 – 3 May 2019	Report
Stage 3	
Consideration by the Parliament	
18 June 2019 (amendments)	Official Report, col 32-147
19 June 2019 (amendments)	Official Report, col 21-183
20 June 2019 (amendments and debate)	Official Report, col 46-70, 108-133, 135-136
Bill as passed	SP Bill 23B, Session 5 (2019)
Royal Assent	
25 July 2019	Planning (Scotland) Act 2019

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