

PLANNING (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are published to accompany the Planning (Scotland) Bill, introduced in the Scottish Parliament on 4 December 2017.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 23–FM);
 - a Policy Memorandum (SP Bill 23–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 23–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. 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 BILL

5. The Bill 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 Bill 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.
6. Many of the provisions of the Bill amend the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). There are 35 sections, arranged into six Parts, as follows:
 - **Part 1** – Development planning. This Part reorganises the system of development plans, in particular removing strategic development plans, and amends the procedures for producing plans. It also introduces local place plans, prepared by community bodies.

- **Part 2** – Simplified development zones. 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 broadens the scope of regulation-making powers on planning fees; makes amendments in relation to fines and recovery of expenses for enforcement activity; imposes a requirement for members of planning authorities to undergo training before taking part in planning functions; and introduces new measures for the monitoring and assessment of planning authorities' performance.
- **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 Bill, about the Bill's commencement, and about its short title.

COMMENTARY ON SECTIONS

PART 1 – DEVELOPMENT PLANNING

Development planning

7. Sections 1 to 8 of the Bill change the procedures for preparing the development plan and associated documents.

Section 1: National Planning Framework

8. Section 1 of the Bill 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.

9. Subsection (2) amends the description of what is to be set out in the National Planning Framework to specify that it is to be the Scottish Ministers' policies and proposals for the development and use of land.

10. Subsection (4)(a) amends the timescale for revising the National Planning Framework from within five years, as set out in the 1997 Act, to within 10 years.

11. Subsection (3) and paragraphs (b) and (c) of subsection (4) clarify the wording around the preparation and publishing of revised frameworks.

12. Subsection (5) introduces section 3A(11) into the 1997 Act, which places a duty on key agencies to co-operate with the Scottish Ministers in preparing the National Planning Framework and any revised framework.

13. Subsection (6) introduces section 3AA into the 1997 Act. New section 3AA(1) allows the Scottish Ministers to direct a planning authority, or two or more planning authorities, to provide information to assist in the preparation of the National Planning Framework. New section 3AA(2) defines the matters about which the authorities may be required to provide information and includes additional matters that may be prescribed. New section 3AA(3) requires that, where the direction relates to two or more planning authorities, they are to co-operate with one another.

14. Subsection (7) amends section 3B(2) of the 1997 Act, so that the timescale for the period for parliamentary consideration (meaning the period beginning on the day the draft National Planning Framework is laid, and during which the framework cannot be adopted, which allows the Parliament to report on the proposed framework if it wishes) is increased from 60 days, as currently set out in the 1997 Act, to 90 days. No changes are proposed to how the period is reckoned (i.e. the days that are not to be taken into account in calculating the period).

Section 2: Removal of requirement to prepare strategic development plans

15. Section 2 of the Bill repeals sections 4 to 14 of the 1997 Act. This removes the requirement for strategic development plans. Consequential changes in respect of other references within the 1997 Act to strategic development plans and strategic development plan authorities are made in schedule 2 of the Bill.

Section 3: Local development plans

16. Section 3 of the Bill 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 Act are set out in schedule 2 of the Bill.

17. Subsection (2)(b) repeals section 15(2) of the 1997 Act. This removes the requirement for local development plans to set out a vision statement. This will enable authorities to ensure that their local development plans clearly support the outcomes of the local outcomes improvement plan, rather than creating any potential conflict or confusion with a separate vision statement.

18. However, this repeal also removes the foundation for section 15(5) of the 1997 Act. As section 15(5) of the 1997 Act is to be retained, sections 3(2)(a) and (c) of the Bill re-establish the foundation, so that the matters listed in section 15(5) of the 1997 Act continue to be taken into account, but are now taken account of in the spatial strategy rather than in the vision statement.

19. Subsection (3)(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.

20. Subsection (3)(b) amends section 16(2) of the 1997 Act to require planning authorities to take account of any local outcomes improvement plan for the part of their district to which the local development plan relates. This requirement is in addition to the existing requirement of taking into account the National Planning Framework. Changes made to section 16 of the 1997

Act by section 9(2) of the Bill also require planning authorities to have regard to local place plans when preparing a local development plan.

21. Subsection (3)(c) 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.

22. Subsection (4) introduces section 16A into the 1997 Act. This is to bring in the gate-check proposal as a statutory requirement. Section 16A 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, and for the report to be submitted to the Scottish Ministers. The new section also provides 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. Section 16A(9) allows for regulations to cover costs, procedure and what is to be assessed.

23. Subsection (5) 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 Bill.

24. Subsection (6) 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 22 above. The planning authority are required to have regard to the appointed person's report in preparing the proposed plan. The amendments 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.

25. Subsection (6)(d) introduces subsections (1A) and (1B) 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. It does this by requiring the planning authority to approve the proposed plan before its publication and then disapplying section 56 of the Local Government (Scotland) Act 1973 to the function of approving the proposed plan (which means that the task cannot be delegated to, for example, a committee or an officer of the authority).

26. Subsection (6)(e) 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 eight weeks.

27. Subsection (6)(f) introduces section 18(3)(A) into the 1997 Act. This requires 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 must then publish the report in such manner as may be prescribed.

28. Subsection (6)(g) 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.

29. Subsection (6)(h) 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.

30. Subsection (7)(a) amends the default standstill period during which a local development plan cannot be adopted by a planning authority, from a period of 28 days as currently set out in section (20)(3) of the 1997 Act, to a period of eight weeks beginning with date of the planning authority advertising their intention to adopt the plan.

31. Subsection (7)(b) amends section 20(5) of the 1997 Act to enable the Scottish Ministers to direct a planning authority to modify the proposed plan submitted to them if it appears to them that the proposed plan is unsatisfactory.

32. Subsection (7)(c) introduces subsections (8), (9) and (10) into section 20 of the 1997 Act. New section 20(8) enables the Scottish Ministers to modify the proposed plan or approve the proposed plan only in part where they approve the plan under section 20(7). New section 20(9) enables the Scottish Ministers to appoint a person to report to them on any matter within or relating to the proposed plan and new section 20(10) allows the Scottish Ministers to prescribe the procedure for the appointed person to follow.

Section 4: Supplementary guidance

33. Section 4 of the Bill 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 5: Key agencies

34. Section 5 of the Bill 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 6: Delivery programmes

35. Section 6 of the Bill 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 Bill.

Section 7: Amendment of National Planning Framework and local development plans

36. Section 7 of the Bill introduces sections 3CA and 20AA into the 1997 Act. New section 3CA(1) enables the Scottish Ministers to amend the National Planning Framework at any time. New section 3CA(2) provides that key agencies must co-operate with the Scottish Ministers in relation to the amendment process, and that Ministers may direct planning authorities to provide specified information to them for the purpose of determining the amendments. New section 3CA(3) allows 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.

37. 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.

38. New section 20AA(4) ensures that in preparing an amendment to a local development plan, a planning authority are to have the same regard to the matters set out at section 16(2) of the 1997 Act (as amended by sections 3(3)(b) and 9(2) of the Bill) as they would when preparing a local development plan.

39. 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 8: Development plan

40. Section 8(2) of the Bill amends section 24 of the 1997 Act to provide that the development plan for an area is to be the National Planning Framework and any local development plan for the time being applicable to the area. Subsection (3) of the amended section 24 provides that in the event that the National Planning Framework and the local development plan are incompatible, whichever of them is the later in date is to prevail. New subsections (2) and (4) of section 24 are clarifications to aid the interpretation of the provisions.

41. Section 8(3) of the Bill amends section 25 of the 1997 Act in consequence of the changes made to section 24 of the 1997 Act. Subsection (3)(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 subsection also, together with subsection (3)(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.

42. Sections 8(4) and (5) of the Bill 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. 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 Bill).

Local place plans

Section 9: Local place plans

43. Section 9 of the Bill amends section 16 of the 1997 Act. Section 9(2) of the Bill amends section 16 of the 1997 Act to provide that where a planning authority are preparing their local development plan, they must have regard to any local place plans within their district. Section 9(3) of the Bill inserts a definition of a local place plan into section 277 of the 1997 Act. Section 9(4) of the Bill inserts schedule 19 (local place plans) into the 1997 Act, which makes provision about local place plans and their preparation and submission.

Preparation of local place plans

44. 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)(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 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

45. 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. “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.

Meaning of ‘community body’

46. Paragraph 3 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 – SIMPLIFIED DEVELOPMENT ZONES

Section 10: Simplified development zone schemes

47. Section 10 of the Bill amends the 1997 Act to insert new sections 54A-F and schedule 5A, which relate to simplified development zones (SDZs). Consequential changes in respect of other references within the Act which now also need to refer to simplified development zones are made in schedule 2 of the Bill.

Making and alteration of schemes

48. New section 54A introduces new schedule 5A which provides detail on the process for making and altering SDZ 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.

49. Under subsection (1) of new section 54B, an SDZ scheme can grant authorisation for the type of development set out in the scheme, within the geographic location (zone) 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.

50. Subsection (2) states that the authorisation given by an SDZ 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.

51. Subsection (3) covers the types of consent that an SDZ 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.

Scheme may also control advertisements

52. New section 54C deals with control of advertisements. Regulations made under section 182 of the 1997 Act can require consent to be obtained from the planning authority for the display of advertisements or any class of advertisements specified in the regulations. Subsection (1) allows SDZ schemes to disapply any regulations made under section 182 of the 1997 Act and apply alternative controls on advertisements that are provided for in the scheme. This removes the need to apply for a separate advertisement consent. Subsection (3) means that SDZ schemes can only include such restrictions as could have been included in regulations under section 182 of the 1997 Act, e.g. in terms of the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land.

53. New section 54C(2) means that any provisions in an SDZ scheme about restricting advertisements are to be treated as if they were provisions made in regulations under section 182, for the purposes of various other sections relating to advertisements control, including section 184 of the 1997 Act. Section 184 provides that where advertisements comply with regulations made under section 182, planning permission is deemed to be granted and there is no need to apply for planning permission - so by providing that any provisions in an SDZ scheme about advertisements have the same effect, it gives such advertisement activity planning permission, where it complies with the scheme.

54. Other sections which will apply and for which the SDZ provisions will be treated as regulations under section 182 are section 185 (repayment of expense of removing prohibited advertisements), section 186 (enforcement of advertisement control) and section 187 (power to remove or obliterate placards and posters which contravene the regulations).

Effect of altering scheme

55. The Bill provides the potential for a planning authority to make alterations to an SDZ 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 SDZ 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

56. New section 54E provides in subsection (1) that the SDZ 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 SDZ 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 SDZ.

57. New section 54E confirms in subsection (2) that schemes cannot impose stricter controls for activities that already do not require consent by affecting rights to do anything that is not development 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

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

Schedule 5A: Simplified Development Zones

Part 1: Content of schemes

General

59. 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 zone 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

60. Paragraph 2 of schedule 5A allows schemes to specify different conditions for different cases, which could cover different parts of the scheme's zone 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

61. Paragraph 3 of schedule 5A provides that the Scottish Ministers can make regulations restricting the type of land that can be included in a scheme, and schemes cannot include such land or be altered to include such land. However, paragraph 3(3) provides that if land 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

Chapter 1 - Planning authorities' powers and duties

Power to make or alter scheme

62. 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

63. Paragraph 5 of schedule 5A places a duty on planning authorities to consider 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 consideration, their decision and reasons. The Scottish Ministers may use regulations to prescribe minimum standards as to how frequently planning authorities must consider this question, and 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

64. 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. 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.

Duty to consider making or altering scheme on request

65. Paragraph 7 of schedule 5A covers requests to a planning authority for them to make a scheme for a part of their district, or alter a scheme in their district. Sub-paragraph (1) requires a planning authority to consider any such valid request. Sub-paragraph (2) allows the Scottish Ministers to make regulations prescribing the requirements that need to be met for a request to be treated as valid, and sub-paragraph (3) sets out that the requirements in regulations may, in particular, cover how a request is to be made, and steps that must be taken before a request may be made.

Chapter 2 – Steps that may be taken where scheme not made or altered on request

Referral to Scottish Ministers

66. Paragraph 8 covers instances where someone has made a request for an SDZ scheme to be made or altered under paragraph 7, as above, and the planning authority have either refused the request or not given a decision within three months of the request. In such cases, the person may refer the question to the Scottish Ministers to determine whether the authority should make or alter the scheme. Sub-paragraph (2)(c) means that such referrals must be made to the Scottish Ministers before the deadline for making such a referral has expired. The deadline will be prescribed in regulations made under sub-paragraph (3), which may also prescribe further requirements to be complied with when making a referral to the Scottish Ministers.

Scottish Ministers to consider giving direction following paragraph 8 referral

67. Paragraph 9 relates back to paragraph 8 which, as explained above, deals with the position where a person is aggrieved that the planning authority has turned down or not responded to their request to make or alter a simplified development zone scheme and so refers the matter to the Scottish Ministers. Sub-paragraph (2) requires that where the Scottish Ministers have received such a request they must consider the matter and whether they should issue a direction to the planning authority (under paragraph 6) requiring them to make or alter a scheme.

68. Under sub-paragraph (3), in order to inform their decision, the Scottish Ministers must give both the person who made the request and the planning authority the opportunity to make written representations; and must have regard to such representations. The Scottish Ministers may also consult any other person they choose.

69. Having considered the question and made their decision, the Scottish Ministers must inform the person who made the request and the planning authority, and give their reasons for the decision (sub-paragraph (4)).

70. Only a valid request to a planning authority (as defined in paragraph 7(2)) may be referred to the Scottish Ministers under paragraph 8. As paragraph 9 is about requests referred under paragraph 8, the rules in paragraph 9 similarly only apply to a valid request. Accordingly, the requirement (under paragraph 9(2)) for the Scottish Ministers to consider referrals made to

them does not apply where the requirements for making a valid referral have not been complied with, meaning that the original request to the planning authority was not a valid request. Paragraph 9(5) clarifies that this applies not just to rules about the request itself, but also to any rules made under paragraph 7(3)(b) as to things that must be done before a request is made (notwithstanding that what is done before will not form part of the request itself).

Part 3: Process for planning authority making or altering scheme

Chapter 1: Process for all cases

Outline of process

71. Paragraph 10 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 11(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 12, and consider any representations received in accordance with paragraph 13 (including holding any hearings required under paragraph 14).
- 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 16.

Consultation on possible proposals

72. Paragraph 11 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

73. Paragraph 12 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

74. Under paragraph 13, 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 12(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

Requirement to hold hearings

75. Paragraph 14 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 13 before any scheme or alteration is made.

76. 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.

77. However, if the proposal is called-in by the Scottish Ministers under paragraph 17, the planning authority are not to hold or continue with such hearings.

Requirement to notify Scottish Ministers of certain proposals

78. Paragraph 15 allows the Scottish Ministers to direct a planning authority to notify them of any proposals for making or altering a 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. The direction will specify a standstill period, during which the planning authority may not make the proposed scheme or alteration (or any variant of it). This period may be a specified period of time, or may last indefinitely until the Scottish Ministers tell the authority it has ended.

Pause before making certain alterations

79. Paragraph 16 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 land 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.

80. Sub-paragraph (3) sets out that the consultation process is completed on the last day of hearings required under paragraph 14(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

Power to call in proposals

81. The Scottish Ministers may give a “calling-in direction” to a planning authority under paragraph 17(2), at any time before a proposed scheme or alteration is made. Having received a calling-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 in paragraph 14(1).

Powers after calling in

82. Paragraph 18 provides that, having given a calling-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.

83. If the Scottish Ministers decide to alter a scheme in a way that has any of the effects described in paragraph 16(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

Power to make or alter scheme

84. Under paragraph 19, 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.

Process for making or altering schemes

85. 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 20 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.

Recovery of costs

86. In cases where the Scottish Ministers have themselves had to make or alter a scheme directly (as per paragraph 19) because the planning authority were not fulfilling their duty to prepare a scheme following a direction received under paragraph 6, paragraph 21 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

Power to exclude kinds of development

87. Paragraph 22 gives the Scottish Ministers 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 22(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.

Effect of exclusion on existing schemes

88. Paragraph 23 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 22. 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.

Directions about procedure and provision of information

89. Paragraph 24 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 SDZs under schedule 5A.

Regulations about form, content and procedure

90. Paragraph 25 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.

91. The regulations can also make provision in relation to copies of documents. Sub-paragraphs 25(2)(d) and (e) 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

92. Paragraph 26 applies the interpretation set out in section 54F, in relation to the shorthand reference to some key terms, to schedule 5A.

Calculation of periods

93. Paragraph 27 explains how periods described in the schedule as ending after a specified number of months or years are to be calculated. There are four such references, to months or years, within Schedule 5A:

- Paragraph 1(4) – which means schemes cannot cover a period longer than 10 years.
- Paragraph 8(2)(b)(ii) – where, subject to other requirements, if the authority has not taken a decision on whether to grant or refuse the request to make or alter a scheme within 3 months of the request being made, the person can refer it to the Scottish Ministers.
- Paragraph 16(2) – which bars the planning authority from making certain restrictive alterations to schemes until 12 months after the completion of the consultation process.
- Paragraph 18(4) – this is similar to paragraph 16(2) immediately above but applies where the Scottish Ministers are themselves altering the scheme, after calling it in, where, equally, if they are minded to alter a scheme to include such restrictions they may not do so until the end of the day that falls 12 months after they decided to make the alteration.

94. In calculating these periods, paragraph 27(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.

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

Section 11: Bar to creation of new simplified planning zones

96. The intention is that once the new provisions around simplified development zones 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 SDZ tool should be used instead. Therefore section 11 of the Bill 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

Applications

Section 12: Pre-application consultation

97. Section 12 amends sections 35A, 35B and 35C of the 1997 Act on pre-application consultation (PAC).

98. 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).

99. 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.

100. 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.

101. 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 12(2)(a) of the Bill 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.

102. 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 12(2)(b) and (d) of the Bill 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).

103. Section 12(2)(c) of the Bill 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.

104. Section 12(3) of the Bill 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 is in addition to the existing minimum period, which provides that the application cannot be submitted until at least 12 weeks after the giving of this notice.

105. Section 12(4) of the Bill 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 13: Regulations about procedure for certain applications

106. Section 13 of the Bill replaces subsection (3) of section 42 (determination of applications to develop land without compliance with conditions previously attached) of the 1997 Act – see paragraph 126 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 would allow for such provision to also be made in regulations.

Section 14: Removal of requirement to recover costs before determining certain applications

107. 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 14 of the Bill 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.

Delegation of development decisions

Section 15: Delegation of development decisions

108. Section 15 of the Bill 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.”

109. 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.

110. Section 15 of the Bill 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 16: Schemes of delegation

111. Section 16 of the Bill 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.

112. 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.

113. 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.

114. 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.

115. 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.

116. 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.

117. 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(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).

118. 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.

119. Section 16(3) of the Bill 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 16(3) of the Bill 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 16(4) of the Bill 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 Bill contains various minor and consequential amendments and repeals in connection with these amendments to schemes of delegation and local reviews.

Section 17: Duration of planning permission and planning permission in principle

120. Section 17 of the Bill 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.

121. 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.

122. 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).

123. 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.

124. 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.

125. Section 17(3) of the Bill 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.

126. 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.

127. Section 17(4) of the Bill 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.

128. The changes made by section 17(4) of the Bill 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 17(2) of the Bill 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.

129. Section 17(5) of the Bill 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 18: Completion notices

130. 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). 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.

131. Section 18 of the Bill 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.

132. Section 18(2) of the Bill 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 18(3)(a) of the Bill 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 18(3)(b) of the Bill 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 Ministers before they confirm a notice. Equivalent rules are instead now provided for in, respectively, inserted section 62A(5) and inserted section 62A(3). Section 18(3)(c) of the Bill makes some minor and consequential amendments.

133. Section 18(4) of the Bill 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.

134. Sections 18(5) and (6) of the Bill 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 19: Planning obligations: financial agreements

135. Section 19 of the Bill amends section 75 of the 1997 Act to modify the description of a planning obligation.

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

137. 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 Bill.

138. 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.

139. The remaining provisions of section 19 of the Bill reflect the restructuring of the section.

140. 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 20: Planning obligations: modification or discharge

141. Section 20 of the Bill 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.

142. Sections 20(4)(a) and (b) of the Bill clarify that a modification or discharge of a planning obligation is to be made only by means of an application under section 75A.

143. Section 20(4)(c) of the Bill 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 20(4)(e) of the Bill. 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 20(4)(f) of the Bill ensures that non-applicants against whom the planning obligation is enforceable will be notified of the decision.

144. Section 20(4)(e) of the Bill 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 20(4)(d) of the Bill), 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.

145. Section 20(5) of the Bill 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 Bill expand the notification requirements to provide for a third party against whom the obligation is enforceable to be notified of the outcome.

146. Sections 20(2), (3) and (4)(g) and (h) make minor or consequential modifications as a result of the changes set out above.

PART 4 – OTHER MATTERS

Charges and fees

Section 21: Fees for planning applications etc.

147. Section 21 of the Bill 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.

148. Subsection (2) inserts paragraph (c) into section 252(1) of the 1997 Act. This 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.

149. Subsection (3) 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.

150. Subsection (5) adjusts section 252(1A)(b) 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.

151. Subsection (6) 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 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. In addition, by virtue of subsection (7) (which inserts section 252(1C) into the 1997 Act), the regulations may 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. Section 252(1A)(b) of the 1997 Act provides that regulations under this section may make provision about how the charge or fee is to be calculated.

152. Subsection (8) 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).

153. Subsection (10) 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 Bill amends this rule so that it applies equally to the Scottish Ministers.

154. As discussed at paragraph 151 above, new section 252(1D) (as inserted by section 21(7) of the Bill) enables the regulations to impose a surcharge in the case of applications for retrospective planning permission. Subsection (11) of section 21 of the Bill 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 22: Fines: increases and duty of court in determining amount

155. Section 22 of the Bill 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.

156. 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 22(2)(a) of the Bill 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 22(2)(b) of the Bill from level five on the standard scale to the statutory maximum.

157. 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.

158. 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.

159. 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).

160. 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.

161. 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.

162. ‘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 23: Liability for expenses under enforcement notice

163. Section 23 of the Bill 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.

164. Section 23(2)(a) of the Bill 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 23 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 23(2)(b) and (c) of the Bill 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.

165. Section 23(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.

166. 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.

167. 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.

168. 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.

169. 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.

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

171. Section 23(4) of the Bill 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.

172. Section 23(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 23 comes into force.

Training for taking planning decisions

Section 24: Power to impose training requirement

173. Section 24(1) of the Bill 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).

174. Section 24(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.

175. Section 24(3) restricts the functions that may be specified in regulations to those conferred by the planning Acts.

176. Section 24(4) provides that any regulations made under this section can specify that training requirements may mean attendance on a training course and/or the completion of an examination. It also provides that the Scottish Ministers may specify that the content and provider of the training and any examination must be accredited by them.

177. Section 24(5) makes provision that regulations may disapply the requirement for training in relation to either a particular planning authority or all authorities.

178. All regulations made under this section are subject to affirmative parliamentary procedure (see section 32(3)).

Section 25: Power to transfer functions where insufficient trained persons

179. Section 25 of the Bill makes provision allowing the Scottish Ministers, where the provisions of section 24(1) have not been met and elected members have not undertaken the required training, to direct that the functions of the planning authority are to be carried out by either another planning authority or by the Scottish Ministers. This “transfer of functions direction” may be modified or revoked by another direction, and both types of direction may make different provision for different purposes.

180. Where functions are transferred under this section, subsection (5)(a) provides that regulations may provide for any enactment to apply subject to such modifications as the Scottish Ministers consider appropriate. This is required to ensure that the authority to which the functions are transferred (or the Scottish Ministers) can carry them out effectively. Subsection (5)(b) allows the Scottish Ministers to make regulations which would allow any person who has exercised a function of the planning authority through a transfer of functions direction to claim any reasonable costs incurred whilst fulfilling their role. Regulations made under this section are subject to the affirmative parliamentary procedure (see section 32(3)).

Section 26: Performance of planning authorities

181. Section 26 of the Bill inserts a new Part 12A into the 1997 Act. The new Part 12A comprises new sections 251A to 251G and deals with the performance of planning authority functions.

182. 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.

183. 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. New section 251A(4) clarifies that for the purpose of reporting, the financial year is the period of 12 months beginning on 1 April.

184. New section 251B makes provision in subsection (1) for the Scottish Ministers to appoint a person who will monitor the service of planning authorities and how they carry out their functions, as well as providing advice to authorities on ways in which they may improve their performance. Subsection (2) requires the person so appointed to submit reports to the Scottish Ministers setting out the work they have carried out in monitoring performance and providing advice, as well as any recommendations they may have, for example, where they consider an authority has fallen short in their performance and may require further scrutiny. Subsection (3) allows the Scottish Ministers to make further provision by regulations about the appointment of the person, the functions they carry out and the reports they produce.

185. New section 251C(1) allows the Scottish Ministers to appoint a person to undertake an assessment of a planning authority or planning authorities. This assessment can be against all of their general functions or a particular function. New section 251C(2) requires the Scottish Ministers to specify when appointing the person which authority or authorities the assessment should relate to, which of their functions are to be assessed, the period the assessment is to cover and any other restrictions they wish to place on the scope of the assessment. Once a person has been appointed to carry out an assessment, new section 251C(3) requires the Scottish Ministers to notify each relevant authority of the appointment and the scope of the assessment that will be undertaken on the authority. Section 251C(4) sets out defined terms and provides that references made to the “appointed person” and “relevant planning authority” in sections 251D to 251F are to the person appointed under subsection (1) of section 251C and to the planning authority on which the assessment will be carried out.

186. New section 251D sets out the powers of the appointed person in carrying out their assessment duties. Subsection (1) makes provision for the appointed person to have access at all reasonable times to the planning authority’s premises and any documents relating to the planning authority which the appointed person considers are necessary for the assessment. Subsection (2) requires any person accountable for or holding documentation needed as part of the assessment to provide the appointed person with information or an explanation for the performance. This person must, if required, attend in person to provide the information or produce the documentation as requested. Subsection (3) provides that the planning authority must co-operate fully with the appointed person and provide that person with everything they reasonably require to conduct the assessment. Subsection (4) requires the appointed person to give the planning authority three clear days’ notice where they require either information or any documents or someone from the authority to appear in person. They must also provide identification where they are reasonably asked to do so. Subsections (5) and (6) provide that any person who does not comply with subsections (1) to (3) commits an offence and, if convicted, is liable to a fine not exceeding level three on the standard scale (currently £1,000). Within this section, the term ‘document’ means anything which is recorded regardless of the form it takes.

187. New section 251E(1) requires that on completion of the assessment the appointed person has to prepare a report, submit it to the Scottish Ministers, issue a copy to the planning authority who were under assessment and publish the report. This report is the ‘performance assessment report’ and is referred to as such in later sections. New section 251E(3) provides that the contents of the report may include recommendations of improvements the planning authority should implement to improve the services carried out under their functions.

188. New section 251F sets out the steps that a planning authority are required to take once the performance assessment report has been received. Subsection (1) requires a planning authority to which recommendations are addressed to prepare and submit a response to the performance assessment report (the ‘response report’). The response report should outline how and when they intend to implement the recommendations of the report, and, where they do not intend to implement the recommendations, the reasons why not. The response report should be submitted within the timescale identified in the performance assessment report or another date that has been mutually agreed between the Scottish Ministers and the planning authority. Subsection (4) makes provision for different dates for response reports to be specified for different authorities. Subsection (5) requires that response reports must also be published.

189. New section 251G gives the Scottish Ministers powers to issue directions where they require a planning authority to take action. Subsection (1) makes provision for three specific circumstances in which the Scottish Ministers will be entitled to give a direction. These are: (a) where the planning authority decline to implement the recommendations of the performance assessment report; (b) where the Scottish Ministers consider that the steps the planning authority intend to take to meet the recommendations are not robust enough; and (c) where the Scottish Ministers consider that the planning authority are breaching their proposed timescales and not acting quickly enough in implementing the recommendations.

190. Subsection (2) makes provision allowing the Scottish Ministers to direct that a planning authority are to submit a further response report within a given timeframe where Ministers feel it necessary. Subsection (3) allows the Scottish Ministers to vary or revoke a direction they have issued under subsection (1). Any direction which is made, revoked or varied by the Scottish Ministers under the above provisions must be published (which may be achieved by publication on an appropriate website).

191. Section 26(2) of the Bill repeals section 30 of the Planning etc. (Scotland) Act 2006 (assessment of planning authority's performance or decision making) which is in effect replaced by new Part 12A.

PART 5 – INFRASTRUCTURE LEVY

192. Sections 27 to 30 and schedule 1 of the Bill set out powers to introduce an infrastructure levy, and to issue associated regulations and guidance.

Section 27: Power to provide for a levy

193. Section 27(1) of the Bill 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 32(3)).

194. Subsection (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.

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

Schedule 1: Infrastructure-levy regulations

196. Schedule 1 of the Bill makes more detailed provision about what may be included in regulations on the infrastructure levy made under section 27.

197. Paragraph 2 notes that the schedule (apart from specified exceptions) does not limit what may be included in regulations made under section 27, although it makes specific provision to allow various matters to be covered. The specified exceptions are: paragraph 14(2), which ensures that infrastructure-levy income benefits local authorities; paragraph 16(2), which sets

limits on when the Scottish Ministers may restrict powers relating to planning or development; and paragraph 17, 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

198. 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.

Local exemptions and discounts

199. Paragraph 6(a) allows the regulations to give local authorities the power to waive or reduce the infrastructure levy for development in their areas and paragraph 6(b) allows for this power to be made subject to conditions set by the regulations.

Collection and enforcement

200. Paragraph 7 deals with collection and enforcement of the levy. Paragraph 7(a) makes provision for infrastructure-levy regulations to set out how the levy and any penalties for late payment can be collected. Paragraph 7(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 7(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 7 are set out in paragraph 17.

Financial penalty for late payment

201. Paragraph 8 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.

Deferring planning permission

202. Paragraph 9 makes provision allowing the regulations to preclude planning permission from being granted, or being deemed to have been granted, until there has been full payment of the infrastructure levy or any associated financial penalty for late payment under paragraph 8.

Stopping development

203. 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 8. 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 sub-paragraph 10(1)(b), regulations can prescribe the consequences of not stopping development when directed to do so. Sub-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 17.

Remission and repayment

204. 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 8. 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

205. 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

206. 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).

Aggregating levy income

207. Paragraph 14 makes provision allowing the regulations to require some or all of the income from the infrastructure levy (including financial penalties) to be transferred to the Scottish Ministers, and to set out how the money received in this way should be distributed amongst local authorities. If the regulations require such funds to be transferred to Ministers, they must also make provision for all such income to be distributed amongst local authorities.

Expenditure of levy income

208. Paragraph 15 makes provision for the regulations to specify the purposes for which income from the infrastructure levy (including financial penalties, or money that has been collected in from and then returned to local authorities by way of the levy) can be applied.

Use of planning and development powers

209. Paragraph 16 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 16(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

210. Paragraph 17 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 28: Guidance

211. Section 28(1) of the Bill 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.

212. Subsection (6) clarifies that income from an infrastructure levy, for the purposes of the guidance, includes income from financial penalties charged for late payment, and monies from the levy being transferred to the Scottish Ministers and then redistributed by them to local authorities.

Section 29: Interpretation of Part and schedule

213. Section 29 of the Bill provides definitions of “development”, “infrastructure” and an “infrastructure project” for the purposes of this Part and schedule 1.

Section 30: Power to change meaning of “infrastructure”

214. Section 30 of the Bill 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 32(3)).

PART 6 – FINAL PROVISIONS

Section 31: Ancillary provision

215. Section 31 of the Bill 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 Bill.

Section 32: Regulation-making powers

216. Subsection (1) of section 32 of the Bill provides that the powers of the Scottish Ministers to make regulations under this Bill include the power to make different provision for different purposes and areas. Subsection (2) provides that ancillary regulations made under section 32 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 Bill. Where the Bill inserts a regulation-making power into the 1997 Act, the procedure that applies is automatically governed by section 275 of the 1997 (as read with section 118(2) of the Scotland Act 1998). Accordingly, the regulation-making powers that the Bill inserts into the 1997 Act are all subject to the negative parliamentary procedure, other than the power to specify land that cannot be included in a simplified development zone scheme (see paragraph 3(1) of schedule 5A to the 1997 Act, as inserted by section 10 of the Bill) which is subject to the affirmative procedure.

Section 33: Minor and consequential amendments and repeals

217. Section 33 of the Bill introduces schedule 2, which makes provision for amendments and repeals which follow from the main provisions of the Bill. These are largely purely consequential changes to cross-references throughout the 1997 Act. However, paragraph 5 of schedule 2 of the Bill 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 Bill’s enactment.

Section 34: Commencement

218. Section 34 of the Bill provides in subsection (1) that this section and sections 31, 32 and 35 come into force on the day after Royal Assent. The remainder of the Bill, 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.

219. Subsection (4) provides that regulations bringing section 23 into force (liability for expenses under enforcement notice) may amend section 158B of the 1997 Act (introduced by section 23) and section 23(5), so that the references in those sections to “the day on which the section came into force” is replaced by the actual date. This will mean that when the amended version of the legislation is viewed, instead of setting out a rule by reference to when a section of this Bill came into force (the date of which will not be immediately apparent to readers), it will instead specify the rule by reference to that date.

Section 35: Short title

220. Section 35 of the Bill provides that the Bill, once enacted, will be known as the Planning (Scotland) Act 2018.

This document relates to the Planning (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 4 December 2017

PLANNING (SCOTLAND) BILL

EXPLANATORY NOTES

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