

Planning (Scotland) Bill

[As amended at stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Planning (Scotland) Bill, (introduced in the Scottish Parliament on 4 December 2017) as amended at stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. 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.
3. The Notes should be read in conjunction with the Bill as amended at Stage 2¹. 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

4. 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.

¹ The Scottish Government has also published relevant sections of the Town and Country Planning (Scotland) Act 1997 showing the changes that would be made by the Bill as amended at stage 2, at <https://www.gov.scot/publications/planning-bill-town-and-country-planning-act-stage-2-amendments>.

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5. Many of the provisions of the Bill amend the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). The sections, are arranged into six Parts, as follows:

- **Part A1** – Purpose of planning. This sets out the purpose of the planning system.
- **Part 1** – Development planning. This Part reorganises makes changes to the system of development plans, in particular removing strategic development plans, and amends amending the procedures for producing plans and the required content of those plans. It also provides a second purpose of planning, linked to the exercise of development planning functions. It introduces local place plans, prepared by community bodies. This pPart also requires planning authorities to produce open space strategies and the Scottish Ministers to report to the Scottish Parliament on how the planning system is operating to meet the housing needs of older people and disabled people.
- **Part 2** – Simplified development zones Masterplan consent areas. This Part introduces provisions and a new Schedule 5A to the 1997 Act, providing a replacement for simplified planning zones, which grant planning permission for specified types of development within the zone.
- **Part 2A** – Culturally significant zones. This Part introduces provisions for culturally significant zones, in which it is desirable to identify, preserve or enhance existing cultural venues, facilities and uses, support the development of new ones, and ensure no unreasonable adjustments to the operation of existing cultural venues or facilities are required in relation to new developments.
- **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; and makes amendments in relation to fines and recovery of expenses for enforcement activity; imposes a requirement. It clarifies that regulations may make different provision for members of different areas; requires the Scottish Ministers to publish all directions made under the 1997 Act and their reasons for making them; requires each planning authorities to undergo training before taking part in authority to have a chief planning functions; and introduces new measures for the monitoring and assessment of

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planning authorities' performance officer; amends provisions on National Scenic Areas and makes provision about notification of applications for listed building consent, under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

- **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 provisions that refer to dates, about the Bill's commencement, and about its short title.

Commentary on sections

Part A1 – purpose of planning

6. Section A1 of the Bill sets out the purpose of the planning system, namely that it is to manage the development and use of land in the best long-term public interest.

Part 1 – development planning

Purpose of planning

Section A2: Purpose of planning

7. Section A2 of the Bill inserts section 3ZA, as Part 1ZA, into the 1997 Act. This requires the Scottish Ministers and planning authorities to exercise their functions under Parts 1A and 2 of the 1997 Act with the objective of achieving the purpose set out in subsection (2). Part 1A of the 1997 Act deals with the National Planning Framework and Part 2 deals with local development plans and other aspects of the development plan.

8. Subsection (2) of new section 3ZA provides that the purpose is to manage the development and use of land in the long term public interest. Subsection (3) states that contributing to sustainable development and achieving the national outcomes are considered to be in the long term public interest. Subsection (3) of section A2 of the Bill repeals sections 3D and 3E of the 1997 Act, which relate to contributing to sustainable development.

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9. Subsection (4) of new section 3ZA provides that the Scottish Ministers and planning authorities must exercise their functions under Parts 1A and 2 of the 1997 Act with the object of implementing two United Nations' resolutions on sustainable development.

Development planning

6.10. Sections 1 to 8 of the Bill change the procedures for preparing the development plans and associated documents., and the content required to be included in them.

Section 1: National Planning Framework

7.11. 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. ("the Framework").

8.12. Subsection 1(2) of the Bill amends the description of what is to be set out in the National Planning Framework in section 3A(2) of the 1997 Act to specify that it is to be the Scottish Ministers' policies and proposals for the development and use of land.

13. Subsections 1(2A), (2B) and (2C) of the Bill respectively amend the description in section 3A(3) of the 1997 Act of what the Framework is to contain as follows:

- Subsection (2A) adds targets for the use of land for housing;
- Subsection (2B) requires a statement about any consideration given to the likely health effects of development; and
- Subsection (2C) requires the statement of what the Scottish Ministers consider to be priorities for development (see section 3A(3)(b) of the 1997 Act) to include priorities for housing suitable for older people and disabled people, and for meeting the housing needs of those people.

14. Subsections 1(2D) to (2I) of the Bill add new requirements relating to the preparation and content of the Framework by inserting new subsections into section 3A of the 1997 Act.

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15. New subsection 3A(3A) of the 1997 Act requires the Framework to be prepared with due regard to other relevant policies and strategies, providing a list of those to be included in particular.

16. New subsection 3A(3B) of the 1997 Act requires the Framework to have regard to the desirability of preserving disused railway infrastructure for the purpose of ensuring its availability for possible future public transport requirements.

17. New subsections 3A(3C) and (3D) of the 1997 Act provide that the Framework must contain national targets for the provision of housing suitable for older people and disabled people, including targets for the building of new housing to meet their needs, and such other matters as the Scottish Ministers consider necessary to meet the housing needs of these groups. New subsections 3A(10A) to (10C) of the 1997 Act, inserted by subsection (5) of section 1 of the Bill, set out a list of persons who must be consulted in respect of the targets for the provision of housing suitable for older people and disabled people. In connection with that, subsection 3A(3C)(b) of the 1997 Act, inserted by section 1(2F) of the Bill, requires the Framework to contain a statement setting out the consultation undertaken in accordance with subsection (10A) and how the views of those consulted have been taken into account.

18. New subsection 3A(3E) of the 1997 Act requires the Scottish Ministers, in considering their strategy and priorities for the purposes of the Framework, to have regard to the desirability of ensuring that the population of rural areas of Scotland increases and resettlement is encouraged in rural areas that have become depopulated.

19. Section 3A(4)(a)b) of the 1997 Act provides that the Framework may designate “national developments”. Subsection (2H) of section 1 of the Bill inserts a new paragraph (za) into section 3A(5) of the 1997 Act, stating that if the Framework contains a designation under subsection (4)(b), it must have regard to an infrastructure investment plan published by the Scottish Ministers, and include a statement setting out the ways the plan has been taken into account in preparing the Framework.

20. New subsections 3A(5A) and (5B) of the 1997 Act require the Scottish Ministers to consult the Chief Medical Officer and Chief Executive of NHS Scotland in preparing the framework, and to lay before the Scottish Parliament a statement setting out any representations received from them.

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9.21. Subsection (4)(a) of section 1 of the Bill amends the timescale for revising the National Planning Framework from within five years, as set out in the 1997 Act, to within 10 years.

10.22. Subsection (3) and paragraphs (b) and (c) of subsection (4) of section 1 of the Bill clarify the wording around the preparation and publishing of revised frameworks.

11.23. Subsection (5) of section 1 of the Bill introduces section 3A(10A), (10B) and (10C) into the 1997 Act, requiring the participation statement (see section 3A(10) of the 1997 Act) to include the Scottish Ministers' proposals relating to consultation on the targets for housing suitable for older people and disabled people, referred to in subsection (3C), inserted by section 1(2F) of the Bill. ItSection 1(5) of the Bill also 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 frameworkFramework.

12.24. Subsection (6) introduces sectionsections 3ZAA and 3AA into the 1997 Act. New section 3ZAA requires the Scottish Ministers to issue guidance to local authorities dealing with certain matters. However, the amendment inserting the provisions to which the guidance should relate was not agreed, so this section has no practical effect. 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.

13. 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).

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Section 2: Removal of requirement to prepare strategic development plans

14. 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.

25. Subsection (6A) introduces section 3AB into the 1997 Act. This requires the Scottish Ministers to request advice from the UK Committee on Climate Change, or such other body as may be designated under the Climate Change (Scotland) Act 2009, on the compatibility of the proposed framework with statutory climate change targets and policies and proposals set out for meeting those targets. The Scottish Ministers must publish the advice received and, if the draft framework is not considered to be entirely compatible with climate change targets and plans, a statement setting out the reasons why.

26. Subsection (9) of section 1 of the Bill introduces section 3CZA into the 1997 Act, setting out the procedure for consultation and Parliamentary scrutiny of the Framework. This replaces sections 3B and 3C of the 1997 Act, which are repealed by subsection 1(8) of the Bill. Section 3CZA requires the Scottish Ministers first to lay a copy of the proposed draft Framework (or revised Framework) before the Scottish Parliament, publish it and make it available to the public at large, and consult on it with planning authorities, key agencies and other appropriate persons, allowing 120 days for representations (excluding periods of Parliamentary recess). The Scottish Ministers must have regard to any representations, and if they make any changes as a result of the consultation, they must undertake such further consultation on those changes as they consider appropriate. Following the consultation the Scottish Ministers must lay an explanatory document before the Parliament, setting out the consultation undertaken, a summary of representations received, and any changes made as a result of the consultation. Having completed these steps, the Scottish Ministers may lay the draft Framework before the Scottish Parliament, which must be approved by resolution of the Parliament before it can be brought into effect. Sections 3CZA(8), (9) and (10) deal with disclosure of representations and information within them.

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Section 1A: Open space strategy

27. Section 1A of the Bill introduces section 3G into the 1997 Act, which requires a planning authority to prepare and publish an open space strategy, as defined in section 3G(2). Section 3G(6) gives the Scottish Ministers powers to make further provision in regulations about how planning authorities are to discharge these functions, and the meaning of certain terms. Section 3G(7) provides that a national park authority is not a planning authority for the purposes of this section (and so is not required to prepare and publish an open space strategy).

Section 1B: Housing needs of older people and disabled people: parliamentary report

28. Section 1B of the Bill introduces section 3CB into the 1997 Act. This requires the Scottish Ministers to lay before the Scottish Parliament, and publish, a report on how the planning system is operating to help ensure that the housing needs of older people and disabled people are met. This must be done as soon as practicable after the end of the period of two years from the day on which section 1B of the Bill comes into force, and every two years thereafter. Section 3CB(2) sets out what the report must contain information about, and subsection (3) sets out who the Scottish Ministers must consult in preparing the report.

Section 2A: Evidence report for preparation of strategic development plans

29. Section 2A amends the provisions of the 1997 Act relating to the preparation of strategic development plans. Subsection 2A(4) of the Bill introduces section 8A to the 1997 Act, which makes provision for an evidence report for a strategic development plan. Subsection (5) repeals section 9 of the 1997 Act, which provides for main issues reports for strategic development plans, and subsections (2), (3), (6) and (10) of section 2A of the Bill change the various references to the main issues report to the evidence report. Subsections (7), (8) and (9) of section 2A of the Bill remove the provision for examination of strategic development plans, and the power of the Scottish Ministers to approve or reject them.

30. Within new section 8A of the 1997 Act, subsection (1) requires an evidence report to be prepared before a strategic development plan is prepared. Subsection (2) explains what the evidence report is to set out,

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including the matters listed in section 7(4) of the Act for (i) development in the boundary of the strategic development plan area, and (ii) any matters or development on an area contiguous to the boundary of the strategic development plan area. The evidence report is also to set out the consultation process undertaken, how views have been taken into account in preparing the report and such other matters as prescribed. Subsection (3) allows the strategic development planning authority to request adjoining local authorities to provide information about these matters too.

31. Subsection (4) requires the strategic development planning authority to publish a draft which can be easily understood, and consult people and organisations listed in schedule 5 of the Development Management Regulations and the general public. Subsection (5) requires the evidence report to be submitted to the Scottish Ministers. Subsection (6) requires an independent assessment of the evidence report by a person appointed by Ministers. If the person is satisfied that the evidence report contains sufficient evidence to enable a plan to be prepared, subsection (7) requires them to notify the Scottish Ministers and the strategic development planning authority. Under subsection (8), if they are not satisfied they should prepare an assessment report setting out their reasons, and are to send the report to Scottish Ministers and strategic development planning authorities, after which the authority must revise and resubmit the report, which then undergoes the same process again. Subsection (11) allows the Scottish Ministers to make regulations about this process.

Section 3: Local development plans

15.32. 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.

33. Section 15(1) of the 1997 Act provides that a local development plan is a plan in which is set out a spatial strategy for the development and use of land in the area, such other matters as may be prescribed, and any other matters the planning authority consider appropriate. Section 3(2)(aa) of the Bill adds to this the planning authority's strategic and cross-boundary policies and proposals for the development and use of land.

16.34. 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

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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.

17.35. 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, section 3(2)(a) and (c) of the Bill re-establishes 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.

36. Subsection (3)(a)Section 3(2)(ab), (ac) and (ba) to (bh) of the Bill insert new subsections into section 15 of the 1997 Act setting out things that are to be included in the local development plan.

37. New section 15(1A), as inserted by section 3(2)(ab) of the Bill, requires the plan to include a statement about the consideration of the likely health effects of development. New subsections (2A) and (2B) of section 15 require the inclusion of statements on the planning authority's policies and proposals as to the provision of public conveniences and water refill stations. New section 15(3A) (inserted by paragraph (be)) requires the plan to have regard to the desirability of preserving disused railway infrastructure for the purpose of ensuring its availability for possible future public transport requirements.

38. Section 15(4) provides that a local development plan is to be accompanied by maps, diagrams, illustrations and descriptive matter for the purpose of explaining or illustrating the proposals in the plan. Paragraph (bf) adds to this a requirement for a list of sites considered suitable for self-build projects.

39. New subsections (1B), (1C) and (1D) of section 15, inserted by section 3(2)(ac) of the Bill, require the local development plan to include targets for the provision of housing for older people and disabled people, taking into account any national targets contained in the National Planning Framework. Section 15(4B), inserted by section 3(2)(bh), requires the plan to include the steps the planning authority intend to take to contribute towards the meeting of such targets set out in the National Planning Framework. Section 15(4A), inserted by section 3(2)(bg), provides that the plan is to include consideration of how the current and future housing needs for older people and people with disabilities are to be met, and how the authority intend to ensure that sufficient and appropriate sites are

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allocated for housing suitable for these groups. In addition, new subsections (2C) to (2F) of section 15 require the local development plan to include information on the use of accessible design to meet the housing needs of disabled people, and age and dementia friendly design to meet the housing needs of older people. New section 15A, introduced by section 3(2B) of the Bill, requires the local development plan to include a detailed statement and maps, diagrams etc, identifying any land which has been designated for the development of housing suitable for older people and disabled people.

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

18.41. Section 3(3)(a) of the Bill; 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.

19.42. Section 3(3)(b) of the Bill 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. Section 3(3)(ba) of the Bill also inserts a requirement to take into account the open space strategy introduced by section 1A of the Bill. Changes made to section 16 of the 1997 Act by section 9(2) of the Bill also require planning authorities to have regard to take into account local place plans when preparing a local development plan, and changes made by section 11A(2) of the Bill require culturally significant zones to be taken into account.

20.43. Section 3(3)(c) of the Bill 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.

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44. Subsection (4) Section 3(3A) introduces section 16A16ZA into the 1997 Act. This, requiring planning authorities to make appropriate arrangements to promote and facilitate participation by children and young people in the preparation of the local development plan, and to publish information about those arrangements.

45. Section 3(4) introduces sections 16A, 16B and 16C into the 1997 Act.

21.46. New section 16A is to bring in the gate-check proposal as a statutory requirement. Section 16A(1) 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. Subsections (1A), (2A) (with (10)) and (2B) (with (2)(ab)) of section 16A set out requirements in relation to consultation to be undertaken in preparing the evidence report. Subsection (2)(aa) requires the evidence report to set out how the planning authority has invited local communities to prepare local place plans and the assistance that has been provided, and subsection (2)(ac) requires the evidence report to assess the demand for and availability of student housing accommodation. Subsection (2E) sets out how a planning authority that is not part of a strategic development planning authority must consider and provide a statement on strategic and cross-boundary issues. Under subsections (2C) and (2D), the evidence report must be approved by the full planning authority, before being submitted to the Scottish Ministers under subsection (3). These subsections do this by requiring the planning authority to approve the proposed evidence report before submitting it and then disapplying section 56 of the Local Government (Scotland) Act 1973 to the function of approving the proposed report (which means that the task cannot be delegated to, for example, a committee or an officer of the authority). Subsections (4) to (8) provide for the Scottish Ministers to appoint a person to assess the report and sets out the process which applies depending on whether or not the appointed person is satisfied with the report. Section 16A(9) allows for regulations to cover costs, procedure and what is to be assessed.

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

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

24.49. Section 3(5) of the Bill 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.

25.50. Section 3(6) of the Bill amends section 18 of the 1997 Act to require planning authorities to prepare a proposed local development plan when they are notified that the appointed person is satisfied that the evidence report is sufficient, as per paragraph 46 above. The planning authority are required to have regard to the appointed person's report in preparing the proposed plan. The 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.

26.51. Subsection (6)(d)Subsection (1)(d) of section 18 of the 1997 Act requires the planning authority to consult the key agencies and such other persons as may be prescribed with regard to the proposed plan. Subsection (3)(6)(ca) of the Bill adds community councils and access panels to the persons to be consulted. Subsection (6)(d) of the Bill introduces a new subsection (1ZA) to section 18 of the 1997 Act, which requires a planning authority within the relevant area to consult the Central Scotland Green Network Partnership (for as long as the body is included in the National Planning Framework as a national development) on the proposed local development plan.

27.52. Section 3(6)(d) of the Bill also 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). This is done in the same way as for the proposed evidence report under subsection (4) (new section 16A(2C) and (2D)).

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28.53. Section 3(6)(e) of the Bill amends the minimum time period for representations to be received once the proposed plan is published, from not less than six weeks as set out in the 1997 Act, to not less than twelve weeks.

29.54. Section 3(6)(g) of the Bill 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. Subsection (6)(ga) adds a requirement that where modifications are made to the proposed plan, the planning authority must prepare a report setting out the modifications made and the reasons for making them, and submit this to the Scottish Ministers with the proposed plan.

30.55. Subsection Section 3(6)(gb) of the Bill removes the requirements to publish the proposed plan and to advertise the authority's intention to adopt the plan if there is to be no examination. These are replaced by new arrangements in the subsequent subsections.

31.56. Section 3(6)(h) of the Bill 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.

32. 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.

33. 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.

34. 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

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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.

57. Subsections (6A) to (8) of section 3 of the Bill remove the Scottish Ministers' ability to intervene in local development plans (LDPs) at the end of the plan preparation process, prior to its adoption, and adjust requirements relating to publication and notification requirements to prevent duplication of process due to the changes.

58. Section 19 of the 1997 Act relates to examination of the proposed local development plan. Section 3(6A)(a) of the Bill inserts a new subsection (5A) into section 19. This requires that when an examination of a plan is to take place, either at the request of the authority or by Ministers, the planning authority must publish the proposed plan and a report setting out any modifications made and the reasons for them. The change to section 19(9) is in consequence of this to include a reference to the new subsection (5A) and so to require publication to include by electronic means.

59. Section 3(6A)(c) of the Bill repeals paragraphs (b) to (d) in section 19(10) of the 1997 Act. This removes the requirements for the planning authority, following the examination, to publish the plan and modifications made to it, to advertise their intention to adopt the plan and to notify those who made representations on it. This avoids duplication with the publicity requirements when the plan is constituted, set out in section 20A of the 1997 Act.

60. Section 3(6A)(d) of the Bill removes section 19(12) of the 1997 Act. This removes the requirement for planning authorities to send copies of various documents to the Scottish Ministers, including the modifications made, any reasons for not modifying the plan as recommended, the proposed plan, the examination report, environmental assessment undertaken and details of the advert of their intention to adopt the plan.

61. Section 19A of the 1997 Act deals with whether the planning authority's consultation and public involvement with respect to the proposed plan has conformed with their participation statement in place at the time. The appointed person must consider this before carrying out the examination. If the appointed person is not satisfied, the Scottish Ministers

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may direct the authority to undertake further consultation, after which the authority may modify and must resubmit the proposed plan. Subsection (6B) of the Bill removes the separate requirements to publish the modified plan and advertise that a proposed plan has been resubmitted in these circumstances, and instead applies the requirement to publish the proposed plan and report on modifications under new section 19(5A).

62. Section 3(7) of the Bill amends section 20 of the 1997 Act (which provides for the local development plan to be constituted when it is adopted by the planning authority). In particular, it removes subsections (2) to (7), which allow the Scottish Ministers to direct that modifications are to be made to the proposed plan, extend the time before which the plan may not be adopted, or require that the plan is to be constituted when it is approved by the Scottish Ministers, rather than when it is adopted by the planning authority. In place of these, the Bill inserts subsections (1A) and (1B).

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

64. Section 3(8) of the Bill inserts new subsections (1A) to (1E) into section 20A of the 1997 Act, which deals with publication and publicity for the local development plan.

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

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

67. Subsection (1C) sets out where a report on modifications is required – this is where the constituted plan is different to the proposed plan as a

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result of modifications from earlier stages. Subsection (1D) provides that if a report on modifications was published at the examination stage, only new modifications need to be included in the report following constitution of the plan; if no new modifications were made no report need be published.

68. Section 3(9) of the Bill inserts a new subsection (4A) into section 20B of the 1997 Act relating to development plan schemes. A development plan scheme is a document setting out the authority's programme for preparing and reviewing their plan. The development plan scheme is currently required to include a participation statement, which is an account of when consultation is likely to take place, with whom, its likely form, and steps to be taken to involve the public at large. New subsection (4A) requires that when the planning authority is preparing a development plan scheme, they must seek the views of, and have regard to any views expressed by, the public at large on the content of the participation statement. This will allow interested stakeholders to have a say in how they can be most effectively consulted, so that authorities can tailor their approach to improve its effectiveness.

Section 4: Supplementary guidance

35.69. 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

36.70. 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

37.71. 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)

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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

38.72. 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(2A) requires the Scottish Ministers to set out in regulations circumstances in which they consider that an amendment would result in a significant change to the National Planning Framework such that a full revision should be carried out in line with the procedures set out in section 3A. 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.

39.73. 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.

40.74. New section 20AA(4) ensures provides that in preparing an amendment to a local development plan, a planning authority are to have take into account the same regard to National Planning Framework, any local outcomes improvement plan for the matters set out at section 16(2) of the 1997 Act (as amended by sections 3(3)(b) area and any culturally significant zones. Section 9(2) of the Bill) as they would when preparing 2B) of the Bill also adds any registered local place plan. However, an amendment to a local development plan. is not required to take into account the open space strategy. They must also have regard to

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such information and considerations as are prescribed, and to any other information and considerations as appear to them to be relevant.

41.75. 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

42.76. 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, any strategic development plan for the time being applicable to the area together with the Scottish Ministers' notice of approval of that plan and any supplementary guidance related to it, 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 any provisions of the National Planning Framework and the local development plan are incompatible, whichever provision is the later in date is to prevail. New subsections (2) and (4) of section 24 are clarifications to aid the interpretation of the provisions.

43.77. 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.

44.78. 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

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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

79. Section 9 of the Bill amends section 16 of the 1997 Act. to make provision for local place plans, inserting schedule 19 into the 1997 Act to set out details about their preparation and submission and keeping a register and map of local place plans within a local authority area.

80. Section 9(1A) of the Bill inserts a new section 15B into the 1997 Act. This requires a planning authority, before preparing a local development plan, to publish an invitation to local communities to prepare local place plans, with information on the assistance available from the planning authority, and the manner in which and date by which local place plans must be prepared in order to be taken into account in the preparation of the local development plan.

45.81. 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 take account of any registered local place plans within their district. Section 9(2A) makes provision in case amendments made to section 16 of the 1997 Act by different parts of the Bill come into force at different times. Section 9(2B) of the Bill amends section 20AA of the 1997 Act, inserted by section 76(3) of the Bill inserts, to provide that local place plans must be taken into account when a definition of a planning authority is amending its local place development 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

46.82. Paragraph 1(1) of new schedule 19 to the 1997 Act states that a community body may prepare a local place plan. Sub-paragraph (1A) states that a local place plan is a proposal as to the development and use of land. Sub-paragraph (2)(a) sets out the matters which the community body must have regard to when preparing the local place plan, namely the

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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)(aa) sets out that a community body, when preparing a local place plan, must set out reasons for considering that the local development plan should be amended, and sub-paragraph (2)(b) that they must comply with any prescribed requirements as to the form and content of the plan and any steps which must be taken before preparing the plan.

Submission of local place plans

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

Register and map of local place plans

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

Meaning of ‘community body’

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48.85. 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 masterplan consent areas

Section 10: Simplified development zone Masterplan consent area schemes

49.86. 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) masterplan consent areas (MCAs). Consequential changes in respect of other references within the Act which now also need to refer to simplified development zones masterplan consent areas are made in schedule 2 of the Bill.

Making and alteration of schemes

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

Scheme grants planning permission, etc.

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

52.89. Subsection (2) states that the authorisation given by an MCA scheme is subject to any conditions, limitations or other exceptions that are specified in the scheme itself, or any regulations made by the Scottish

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Ministers restricting the type of development that may be authorised by a scheme.

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

Scheme may also control advertisements make provision for land value capture by compulsory purchase

54. 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.

55. 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.

56. 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

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of advertisement control) and section 187 (power to remove or obliterate placards and posters which contravene the regulations).

91. New section 54CA states that a scheme, if it so provides, has the effect of permitting a local authority to purchase land within the area to which the scheme relates. The Scottish Ministers must make regulations making further provision about what land may be purchased in this way, the process to be followed, and provision for the compensation payable when land is purchased under this section. Subsection (3)(a) sets out provision that must be made about how the compensation payable is to be calculated. Under subsection (3)(b) the regulations must also disapply or apply with modifications any provisions of the Land Compensation (Scotland) Act 1963.

Effect of altering scheme

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

Further provision about effect of scheme

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

59.94. New section 54E confirms in subsection (2) that schemes cannot impose stricter controls for activities that already do not require

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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

60.95. Section 54F explains how “scheme”, “authorisation” and “development” are to be interpreted in relation to MCAs.

Schedule 5A: Simplified Development Zones Masterplan consent areas

Part 1: Content of schemes

General

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

Further provision about conditions, limitations and exceptions

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

Land that cannot be included in a scheme

63.98. Paragraph 3 of schedule 5A provides that the Scottish Ministers can make regulations restricting the type of landimposes restrictions on places that can be included in a scheme. The list provided in subsection (4) covers places subject to various national or international environmental

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or heritage designations, and schemes it may be modified by regulations. Schemes cannot include such landplaces or be altered to include such landplaces. However, paragraph 3(3) provides that if a land place is already included within a scheme and benefits from the authorisations the scheme gives, it will not be removed from the scheme by the Scottish Ministers subsequently making regulations which provide that the land is of a type that may no longer be included in such schemes.

Part 2: Making and altering of schemes by planning authorities

Chapter 1 - Planning authorities' powers and duties

Power to make or alter scheme

64.99. 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

65.100. Paragraph 5 of schedule 5A places a duty on planning authorities to consider, at least once every five years, which part(s) of their area it would be desirable to make a scheme for and to publish a statement setting out details of their 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

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

Duty to consider making or altering scheme on request

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67. 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

68. 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

69. 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.

70. 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

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must have regard to such representations. The Scottish Ministers may also consult any other person they choose.

71. 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)).

72. 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

73.102. 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

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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

74.103. 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

75.104. 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

76.105. 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

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Requirement to hold hearings

77.106. 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.

78.107. 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.

79.108. 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.

Pause before making certain alterations

80.109. 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 a place from the scheme, withdraw authorisation granted by the scheme or make the authorisation granted by the scheme subject to new or more stringent conditions, limitations or exceptions.

81.110. 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 2: Making or altering scheme following paragraph 6 direction

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Power to make or alter scheme

82.111. 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

83.112. 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

84.113. 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

85.114. 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

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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

86.115. 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

87.116. 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 MCAs under schedule 5A.

Regulations about form, content and procedure

88.117. 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.

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89.118. 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

90.119. 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

91.120. 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 two such references, to months or years, within Schedule 5A:

- Paragraph 1(4) – which means schemes cannot cover a period longer than 10 years.
- Paragraph 16(2) – which bars the planning authority from making certain restrictive alterations to schemes until 12 months after the completion of the consultation process.

92.121. 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.

93.122. 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

94.123. The intention is that once the new provisions around simplified development zones masterplan consent areas are in place, existing simplified planning zones will be allowed to run their course but there will

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be a bar to the creation of new simplified planning zones, as the new MCA 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 –2A – culturally significant zones

Section 11A: Culturally significant zones

95.124. Section 11A introduces new sections 56A to 56E into the 1997 Act to establish provisions to designate “culturally significant zones”, along with provisions to integrate these into both development planning and development management.

125. Subsection (2) amends section 16(2) of the 1997 Act to require planning authorities to take account of any culturally significant zones in their areas when preparing a local development plan.

126. Subsection (3) amends section 29 of the 1997 Act to the effect that planning permission may be granted in accordance with any conditions, limitations or exceptions of any culturally significant zone. (The other provisions of section 29 provide for the mechanisms by which planning permission may be granted, for example by a development order or by the planning authority in response to an application.)

127. New section 56A would require planning authorities to identify and designate “culturally significant zones” from time to time. Subsection (2) of the new section 56A sets out that a culturally significant zone (CSZ) is an area in which it is desirable to identify, protect and enhance existing cultural venues, facilities and uses; identify and support development of new cultural venues, facilities and uses; and ensure that no unreasonable consequences for such venues or facilities are created by new development within the zone. Subsection (3) sets out that a CSZ may consist of one or more buildings or a designated area, or any combination of both.

128. Subsections (4) and (5) of new section 56A require a planning authority to designate a CSZ if a valid request to do so is made and set out that the requirements for a request to be considered valid are to be set out in regulations, described further in subsection (6).

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129. Subsection (7) allows Ministers to make further provision on how local authorities are to discharge their functions under this section, and on the meaning of “culturally significant zone”. Subsection (8) establishes that cultural venues and facilities include in particular venues and facilities used for the performance of live music.

130. New section 56B requires planning authorities to give the Scottish Ministers notice of the designation of any CSZs in their area and of any variation or cancellation of a CSZ. The notice must also be published in the Edinburgh Gazette and at least one local newspaper. Subsections (4) and (5) require planning authorities to prepare a list of CSZs in their area which must be available for public inspection at reasonable hours and at a convenient place. The particulars to be included in the list are to be prescribed by regulations.

131. New section 56C requires planning authorities, from time to time, to formulate and publish proposals for the preservation and enhancement of any CSZs in their areas. Subsections (2) and (3) require planning authorities to publish their proposals and to allow opportunity for residents to make representations which the authority must have regard to.

132. New section 56D requires that, in exercising any of their powers under the 1997 Act in relation to buildings or land in a CSZ, a planning authority is to give particular consideration to preserving or enhancing the purposes of the CSZ as set out in section 56A(2).

133. New section 56E requires planning authorities to publicise any application for planning permission for development of land within a CSZ or within 100 metres of the boundary of a CSZ. Such publicity is to be achieved by advertising in a local newspaper and by display of a notice on or near the land to be developed. The notice must name a place where a copy of the application will be open to inspection by the public. The application must not be determined until after 21 days from the date the notice is published or displayed, whichever is later. In determining the application the planning authority must take into account any representations relating to the application received before the period expires.

Part 3 – development management

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Meaning of “development”

Section 11B: Meaning of “development”: use of dwellinghouse for short term holiday lets

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

135. Section 11B of the Bill amends section 26(3) of the 1997 Act, which sets out various provisions “for the avoidance of doubt”. Section 11B(2)(a) inserts new paragraph (aa), stating that the use of a dwelling house for the purpose of providing short-term holiday lets involves a material change in the use of the building. This therefore means that such a change will require planning permission. New paragraph (ab) clarifies that providing short term holiday lets does not include a residential lease or letting part of a property which is the landlord’s sole or main residence. Section 11B(3) inserts a new subsection (8), providing that the Scottish Ministers may issue guidance on the definition.

Applications

Section 12: Pre-application consultation

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

97.137. 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).

98.138. Section 35B of the 1997 Act requires the prospective applicant to give a notice (a proposal of application notice) to the planning authority

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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.

99.139. 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.

100.140. 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.

101.141. 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).

102.142. 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.

103.143. 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

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

104.144. 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 12A: Assessment of health effects

145. Section 12A of the Bill introduces a new section 40A into the 1997 Act, which requires the Scottish Ministers to make regulations about the consideration to be given to the likely health effects of any national or major development, before planning permission is granted. The regulations are to be subject to affirmative procedure.

Section 13: Regulations about procedure for certain applications

105.146. 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 179 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

106.147. 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.

Section 14A: Declining to determine an application

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148. Section 39 of the 1997 Act sets out the discretionary powers for planning authorities to refuse to accept planning applications (decline to determine), where permission was previously refused for a ‘similar application’, i.e. where the development and the land are the same or substantially the same. Different criteria apply depending whether there has been an appeal or local review, but in each case the authority may decline to determine an application if the criteria were met within the previous two years. Section 14A of the Bill amends this to be five years in each case.

Notice by planning authority of certain applications made to them

Section 14B: Notice by planning authority of certain applications made to them

149. Section 14B of the Bill amends section 34 of the 1997 Act to require that a planning authority must give notice of any application for planning permission for a major development to each local councillor, MSP and MP representing the district to which the application relates.

Determination of applications: cultural venues, facilities and uses

Section 14C: Determination of applications: cultural venues, facilities and uses

150. Section 14C inserts a new section 37A into the 1997 Act. The effect of the new section is to prevent a planning authority from granting permission for any development which, in the planning authority’s opinion,

(a) would require unreasonable adjustments on the operation of an existing cultural venue, facility or use in the vicinity of the development, or

(b) does not include as part of the application sufficient measures to mitigate, minimise or manage the impact of noise between the development and any existing cultural venues, facilities or uses or dwellings or businesses in the vicinity.

151. Subsections (2) and (3) of new section 37A set out that, for the purposes of subsection (1), a planning authority are to presume that a

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residential development within a culturally significant zone (CSZ) (as provided for in section 11A of the Bill) or within 100 metres of the boundary of a CSZ would require unreasonable adjustments on the operation of existing cultural venues, facilities and uses within the CSZ, unless the applicant can prove otherwise.

152. Subsection (4) allows planning authorities to impose different conditions, including acoustic protection, on development within a CSZ or within 100m of a CSZ in order to ensure there are no unreasonable adjustments for existing cultural venues, etc. within the zone.

Determination of applications: brownfield land

Section 14D: Determination of applications: brownfield land

153. Section 14D of the Bill amends section 37 of the 1997 Act. It inserts a new section (1A) which prevents a planning authority from granting planning permission for development on green belt land in two circumstances. The first is if the applicant has not included in the application a statement explaining why the development cannot be achieved on land the planning authority consider brownfield land, and setting out what brownfield land was considered and why it was not suitable. The second is if the application would, in the opinion of the planning authority, be likely to have an adverse effect on any intrinsic natural or cultural heritage value of the green belt land.

Consultation in connection with determination of applications

Section 14E: Consultation in connection with determination of applications

154. Section 14E amends section 38 of the 1997 Act to insert a requirement that regulations or a development order must be made prescribing that the planning authority must consult the Music Venues Trust before determining an application for planning permission where the development involves any land on which there is a music venue.

Conditional grant of planning permission: noise-sensitive developments

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Section 14F: Conditional grant of planning permission: noise-sensitive developments

155. Section 14F inserts a new section 41A into the 1997 Act. Subsection (1) defines a “noise-sensitive development” and a “noise source”. Subsection (2) provides that where an application is made for planning permission for a noise sensitive development, the planning authority may not set conditions on the grant of that planning permission that impose additional costs on a noise source, relating to acoustic design measures to manage the effects of noise.

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

Section 14G: Conditional grant of planning permission: provision of toilet facilities within certain large developments

156. Section 14G inserts a new section 41B into the 1997 Act. This requires that a planning authority may only grant planning permission for certain types of development on condition that it includes at least one toilet facility meeting specified standards. The section is intended to provide that “Changing Places” toilets suitable for adults with complex disabilities are included in the development of large public buildings. The list of developments to be covered is set out in subsection (2), and the specification for the required facility is in subsection (3). Subsections (4) and (5) provide that the Scottish Ministers may amend these by regulations, in order to ensure the requirements are appropriate and keep up with changing standards. Such regulations are subject to the affirmative procedure.

Delegation of development decisions

Section 15: Delegation of development decisions

107.157. 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

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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.”

108.158. 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.

109.159. 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

110.160. 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.

111.161. 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

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requirement for each planning authority to prepare one as soon as possible after the provision comes into force has been removed.

112.162. 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.

113.163. 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.

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114.164. 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.

115.165. 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.

116.166. Subsections (1) and (4) of new section 43AC, on, respectively, the right to review and determining a review, reflect the wider range of applications to which the schemes of delegation and review procedures now apply under new section 43A(4). New section 43AC(1)(e), together with 43AC(7), provide that a review may be requested if notice of the decision has not been given within “the relevant period”, which may be as prescribed or such other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a “fast track” service attracting a higher fee. New section 43AC(4) sets out the determinations available to a planning authority in

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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).

117.167. 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.

118.168. 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.

Call-in of applications by Scottish Ministers: further provision

Section 16A: Call-in of applications by Scottish Ministers: further provision

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169. Section 16A inserts a new section 46A into the 1997 Act. This requires the Scottish Ministers to set out in regulations the circumstances in which they consider it appropriate to give directions under section 46(1) requiring planning applications to be referred (“called-in”) to be determined by Ministers rather than the planning authority. The regulations are to be subject to the affirmative procedure.

Determination of applications: statement to accompany notification

Section 16B: Determination of applications: statement to accompany notification

170. Section 16B amends section 37 of the 1997 Act. It inserts a new subsection (2A) which requires the planning authority to include in the decision notice for a planning application a statement as to whether they consider the development to be in accordance with the development plan, and their reasons for reaching that view.

Agreements relating to period before which an appeal may be made

Section 16C: Agreements relating to period before which an appeal may be made

171. Section 16C amends section 47 of the 1997 Act (right to appeal against planning decisions and failure to take such decisions). This currently provides that an applicant may appeal if an application has not been determined within a period prescribed in regulations, or an extended period agreed between the applicant and the planning authority. The amendments alter this to provide that an appeal may be brought if notice of the decision has not been given with “the relevant period”, which may be as prescribed or such other period as may be agreed in writing either before or after the application is made. This allows, in particular, for a shorter period than the prescribed period to be agreed before the application is made, thus enabling a “fast track” service attracting a higher fee.

Meaning of “material considerations”

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Section 16D: Meaning of “material considerations”

172. Section 16D amends section 277(1) (interpretation) of the 1997 Act. It inserts a definition for “material considerations” and states that this expression has the meaning prescribed by the Scottish Ministers in regulations. Such regulations are to be subject to the affirmative procedure.

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

119.173. 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.

120.174. 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.

121.175. 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).

122.176. 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

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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.

123.177. 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.

124.178. 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. The amendments also remove the exemption for planning permission granted for a limited time (subsection (4)(c) of section 58), which exemption prevents certain planning permissions from lapsing if development has not begun within the specified period.

125.179. 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.

126.180. 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

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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.

127.181. 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.

128.182. 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

129.183. 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.

130.184. 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,

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while giving recipients of a notice a right to object which would trigger the need for the Scottish Ministers to confirm the notice.

131.185. 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.

132.186. 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.

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133.187. 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

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

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

136.190. 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.

137.191. 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.

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

139.193. 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 19A: Planning obligations: publication

194. Section 19A inserts a new subsection (4A) into section 75 of the 1997 Act, which requires the planning authority to publish and promote a

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planning obligation in such a manner as they consider sufficient to ensure it is brought to the attention of residents of the area or district to which it relates.

Section 19B: Planning obligations: publication

195. Section 19B(2) introduces new subsections (5) and (6) into section 36 of the 1997 Act. These require a planning authority to publish an annual report on planning obligations that have either been entered into in that year, or were entered into in a previous year and have not yet expired or have not been complied with. Section 19B(3) inserts a new subsection (4B) into section 75 of the 1997 Act, requiring the person who enters into a planning obligation to publish details of the obligation in such a manner as they consider sufficient to ensure it is brought to the attention of residents of the area or district to which it relates.

Section 20: Planning obligations: modification or discharge

140.196. 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.

141.197. Sections 20(4)(a) and (b) of the Bill clarify/amends section 75A to provide that a modification or discharge of a planning obligation is to may be made only either by means of an application under section 75A, or following an appeal to the Scottish Ministers, or by a simple agreement between the planning authority and a person against whom the obligation is enforceable. The remainder of section 75A applies only to a modification or discharge made by a formal application under subsection (2).

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142.198. 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., for a modification or discharge made following an application under subsection (2). Specifically, new subsection (4B) of section 75A of the 1997 Act requires the consent of any non-applicant to the imposition of any increased burden on them. Section 20(4)(f) of the Bill ensures that non-applicants against whom the planning obligation is enforceable will be notified of the decision.

143.199. 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.

144.200. 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.

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

Declining to determine an application: further provision

Section 20A: Declining to determine an application: further provision

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202. Section 20A introduces a new section 39A into the 1997 Act, which provides that the Scottish Ministers must publish guidance outlining what constitutes a “similar application” and a “significant change” for the purposes of section 39.

Development Orders

Section 20B: Withdrawal of planning permission granted by development order

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

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

205. Section 20B of the Bill repeals section 77 of the 1997 Act and introduces instead a power for the Scottish Ministers to make regulations concerning the compensation that may be payable on revocation of an order. The effect of this provision is to enable the Scottish Ministers to use regulations to :

- set out the circumstances in which compensation may be payable;
- set out what the compensation is to cover;
- set out the manner in which the level of compensation is to be calculated;

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- require a claim for such compensation to be made within a certain period and specify how such a claim should be made and the information which should be included;
- apply or disapply any of the provisions of Part IV of the 1997 Act with or without modifications.

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

Part 4 – other matters

Charges and fees

Section 21: Fees for planning applications etc.

146.207. 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.

147.208. Subsection (2) inserts paragraph (c) into section 252(1) of the 1997 Act. This Subsections (1A) and (2) insert new paragraphs into section 252(1) of the 1997 Act, which sets out the activities in respect of which fees or charges may be payable to a planning authority. New paragraph (aa) states that regulations may make provision for a fee or charge to be payable in respect of anything done to monitor compliance with conditions imposed on the grant of planning permission or with planning obligations. New paragraph (c) makes it clear that the regulations can make provision for a fee or charge to be payable in respect of the performance of functions by a person appointed by virtue of a scheme of delegation.

148.209. 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

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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.

149.210. 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. 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 or the Scottish Ministers to decide whether to charge an applicant the full fee, a reduced fee or waive the fee entirely. They also allow the Scottish Ministers to set limits on that discretion. In addition, by virtue of subsection (7) (which inserts section 252(1C) into the 1997 Act), inserted by subsection (7), 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.

211. Subsection (5A) of the Bill repeals subsection (1A)(da) of section 252 of the 1997 Act, and subsection (6A) repeals subsections (1AA) and (1AB) of section 252 of the 1997 Act. These currently allow regulations to make provision for different levels of fees or charges to be payable to different planning authorities, and subsection (1AA) makes clear this may be done where the Scottish Ministers are satisfied that a particular authority is not, or has not been, performing its planning functions satisfactorily. Subsection (6B) inserts a new section 252(1AC) which prevents similar provision being made in future on the basis of performance.

212. Subsection (7) also introduces new subsections (1D), (1E) and (1F) into section 252 of the 1997 Act.

213. New section 252(1D) allows regulations to make provision for a surcharge to be imposed for retrospective planning applications. The surcharge may not be more than the fee that would be payable for the same application if it was not retrospective, that is, the total retrospective fee may not be more than twice the standard fee.

214. New section 252(1E) and (1F) clarify that provision may be made for fees and charges to be waived for applications where the development has

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the primary purpose of contributing to a social enterprise or not-for-profit enterprise (defined in subsection (1F)), or is likely to contribute to improving the health of residents in the area.

150.215. 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).

151.216. 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.

152.217. As discussed at paragraph 213 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

153.218. 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.

154.219. Subsection (2) makes provision that the maximum penalties for non-compliance with a planning contravention notice set out in sections 126(4) and 126(6) of the 1997 Act are increased. Where the offence is failure to comply with the requirements of a planning contravention notice within 21 days of the date of service, the maximum penalty on summary

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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.

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

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

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

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

159.224. Subsection (8) provides that the maximum penalty on summary conviction for the offence of displaying an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (Scotland)

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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.

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

Section 23: Liability for expenses under enforcement notice

161.226. 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.

162.227. 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.

163.228. 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

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section 135(1), they may make a charging order and apply to register it against the land with Registers of Scotland.

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

165.230. Under new section 158C, the charging order must set out the number of instalments in which the total amount is to be paid and the date on which each instalment falls due. The date on which the first instalment is due must be at least 56 days after the date on which the charging order is served, and the number of annual instalments must be between three and 30. New section 158C(3) provides that the charging order may be paid off at any time, either in full or as a lower sum agreed with the charging body. New section 158C(4) establishes that the charging body may at any time waive or reduce the amount payable.

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

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

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

169.234. 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

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1997 Act and the current position is to allow the rules relating to enforcement notices to be applied with modifications.

170.235. 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.

Regulations Training for taking planning decisions

Section 24: Power to impose training requirement 26A: Regulations

171. 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).

172. 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.

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

174. 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.

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

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

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Section 25: Power to transfer functions where insufficient trained persons

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

178. 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 Section 26A of the Bill adds that they may 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. made under this section are subject to the affirmative parliamentary procedure (see section 32(3)).

Section 26: Performance of planning authorities

179. 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.

180. 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.

181. 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

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for the purpose of reporting, the financial year is the period of 12 months beginning on 1 April.

182. 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.

183. 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.

184. 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

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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.

185. 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.

186.236. 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 provision for different authorities. Subsection (5) requires that response reports must also be published areas.

New Ministerial directions

Section 26B: Publication of directions

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237. Section 26B inserts a new section 251G gives 275B into the 1997 Act, requiring tThe Scottish Ministers powers to issue directions where they require a publish any directions made under that Act and their reasons for making themit. There are exceptions for: directions given in the form of a regulation or order, which will be published automatically as statutory instruments: directions given before this provision comes into force, and directions given under section 265A of the 1997 Act.

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

Chief planning officers

Section 26C: Chief planning officers

239. Section 26C inserts a new section 1A into the 1997 Act, which requires each 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 have a chief planning officer to advise the authority decline to implement the recommendations of the performance assessment report; (b) where the Scottish Minsters consider that the stepsabout their functions under the planning Acts and any other functions relating to development. When appointing a chief planning officer, the planning authority intend to take to meet the recommendations are not robust enough; must be satisfied that the officer has appropriate qualifications and (c) whereexperience, having regard to any guidance on that matter issued by the Scottish Ministers consider that the .

National Scenic Areas

Section 26D: National Scenic Areas

240. Section 263A of the 1997 Act provides for the designation of National Scenic Areas, which are of outstanding scenic value in a national context. In exercising planning powers with respect to land in any such area, special

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attention is to be paid to the desirability of safeguarding or enhancing its character or appearance. Section 26D(2) of the Bill removes the words “the desirability of” from that provision.

Notice by planning authority of applications for listed building consent

187. 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).

Section 26E: Notice by planning authority of applications for listed building consent

188.241. Section 26E amends section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Section 9 deals with the making of applications for listed building consent, and subsection (3) enables regulations to make provision about how such applications are to be made, the manner in which they are to be advertised and how they are to be dealt with by planning authorities. The current regulations are the Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (SSI 243/2015) and the advertisement of applications is dealt with in regulation 8. The equivalent requirements for planning applications are set out in regulations 18 and 20 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (SSI 155/2013).

242. Section 26E(2) inserts new subsections (3A) to (3F) into section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. These require that the regulations made under section 9 must require a planning authority to give notice of an application for listed building consent to neighbouring properties, sending a notice to the owner, lessee or occupier of any premises situated on neighbouring land, or otherwise publishing a notice in a local newspaper. Notice is to be given for such period as is prescribed in the regulations, and the planning authority may not determine the application until that period has expired. In addition, new subsection (3F) requires that the regulations are to ensure

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that the arrangements for notification and for making representations in relation to applications for listed building consent are the same as for applications for planning permission.

Part 5 – infrastructure levy

189.243. 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

190.244. 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)).

191.245. 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.

192.246. 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

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

194.248. 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 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.

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Who is liable for what

195.249. 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

196.250. 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

197.251. 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

198.252. 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.

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Deferring planning permission

199.253. 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

200.254. 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

201.255. 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

202.256. 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

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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

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

Expenditure of levy income

204.258. Paragraph 15 makes provision for the regulations to specify the purposes for which income from the infrastructure levy (including financial penalties) can be applied.

Use of planning and development powers

205.259. 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

206.260. 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

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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

207.261. 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.

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

Section 29: Interpretation of Part and schedule

209.263. 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”

210.264. 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)).

Section 30A: Lapsing of power to provide for levy

265. Section 30A of the Bill provides that the power to make regulations to establish an infrastructure levy ceases to be exercisable if no regulations

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have been made within 10 years after the Bill receives Royal Assent – this is known as a “sunset clause”. If that happens, the Scottish Ministers may repeal Part 5 of the Bill and Schedule 1 by regulations.

Part 6 – final provisions

Section 31: Ancillary provision

211.266. 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 31A: Power to replace descriptions with actual dates

267. Section 31A provides for a power to make regulations to amend provisions which refer to a date when a provision comes into force so that instead it includes the actual date on which the provision in question came into force. This avoids the reader having to separately ascertain the date on which the provision came into force. Subsection (1) relates to the date of liability for expenses in relation to enforcement notices (section 158B of the 1997 Act inserted by section 23(3) of the Bill). Subsection (2) relates to the date from which all directions are required to be published in accordance with the new section 275B of the 1997 Act inserted by section 26B of the Bill, and subsection (3) refers to the infrastructure levy “sunset clause” in section 30A of the Bill.

Section 32: Regulation-making powers

268. 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 31 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. , in sections 24, 27 and 30. Subsection (4) provides that before making regulations on the infrastructure levy, the Scottish Ministers must consult any local authority that may be affected by them, and any other persons the Ministers consider appropriate.

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212.269. 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, unless otherwise specified, 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. The following new regulation-making powers are subject to the affirmative procedure.:

- New section 40A, inserted by section 12A of the Bill – Assessment of health effects
- New section 41B, inserted by section 14G of the Bill – Conditional grant of planning permission: provision of toilet facilities within certain large developments
- New section 46A, inserted by section 16A of the Bill – Call-in of applications by Scottish Ministers: further provision
- The definition of “material considerations” in section 277(1), required by section 16D of the Bill
- Paragraph 3 of new schedule 5A, inserted by section 10 of the Bill – places that cannot be included in a scheme for a masterplan consent area. This provision is made by paragraph 10 of schedule 2 of the Bill.

Section 33: Minor and consequential amendments and repeals

213.270. 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

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214.271. Section 34 of the Bill provides in subsection (1) that this section and sections 30A, 31, 31A, 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.

215. 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

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

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Planning (Scotland) Bill

[As amended at stage 2]

Revised explanatory notes

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