PLANNING ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED MEMORANDUM ON DELEGATED POWERS

PURPOSE

1. This memorandum has been prepared by the Scottish Executive in accordance with Rule 9.7.10 of the Parliament’s Standing Orders, in relation to the Planning etc. (Scotland) Bill as amended at Stage 2. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Revised Explanatory Notes and the Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Bill will provide a mechanism for the delivery of a modernised planning system, as set out in the Policy Memorandum. It takes forward the commitment in A Partnership for a Better Scotland to improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investment decisions.

3. The package set out in the White Paper Modernising the Planning System (June 2005) brings together the Scottish Executive’s final proposals for modernisation of the system in a single document. The White Paper identifies elements of the modernisation package that require changes to primary legislation, secondary legislation, and elements that can be dealt with through guidance.

4. The purpose of the Bill is to amend existing planning legislation to implement the proposals in the White Paper Modernising the Planning System, which require changes to primary legislation. It also introduces provisions to implement Business Improvement Districts in Scotland, as set out in A Partnership for a Better Scotland.

5. The Bill is in 10 parts and 1 schedule. These are:
   • Part 1 National Planning Framework
   • Part 2 Development plans
   • Part 3 Development management
• Part 4 Enforcement
• Part 5 Trees
• Part 6 Correction of errors
• Part 7 Assessment
• Part 8 Financial provisions
• Part 9 Business improvement districts
• Part 10 Miscellaneous and general provisions
• The schedule

Rationale for subordinate legislation

6. The Bill contains a number of delegated powers provisions which are explained in more detail below. In deciding whether these provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Executive has carefully considered the importance of each matter against the need to:

• ensure sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation, and

• allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation.

7. In addition to the powers outlined below the Bill also contains a number of direction making powers. It is considered that these are of an executive rather than legislative nature and as such they are not detailed in this memorandum.

Delegated powers

8. The Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. Some of the powers contained in the Bill are new, while others replace or update existing powers in the Town and Country Planning (Scotland) Act 1997 and Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The powers conferred in the Bill are mainly either of a technical and procedural nature or require, because of their nature, a flexible approach. It is therefore regarded as appropriate that they be dealt with by subordinate legislation. Regulations and orders under the powers described below are mainly subject to negative resolution procedure in the Scottish Parliament. The Executive has chosen this procedure where the delegated powers sought are required to prescribe procedural detail or other detail to supplement or update the provisions of the Bill. With regard to certain powers, affirmative resolution procedure is considered to be appropriate, as explained below.

PART 1: NATIONAL PLANNING FRAMEWORK

9. Section 3B requires the Scottish Ministers to lay the proposed National Planning Framework before the Scottish Parliament for a period of 60 days. This is not a delegated power,
but gives the Parliament an opportunity to make formal comments on the draft framework, and the Scottish Ministers are to have regard to any resolution or report of the Parliament or any of its committees.

PART 2: DEVELOPMENT PLANS

10. Due to the detailed technical and administrative nature of the material that will be included in the regulations for development planning and the need to have flexibility to amend them, it is not thought appropriate to incorporate such matters in the following sections in the Bill. The regulations in Part 2 will be mainly subject to negative resolution procedure, which follows the procedure currently in place for regulations made under Part 2 of the 1997 Act. This procedure is thought to provide the appropriate degree of parliamentary scrutiny as the regulations will be uncontroversial in nature and will relate to administrative and technical details. We highlight for the relevant sections in Part 2 explanations of why conferring the power is appropriate, and reasons for selecting the Parliamentary procedure, in accordance with the purpose of this Memorandum as stated in paragraph 1 above. The first set of regulations on matters to be set out in a strategic development plan will be subject to affirmative procedures. Subsequent amendments to these regulations will then be subject to negative procedures.

New section 4(1) – power to designate a group of planning authorities to prepare a strategic development plan.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

11. Part 2 of the Bill replaces in their entirety the existing provisions in the 1997 Act relating to development planning.

12. New sections 4 to 14 introduced by section 2 of the Bill make provision for strategic development plans. New sections 15 to 20A make provisions for local development plans. This removes the current two-tier development plan structure for all regions in Scotland except for those specified by Scottish Ministers in new section 4. Strategic development plans will deal with strategic issues which cross the boundaries of the planning authorities in the regions designated.

13. New section 4(1) gives the Scottish Ministers powers to designate the group of planning authorities which is to prepare each strategic development plan. Subsection (1) sets out when the group is to prepare the plan and requires it to keep the plan under review. The designated group of planning authorities are to work together to produce a strategic development plan.
New sections 7(1) and (2) – Form and content of strategic development plan

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative or negative resolution of the Scottish Parliament

14. New section 7 of the Bill describes the form and content for strategic development plans. The strategic development plan is to be a statement accompanied by or including maps, diagrams etc. which explain and illustrate the proposals in the plan. New section 7(1) sets out in general terms the primary aim of the strategic development plan and what the plan should contain. New section 7(1)(d) gives Scottish Ministers the power to set out in regulations other matters that should be contained in the plan. New section 7(2)(a) gives the Scottish Ministers powers to prescribe what maps, diagrams, illustrations that are to be accompanied with the strategic development plan.

New section 8 – Preparation of the strategic development plan etc.: general

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

15. New section 8 of the Bill sets out the main sources of information to which the planning authority is to have regard in preparing the plan. New section 8(1)(a) requires the planning authority to take into account the National Planning Framework. New section 8(1)(b) enables the Scottish Ministers to prescribe other information and consideration to which the planning authority are, to have regard.

New section 9(4) and (6) – Publication of the main issues report

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

16. The Bill makes provisions for the preparation of development plans to be focused around two stages: early engagement around a report on the main issues, leading to the preparation of a proposed plan, to which formal representations can be made.

17. The purpose of early engagement is to draw out any alternative strategies so that they can be fully considered and environmentally appraised by the strategic development plan authority when drawing up the proposed plan. This engagement will be centred on the main issues report. New section 9 sets out the preparation and publication processes for a main issues report. It is envisaged that the report will identify the key areas of change that will need to be addressed in the strategic development plan, which will include preferred general locations for development and the nature of those developments and any reasonable alternatives. The report will provide sufficient information to ensure that local people, the development industry and other interests understand the strategic development plan authority’s proposals and can give meaningful responses to the strategic development plan authority. New section 9(4)(c) gives Scottish
Ministers the powers to set out in regulations which persons will be consulted in addition to key agencies and neighbouring local authorities.

18. The main issues report will be published by the strategic development plan authority. New section 9(6) gives Scottish Ministers the power to prescribe in regulations how the strategic development planning authority are to publish it. These powers are also referred to new sections 10(1)(a), 10(6), 12A(7) and 18(1)(a). It is envisaged that publication will be by notice advertised in local newspapers, copies of publications provided in the local library and also for it to be posted on the internet.

New section 10(1)(d) and (7) – preparation and publication of a proposed strategic development plan

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

19. The strategic development plan authority (SDPA) having prepared a strategic development plan are to publish it and are to consult with key agencies. New section 10(1)(d) gives Scottish Ministers the power to set out in regulations which other persons are to be consulted.

20. Following consultation, the SDPA will be required to consider all representations made to it and may modify the proposed SDP to take into account these representations and submit it to Scottish Ministers as set out in subsection (3). The SDPA are to advertise that a plan has been submitted to the Scottish Ministers. Subsection (7) gives Scottish Ministers the power to prescribe how this is to be done. It is envisaged that the SDPA will be required, by the regulations, to advertise in local newspapers, and provide copies of publications in local libraries and on the internet.

New section 12 – Examination of proposed strategic development plan

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

21. At the proposed plan stage, the Scottish Ministers are, in the circumstances set out in new section 12(1), to appoint a person to examine the proposed plan. This person will also assess the extent to which the initial consultation statement has been met or exceeded. New section 12(1) gives Scottish Ministers the power to appoint a person to examine the proposed plan if there are representations on the plan which have not been withdrawn, where the SDPA puts forward a statement of alternative proposals or where they consider it appropriate to hold an examination.

22. New section 12(3) gives Scottish Ministers the necessary powers to set out the detail of the procedures for the examination of the strategic development plan in regulations. Costs of the examination and the necessary administration arrangements will also be set out in regulations.
23. New section 12A(8) states that where the plan is submitted to the Scottish Ministers in terms of new section 12A(5)(b)(ii) the SDPA are to advertise that this has been done. New section 12A(8) enables the Scottish Ministers, to set out how this is to be done in regulations.

24. New section 15 of the Bill describes the form and content for local development plans. The local development plan will be a spatial strategy setting out the policies and proposals for development and use of land in the area.

25. New section 15(1)(a) sets out in general terms what the local development plan should contain. New section 15(1)(b) gives Scottish Ministers the power to set out in regulations other matters that should be contained in the plan.

26. Local development plans must contain a schedule of land ownership, listing land owned by the planning authority preparing the plan to which the planning authority’s policies and proposals as to the development and use of land relate. Regulations under new section 15(3) may set out the form which the schedule of land ownership is to take.

27. New section 15(4)(a) gives the Scottish Ministers powers to prescribe what maps, diagrams, illustrations are to accompany the local development plan.

28. New section 16 of the Bill sets out the main sources of information on which the planning authority is to have regard to in preparing the plan. New section 16(2)(b) enables the Scottish Ministers to prescribe information and considerations to which the authority are to have regard in preparing a local development plan in addition to the National Planning Framework and to other matters they think to be relevant.
New section 17 – Publication of the main issues report

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

29. New section 17 provides for the preparation and publication for a main issues report. It is envisaged that the report will draw out any alternative development sites or alternative strategies so that they can be fully considered and environmentally appraised by the planning authority as the proposed plan is drawn up. The report will provide sufficient information to ensure that local people, the development industry and other interests understand the planning authority’s proposals and can give meaningful responses to the planning authority. In terms of new section 17(4)(a) the planning authority are to seek the views of and have regard to views expressed by key agencies. New section 17(4)(b) gives Scottish Ministers the power to set out in regulations which other persons are to be consulted.

30. The main issues report will be published by the planning authority. New section 17(6) gives Scottish Ministers the power to prescribe how the planning authority are to publish it. It is envisaged that publication will be by notice advertised in local newspapers, copies of publications provided in the local library and also for it to be posted on the internet.

New section 18 – Preparation and publication of proposed local development plan

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

31. The proposed local development plan must be published by the planning authority. The planning authority will be required by new section 18(1)(d) to consult with key agencies. New section 18(1)(d) gives Scottish Ministers the power to set out in regulations which other persons are to be consulted. New section 18(1)(e) allows the Scottish Ministers to prescribe in regulations who is to be given notice and the form which the notice is to take.

32. Subsection (3B) gives Scottish Ministers powers to set out in regulations the kinds of modification to a proposed local development plan that will require a second round of neighbour notification to take place before the examination of a local development plan.

33. Following consultation, the planning authority will be required to consider all representations made to it and may modify the proposed local development plan to take into account these representations and submit it to Scottish Ministers as set out in subsection (3). If major amendments are required, then the planning authority are required to publish a new proposed plan, carry out further consultation and publish it as prescribed under new section 17(6), as referred to in new section 18(1)(a). The plan will be published with a report on the consultation statement.

34. New section 18(3A)(b) gives Scottish Ministers the power to prescribe how the plan is to be published. It is envisaged that the planning authority will be required, by regulations, to...
advertise in local newspapers and on the internet, with publications also available in local libraries. This power is also referred to in new section 19A(7).

New section 19 – Examination of proposed local development plan

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

35. Where there are outstanding objections to the proposed local development plan which were not taken account of in the preparation of the plan, an examination of the plan will be held in terms of new section 19 by a person appointed by the Scottish Ministers. The details of the procedures for the examination will be set out in regulations made by the Scottish Ministers under new section 19(5).

36. Following the examination, the planning authority will then publish a statement of any modifications made, together with the proposed plan as modified. New section 19(10)(a)(i) gives the Scottish Ministers powers to set out the grounds on which planning authorities can decline to make such modifications. The method of publication will be set out in regulations and new section 19(10)(b) gives the Scottish Ministers the regulation making power to do this.

New section 19A – Further provision as regards examination under section 19(4)

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

37. Where the person appointed to conduct the examination finds that appropriate consultation was not carried out, the appointed person may recommend that additional steps are taken. Having undertaken additional consultation the planning authority are to submit the plan to the Scottish Ministers. New section 19A(8) requires the planning authority to advertise that the plan has been submitted and gives the Scottish Ministers the power to prescribe in regulation how this is to be done.

New section 20B – Development plan schemes

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

38. Every strategic development planning authority and local development planning authority is required to prepare a development plan scheme. New section 20B of the Bill requires the authority to prepare a development plan scheme and subsection (5) gives the Scottish Ministers regulation making powers to set out the details to be included in the scheme and the procedures for preparing and adopting it.
New section 21 – Action programmes

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

39. Every strategic development planning authority and local development planning authority is required to prepare and publish an action programme for each development plan. The action programme will be plan specific, and will relate to both strategic development plans and local development plans. In preparing an action programme the planning authority are to seek the views of key agencies. New section 21(3)(b) enables the Scottish Ministers to prescribe in regulations other persons whose views are to be sought. New section 21(7) gives Scottish Ministers regulation making powers to set out the form of the and content of the action programme and the procedures for preparing and adopting it.

New section 22 – Supplementary guidance

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

40. Supplementary guidance is intended to provide detailed guidance on a particular aspect or policy contained in a local development plan. It should be more detailed, more focused and more relevant to specific local circumstances than the general content of a local development plan. Supplementary guidance will be subject to public consultation. New section 22(2) gives Scottish Ministers regulation making powers to set out the procedure for the adoption of supplementary guidance in secondary legislation, as well as the topics that may be covered in supplementary guidance.

New section 23D – Meaning of “key agency”

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

41. Key agencies will be engaged in various stages of the development plan process. This section gives Scottish Ministers powers to prescribe in regulations who the key agencies are. Key agencies are likely to include Scottish Natural Heritage, the Scottish Environment Protection Agency and Local Enterprise Companies.
PART 3: DEVELOPMENT MANAGEMENT

Section 3 – Meaning of “development”

Power conferred on: Scottish Ministers
Power exercisable by: development order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

42. Section 3(1) inserts new provisions in section 26 of the 1997 Act. Section 26(2) of the 1997 Act sets out those operations or uses of land which do not constitute development of the land. In subsection 3(1)(a), new section 26(2AA) of the 1997 Act gives the Scottish Ministers the power to set out in a development order the circumstances in which subsection (2) does not apply, where such operations would increase the total internal floor area of a building. The extent of such an increase can also be set out in the order, which under new section 26(2AB) of the 1997 Act can make different provisions for different purposes. In effect, this gives Ministers the ability to control developments which increase the internal floor areas of existing buildings, in respect that such operations will become “development”.

43. This provision will allow Ministers to set out in detail the categories of internal alterations which are to be brought within planning control, and this is thought to be more appropriate to be in a development order than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

44. Section 3(1)(c) gives the Scottish Ministers the power to make provisions in an order relating to planning controls over marine fish farms. New subsection (6C) contains a general power in relation to subsection 26(6) of the 1997 Act, which can be extended by direction under new subsection (6E) to apply to National Park authorities. New subsection (6G) requires the Scottish Ministers to consult every planning authority, SEPA and other persons as they see fit before making such an order. New subsection (6H) sets out the range of things that an order under this subsection can do.

45. This provision will allow Ministers to set out in detail the operational details of the application of planning controls to marine fish farming, and this is thought to be more appropriate to be in regulations than on the face of the Bill. As an order under subsection (6C) may modify any enactment, instrument or document, it is thought appropriate for it to be subject to affirmative resolution procedure.
Section 4 – Hierarchy of developments for purposes of development management etc.

Power conferred on: Scottish Ministers  
Power exercisable by: regulations made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

46. New section 26A of the 1997 Act, inserted by section 4(2) requires the Scottish Ministers to describe in regulations classes of development other than national developments which are then assigned to be either major or local developments. Subsection (4) allows different provision to be made for different areas.

47. The categories set out in subsection (1) will determine how the planning authority deal with the applications in each class. This provision will allow Ministers to set out in detail how the categories are to apply to applications for planning consent, and this is thought to be more appropriate to be in regulations than on the face of the Bill, as further adjustments to the hierarchy can easily be made if necessary. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 5 – Initiation and completion of development

Power conferred on: Scottish Ministers  
Power exercisable by: regulations or a development order made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

48. Section 27A requires a person who intends to carry out development to provide the planning authority with a Notification of Initiation of Development (NID). The NID will inform the planning authority (PA) of the date on which development will commence. It is to be submitted after planning permission has been granted and before development has commenced. Regulations under new section 27A(1) may prescribe further information to be included in the NID.

49. Section 27C requires developers to display certain information on-site once planning permission has been granted and development is underway. Subsection (1) and (2) allow for Scottish Ministers to set out in regulations the exact nature of the information to be displayed and how and where it will be displayed. It is intended that the notices will be used to provide information to the public about the development and provide contact details to allow them to obtain further information or to report perceived breaches of planning control.

50. The Executive has chosen to delegate these powers, which are subject to negative resolution procedure. Given the detailed technical nature of these provisions this is thought to be appropriate.
Section 6 – Applications for planning permission and certain consents

Power conferred on: Scottish Ministers
Power exercisable by: regulations or a development order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

51. Section 6(1) inserts a new section 32 in the 1997 Act. Under new section 32(1), regulations or a development order may set out how applications for planning permission are to be made, and new section 32(2) lists the types of provision in relation to planning applications that the regulations or order may cover. New section 32(3) states that the regulations or order must require that specified applications are accompanied by statements on access for the disabled, and, where compliance is required with section 35B, a pre-application consultation report.

52. Section 6(2) further qualifies the existing regulation making power in section 182 of the 1997 Act in relation to applications for consent to display advertisements, by listing the types of provision in relation to such applications that the regulations may cover.

53. Section 6(3) further qualifies the existing regulation making powers in section 9 of the listed buildings Act by amending the types of provision that the regulations may cover, and introduces a requirement that specified applications are to be accompanied by statements on access for the disabled.

54. These powers will allow Ministers to set out in detail how applications for planning consent are to be made, and it is thought that this is more appropriate for regulations or a development order than on the face of the Bill. Details of the form and manner of applications, and materials accompanying applications, may also be subject to changes over time. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 7 – Variation of planning applications

Power conferred on: Scottish Ministers
Power exercisable by: regulations or a development order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

55. Section 7 inserts two new sections, 32A and 32B, into the 1997 Act concerning the variation of planning applications. Section 32A(3) allows Ministers to make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application to a planning authority may be varied. Section 32B(3) allows for similar provisions to be made in relation to applications referred to the Scottish Ministers under section 46 of the 1997 Act.

56. These powers will allow Ministers to set out in detail how applications for planning consent are to be varied, and it is thought that this is better set out in regulations than on the face
of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 9 – Publicity for applications

Power conferred on: Scottish Ministers
Power exercisable by: regulations or a development order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

57. Section 9 amends section 34 of the 1997 Act to transfer to planning authorities the responsibility for notification of applications to neighbours and other persons. Section 34(1) allows Ministers to prescribe the persons to whom notification shall be given, the manner in which it is to be done, the period for which it is to be done and the number of occasions on which it is to be done. Planning authorities are required to notify applications, whether applications generally or such classes of application as may be prescribed under section 34(3). Section 34(4) and (5) also set out further powers to allow Ministers to prescribe further detail in regulations.

58. These powers will allow Ministers to set out in detail how neighbour notification is to be carried out, and it is thought that this is more appropriate to be set out in regulations or order, than on the face of the Bill. These details of persons requiring to be notified and the manner of notification could also be subject to changes over time. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 10 – Pre-application consultation

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

59. Section 10 inserts three new sections, 35A, 35B and 35C, into the 1997 Act, which contain provisions relating to pre-application consultations. New section 35A allows Ministers to prescribe classes of developments which are to be subject to pre-application consultation. Subsection (2) allows different provision to be made for different cases or classes of case for different areas. The regulations may also provide that subsections (3) and (5) to (9) of section 35A, which relate to the duty of planning authorities to state whether a development is covered by subsection 35A(1), do not apply to either a class or aspects of a class of development.

60. New section 35A(5) enables the Scottish Ministers to prescribe the form of notice by which a prospective applicant for planning permission may require the planning authority to state whether or not a particular development falls within the class of development prescribed under section 35A(1). New section 35A(7) places a duty on the planning authority to respond to an applicants “proposal of application notice” within 21 days or as otherwise prescribed in regulations or development order.
61. Regulations under new section 35B(4) and (5) may prescribe the form and content of a proposal of application notice, and may also specify to whom the notice is to be given, who is to be consulted about the application and what form the consultation is to take.

62. Regulations under new section 35C allow the form of the pre-consultation report to be prescribed.

63. These powers will allow Ministers to set out in detail how pre-application consultation is to be carried out, and it is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate. The power to vary the time period set out in new section 35A(7) can only make minor changes to primary legislation.

Section 11 – Public availability of information as to how planning applications have been dealt with

64. Section 11 amends and extends the regulation making powers in section 36(1) of the 1997 Act, which relate to the content of the planning register. This has the effect of including information on variation of applications and planning obligations. The detailed nature of the provision made under the existing power means that negative procedure is appropriate, and none of the adjustments made change that.

Section 12 – Keeping and publication of lists of applications

Power conferred on: Scottish Ministers
Power exercisable by: regulations or a development order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

65. Section 12 inserts a new section 36A into the 1997 Act concerning lists of applications which are to be kept by planning authorities. Regulations or a development order may prescribe the manner of keeping such a list, the interval at which the list is to be revised, the intervals at which the list is to be advertised by the planning authority in a local newspaper, and how any costs incurred by the authority are to be recovered from applicants. They also set out the manner in which they are to publish the revised list.

66. These powers will allow Ministers to set out in regulations or development order the details of how such lists are to be kept and publicised, and it is thought that this is appropriate to be set out in regulations or an order rather than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.
Section 13 – Pre-determination hearings

Power conferred on: Scottish Ministers
Power exercisable by: regulations or a development order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

67. Section 13 inserts a new section 38A into the 1997 Act concerning pre-determination hearings. Regulations or a development order under new section 38A(1) may prescribe classes of developments for which planning authorities are required to hold such hearings. A planning authority may also choose to hold a pre-determination hearing for any development not covered by the regulations or development order.

68. These powers will allow Ministers to set out the detail of the classes of development that will be covered by these provisions, and the persons who will be given an opportunity of appearing before and being heard by a committee of the authority. It is thought that this is appropriate for regulations or development order. Types of development may also be subject to change in future. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 15 – Manner in which applications for planning permission are dealt with etc.

69. Section 15 amends and extends the powers to make regulations or a development order in section 43 of the 1997 Act, which relate to the manner in which applications for planning permission are dealt with by planning authorities. It has the effect of giving the Scottish Ministers powers to give directions to the planning authority requiring them to consider imposing conditions in planning consents. It also gives planning authorities additional powers to require additional information from an applicant. These regulations, made under section 43 of the 1997 Act, are subject to negative resolution procedure.

Section 16 – Local developments: schemes of delegation

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

70. Section 16 inserts a new section 43A into the 1997 Act concerning schemes of delegation within planning authorities. Regulations under new section 43A(1) and (3) may make provision as to the form and content, and the procedures for preparing and adopting a scheme of delegation, and the intervals at which it is to be prepared.

71. These powers will allow Ministers to set out in detail how schemes of delegation are to operate, and it is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.
Power conferred on: Scottish Ministers  
Power exercisable by: regulations or a development order made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

72. Section 43A(9) and (11) gives the Scottish Ministers power to make regulations or a development order setting out the form and content of any review of a decision carried out by virtue of section 43A(7). They may make different provision for different cases or classes of case, or for different stages of a case, and in relation to oral or written submissions and documents in support of such submissions, and set time limits within which the review is to be carried out. Under section 43A(7)(c), the Scottish Ministers may prescribe the period within which the appointed person is to determine an application.

73. Subsections (10) and (10A) enable the regulations governing local reviews to include provisions for setting time limits both for requesting and for dealing with a review and for the planning authority to set out the terms of its decision on the review.

74. Section 43A(14) enables the Scottish Ministers to prescribe the period in which a review is to take place failing which an appeal can be made to the Scottish Ministers.

75. These powers will allow Ministers to set out in detail how reviews of decisions taken by officials under a scheme of delegation are to be carried out, and it is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 18 – Appeals etc.

76. Section 18 amends sections 47, 237, 239 and 267 of the 1997 Act in relation to appeals and associated matters. Subsections (5)(a) and (5)(b) amends the regulation making powers in section 267(1) of the 1997 Act, by allowing that regulations may make different provision for different cases or classes of case, may make different provision for different stages of a case as regards the manner in which an appeal or application is to be conducted, and may make provision in relation to oral or written submissions and documents in support of such submissions. These powers are subject to negative resolution procedure.

Section 22 – Planning obligations

Power conferred on: Scottish Ministers  
Power exercisable by: regulations made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

77. Section 22 inserts into the 1997 Act sections 75 to 75C which replace the existing section 75 provisions covering planning agreements. Under section 75A(5) the planning authority are to give notice of their determination of an application for modification or discharge of an obligation to the applicant within such a period as is prescribed by regulations.

78. Under section 75A(9) regulations may make provision in relation to applications to a planning authority for modification or discharge of a planning obligation. The regulations may
provide for the form and content of such an application, the publication of a notice of any such application, procedures for considering any representations made with respect to any such application and the form and content of any notice of determination issued by the planning authority.

79. Under section 75B(3) any appeal under section 75B(1) (against action of a planning authority) is to be made by notice served within such a period and in such manner as may be prescribed by regulations.

80. Under section 75B(5) the Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed by regulations.

81. Under section 75B(9) regulations may make provision for the form and content of any notice of appeal and for the form and content of any notice of determination issued by the Scottish Ministers.

82. These powers will allow Ministers to set out in detail how applications for modification or discharge of obligations, and appeals against decisions of planning authorities are to be handled, and it is thought that these matters are better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 23 – Good neighbour agreements

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

83. Section 23 inserts into the 1997 Act sections 75D to 75G which set out provisions for good neighbour agreements. Section 75E provides for the modification or discharge of a good neighbour agreement. Under section 75E(5) the planning authority are to give notice of their determination of an application for modification or discharge of an obligation under a good neighbour agreement to the applicant within such a period as is prescribed by regulations made by the Scottish Ministers.

84. Under section 75E(8) the Scottish Ministers may by regulations make provision in relation to applications to a planning authority for modification or discharge of an obligation under a good neighbour agreement. The regulations may provide for the form and content of such an application, the publication of a notice of any such application, procedures for considering any representations made with respect to any such application and the form and content of any notice of determination issued by the planning authority.

85. Under section 75F(3) any appeal under section 75F(1) (against action of a planning authority) is to be made by notice served within such a period and in such manner as may be prescribed by regulations.

86. Under section 75F(5) the Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed by regulations.
87. Under section 75F(9) regulations may make provision for the form and content of a notice of appeal, and for the form and content of any notice of determination issued by the Scottish Ministers.

88. These powers will allow Ministers to set out in detail how applications for modification or discharge of obligations under good neighbour agreements, and appeals against decisions of the Scottish Ministers, are to be handled, and it is thought that these matters are better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

PART 4: ENFORCEMENT

Section 23A – Fixed penalty notices

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

89. New section 23A introduces powers to allow a planning authority to issue a fixed penalty notice where a developer has failed to comply with either an enforcement notice or a breach of condition notice. Sections 136A(4) and 145A(4) will allow Scottish Ministers to set out in regulations the amount of the fixed penalty. They will also (in terms of sections 136A(11) and 145A(11)) allow Ministers to make different provision for different cases.

90. The Executive has chosen to delegate these powers, which are subject to negative resolution procedure. Given the detailed technical nature of these provisions this is thought to be appropriate.

Section 24 – Temporary stop notices

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

91. Section 24 inserts new section 144B(1) which sets out that a temporary stop notice does not prohibit certain uses or activities as may be prescribed by regulations. These powers will allow Ministers to set out in detail which uses and activities are exempt from being subject to temporary stop notices, and it is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.
PART 5: TREES

Section 26 – Tree preservation orders

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

92. Section 26 amends the existing provision in the 1997 Act in relation to trees. Subsection (2) inserts a new subsection 160(8) into the 1997 Act to give the Scottish Ministers powers to make regulations concerning applications for consent under tree preservation orders. If granted, the applicant will be able to carry out work on protected trees in accordance with the consent.

93. These powers will allow Ministers to set out in detail the form and manner of such an application, what is to be included and what other documents etc. are to accompany the application. It is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

PART 6: CORRECTION OF ERRORS

Section 27 – Correction of errors

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

94. Section 27 inserts new sections 241A to 241D. These provisions allow certain errors in decisions to be corrected and correction notices to be issued. Section 241B(2) sets out who must be given a correction notice. Under section 241B(3) the Scottish Ministers may by order specify any other person or description of person to whom the correction notice must be given.

95. Section 241D(3)(f) enables the Scottish Ministers to add to the category of decisions which may be corrected under the new provisions by order. Where this is done the Scottish Ministers must also by an order made under section 241C(6) make provision for questioning the validity of the notice which corresponds to the provisions of section 239 of the principal Act, section 58 of the listed buildings Act and section 20 of the Planning (Hazardous Substances) (Scotland) Act. This in effect means that the Scottish Ministers must provide similar provision as regards the correction notice for the additional category of decision as section 241C already does for those decisions described in section 241D(3).

96. These powers will allow Ministers to set out in detail certain aspects of the procedure for correcting errors, and it is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.
PART 8: FINANCIAL PROVISIONS

Section 29 – Fees and charges

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative/negative resolution of the Scottish Parliament

97. Section 29 amends section 252 of the 1997 Act relating to fees and charges. Under new sections 252(1) and (1A) the Scottish Ministers may make regulations concerning the payment of a charge or fee to a planning authority for the performance by the authority of any of its functions, or anything it does in support of the performance of any such function. The regulations may also specify the person by whom the charge or fee is to be paid, how it is to be calculated, and who is to make the calculation. They may also make different provisions for different classes of case, specify when no charge or fee is to be made, and in what circumstances a charge or fee can be transferred from one planning authority to another.

98. Under section 252(1B), different provisions may be made according to whether an application is made before or after the carrying out of the development to which it relates. This will allow authorities to make higher charges for retrospective applications.

99. These powers will allow Ministers to set out in detail how the new system of fees and charges is to operate, and it is thought that this is appropriate to set out in regulations, rather than on the face of the Bill. The details of the current system of fees for planning applications are set out in The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004. Section 252(4) and (5) set out that regulations are subject to draft affirmative procedure, unless they consist of indexed increases to fees or charges, or specify the person by whom a calculation of fees or charges is to be made, when negative procedure will apply. Given the importance of these regulations, which determine what charges or fees applicants for planning consent are required to pay, it is thought to be appropriate that any significant changes should be subject to formal Parliamentary approval.

PART 9: BUSINESS IMPROVEMENT DISTRICTS

100. Under section 44, all regulation making powers in Part 9 of the Bill are subject to negative resolution procedure. Given the nature of these provisions that would be in regulations to specify the details of proposed business improvement district proposals and arrangements, this is thought to be appropriate.

Section 32 – Joint arrangements

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

101. Section 32 allows the Scottish Ministers to make provision in regulations to enable two or more local authorities to make business improvement district (BID) arrangements relating to a business improvement district which is shared between them.
102. These powers will allow Ministers to set out in detail how two or more authorities are to co-operate in relation to setting up BIDs, and it is thought that this is appropriate to set out in regulations, rather than on the face of the Bill. The details of particular authorities to be involved in particular BID arrangements will not be known until after the passage of the Bill. Under section 44, as above, all powers in this Part are subject to negative resolution procedure. Although the powers in section 32(1) allow the Scottish Ministers to amend any provision in Part 9, the scope of any such amendment is limited to matters relating to the implementation of joint arrangements.

Section 35 – BID Revenue Account

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 35(4) provides that the Scottish Ministers may by regulations made by statutory instrument make further provision in relation to the BID Revenue Account, and it is thought that this is better set out in regulations than on the face of the Bill. Under section 44, as above, all powers in this Part are subject to negative resolution procedure.

Section 36 – BID proposals

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

103. Section 36(2) allows the Scottish Ministers to make provision in regulations as to who may draw up BID proposals, what procedures are to be followed, what matters are to be included and the date for the coming into force of the BID arrangements.

104. These powers will allow Ministers to set out the detail of how BID proposals are to be drawn up, and it is thought that this is appropriate to set out in regulations, because these are procedural matters. Under section 44, all powers in this Part are subject to negative resolution procedure. They also allow for regulations to make provision for the procedures and timing required for councils to be satisfied that there is at least 5 per cent support of those entitled to vote, to enable a ballot to proceed as set out in section 36(3).

105. Under section 44, all powers in the Part are subject to negative resolution procedure.

Section 36A – Entitlement to vote in ballot

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

106. Section 36A sets out how entitlement to vote on a BID is determined. Subsection (8) gives Scottish Ministers the power to alter, by regulations, who apart from ratepayers are eligible
to vote. Such persons are defined in subsection (5) as the eligible tenant or owner of relevant property, and not subject to the non-domestic rate.

107. The Executive has chosen to delegate these powers, which are subject to negative resolution procedure. Given the detailed technical nature of these provisions this is thought to be appropriate.

Section 37 – Approval in ballot

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

108. This section sets out the voting mechanism for BIDs. It sets out a flexible position, given the complexities of this, whereby the regulation making powers under subsection (8A) can allow the BID proposal to specify this division of the rateable value voting element for the property. It is envisaged this will take into account, in the particular circumstances of the BID, the respective benefits that ratepayers and tenants will receive from a project, and accordingly the respective amount of levy each will pay. Alternatively, the regulations may prescribe how the rateable value element of voting will be distributed between the ratepayer and the other person.

109. The Executive has chosen to delegate these powers, which are subject to negative resolution procedure. Given the detailed technical nature of these provisions this is thought to be appropriate.

Section 39 – Power of veto

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

110. Section 39 requires that prior to a ballot being held the local authority must issue notice to the BID proposers and Scottish Ministers whether or not their veto will be used and describes the circumstances in which the veto may be applied. Subsection (2) gives Scottish Minister the power to prescribe through regulation the date in advance of ballot by which the veto would be exercised.

111. The circumstances in which a veto can be used include any conflict with existing structure, local or strategic development plans or published policies of the authority or where a significantly disproportionate financial burden may be incurred by particular persons. Ministers will be able to add to, or amend, these circumstances by statutory instrument under subsection (2C).

112. Section 39(4) provides that in deciding whether to exercise the veto, the local authority are to have regard to such matters as may be prescribed.
113. These powers will allow Ministers to set out in detail the matters local authorities have to consider in relation to any veto of a BID proposal. It is thought that this is appropriate to set out in regulations. Such matters may be dependent on the nature of BID proposals, which themselves may change over time. Under section 44, all powers in this Part are subject to negative resolution procedure.

Section 40 – Appeal against veto

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

114. Section 40(2) gives the Scottish Ministers powers to make regulations relating to appeals, which may include provision as to when and how an appeal is to be made, the procedure to be followed, and the matters which are to be taken into account in deciding whether to allow an appeal.

115. These powers will allow Ministers to set out in detail how appeals against vetoes are to be handled, and it is thought that this is appropriate for regulations rather than on the face of the Bill. Under section 44, as above, all powers in this Part are subject to negative resolution procedure.

Section 42 – Duration of BID arrangements etc

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

116. Section 42(4) gives the Scottish Ministers powers to make regulations relating to the alteration and termination of BID arrangements, which can also prevent or restrict the alteration or early termination of BID arrangements. These are detailed powers, and it is thought that this is better set out in regulations than on the face of the Bill. Under section 44, as above, all powers in this Part are subject to negative resolution procedure.

Section 43 – Regulations about ballots

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

117. Section 43 gives the Scottish Ministers powers to make regulations relating to ballots. This includes provision as to the timing of ballots, which non-domestic ratepayers are entitled to vote, the question to be asked, the form of the ballots, who is to hold the ballots and their conduct. Ministers also have powers to declare ballots void in cases of material irregularity, and local authorities can recover the costs of a ballot from the persons who are prescribed in the regulations.
118. These powers will allow Ministers to set out in detail how ballots are to be conducted, and it is thought that this is appropriate to set out in regulations rather than on the face of the Bill. Under section 44, as above, all powers in this Part are subject to negative resolution procedure.

PART 10: MISCELLANEOUS AND GENERAL PROVISIONS

Section 46A – National Scenic Areas

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

119. Section 263A provides a power to the Scottish Ministers to designate areas as National Scenic Areas, or to amend or revoke them. It also requires planning authorities (including national park authorities) and Scottish Ministers to pay special attention to the desirability of safeguarding or enhancing the character or appearance of areas so designated when exercising functions under the Town and Country Planning (Scotland) Act 1997 in relation to land in those areas.

120. Subsection (6) requires Scottish Ministers, before designating such an area, to consult SNH and such other bodies as may be prescribed in regulations. Subsection (9) gives Scottish Ministers regulation making powers to make provision as to the form of any direction under subsection (1) or (5); the manner in which a National Scenic Area is to be described in such a direction; the publicity to be given to any such direction; and other procedural matters in connection with the making of such a direction.

121. The Executive has chosen to delegate these powers, which are subject to negative resolution procedure. Given the detailed technical nature of these provisions this is thought to be appropriate.

Section 48 – Further amendment of the principal Act

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

122. Section 48(13)(za) provides an enabling power for Scottish Ministers to incorporate incidental, transitional, consequential and other minor amendments in regulations and orders associated with the Bill. The general provision will allow for Ministers to make minor changes covering transitional and consequential arrangements.
Section 49 – Further amendment of the listed buildings Act

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

123. Section 49(5) amends the power to make regulations in section 82(1) of the listed buildings Act, which relate to applications. It includes new powers relating to the provision of information, the manner of lodging any application under the Act, the manner of giving notice of appeal under the Act, and the manner of intimating decisions under the Act. These regulations are subject to negative resolution procedure.

124. These powers will allow Ministers to set out in detail certain aspects of the procedure for making applications under the listed buildings Act, and it is thought that this is better set out in regulations than on the face of the Bill. The power is subject to negative resolution procedure. Given the detailed nature of these provisions this is thought to be appropriate.

Section 52 – Supplementary and consequential provisions

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative/negative resolution of the Scottish Parliament

125. Section 52 gives the Scottish Ministers powers to make any supplementary, incidental, consequential, transitory, transitional or saving provision needed to give full effect to any provision of this Act. This includes provisions amending or repealing any other enactment or instrument. An order under section 52 is subject to negative resolution except where it adds to, replaces or omits any part of an Act, in which case the order is subject to an affirmative procedure. It is thought to be appropriate that where the order changes primary legislation it should be subject to formal Parliamentary approval.

Section 53 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: none

126. Section 53 gives the Scottish Ministers powers to commence provisions of the Bill by order. As the order will only bring the provisions into force, it not considered that there is a need for Parliamentary procedure.
PLANNING ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED MEMORANDUM ON DELEGATED POWERS


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