

PLANNING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Planning (Scotland) Bill. 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 Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

OUTLINE OF BILL PROVISIONS

3. 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 in 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.

4. Many of the provisions of the Bill amend the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"). There are 35 sections, arranged into six Parts, as follows:

- **Part 1** – Development planning. This Part reorganises the system of development plans, in particular removing strategic development plans, and amends the procedures for producing plans. It also introduces local place plans, prepared by community bodies.
- **Part 2** – Simplified development zones. This Part introduces provisions and a new schedule 5A to the 1997 Act, providing for a new alternative to simplified planning zones, which grant planning permission for specified types of development within the zone.
- **Part 3** – Development management. This Part makes various amendments to provisions relating to planning applications, planning permission and planning obligations.
- **Part 4** – Other matters. This Part broadens the scope of regulation-making powers on planning fees; makes amendments in relation to fines and recovery of expenses for enforcement activity; imposes a requirement for members of planning authorities to undergo training before taking part in planning functions; and introduces new measures for the monitoring and assessment of planning authorities' performance.

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

RATIONALE FOR SUBORDINATE LEGISLATION

5. The Scottish Government has had regard, when deciding where and how provisions should be set out in subordinate legislation rather than on the face of the Bill, to the need to:

- strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- make proper use of valuable parliamentary time;
- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation; and
- anticipate unexpected issues arising which might otherwise frustrate the purpose of provisions in primary legislation approved by the Parliament.

6. In particular, powers to provide detail such as the form and content of documents and method of publicising information in regulations have been included to allow the system to take advantage of future developments in technology.

7. The parts of the 1997 Act amended by the Bill mainly make provision for the procedures by which development plans are prepared, applications for planning permission and related consents are handled, and breaches of planning control are dealt with. It includes a substantial number of delegated powers by which administrative and technical detail is provided, allowing this detail to be updated as circumstances change, and powers of direction to deal with individual cases of various kinds. The amendments made by the Bill are designed to fit in with this structure, where appropriate.

8. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power was taken in the Bill and, where relevant, why the selected form of parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Development Planning

Section 1(6) – Provision of information to assist preparation of National Planning Framework

Power conferred on: the Scottish Ministers

Power exercisable by: direction

Parliamentary procedure: none

Provision

9. Section 1(6) inserts section 3AA into the 1997 Act. Subsection (1) provides for a discretionary power to enable the Scottish Ministers to direct a planning authority, or two or more authorities, to provide information to assist in the preparation or revision of National Planning Framework. The information may be about any or all of the matters set out in subsection (2), including for example, the principal physical, economic, social and environmental characteristics of the area. The power allows the Scottish Ministers to specify the area to which the direction relates.

Reason for taking power

10. The power allows for the Scottish Ministers to require that information be provided by planning authorities to support the preparation or revision of the National Planning Framework. It is intended that the preparation of the framework will be collaborative with authorities therefore the form and content will develop as it is progressed. It would therefore be inappropriate to determine in either primary legislation or regulations what information is needed from which authorities prior to the collaborative working taking place. The power of direction enables the information to be more precisely defined therefore ensuring public resources are directed more purposefully to what is needed, rather than provision of general information.

Choice of procedure

11. The intention is that the power will be used to specify particular information for particular areas, therefore an administrative power of direction is the most appropriate vehicle. Ministerial directions are not subject to parliamentary scrutiny.

Section 1(6) – Matters about which information may be required to assist preparation of National Planning Framework

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Provision

12. Section 1(6) inserts section 3AA into the 1997 Act. This enables the Scottish Ministers to direct planning authorities to provide information to assist with the preparation of the National

Planning Framework. Subsection (2) sets out the matters which the Scottish Ministers may direct a planning authority to provide information on. Paragraphs (a) to (f) outline specific matters and paragraph (g) allows further matters to be prescribed in regulations.

Reason for taking power

13. There are a range of matters for which information can be sought set out in primary legislation. Whilst these are wide ranging, they are not exhaustive and additions may be required. The power therefore allows flexibility to define additional specific matters on which information may be requested from planning authorities.

Choice of procedure

14. The regulations would provide the ability to specify additional information to be provided by planning authorities, but does not enable changes to be made to the existing list of matters. It is considered that negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 3(4) – Matters to be included in evidence report for local development plan

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

Provision

15. Section 3(4) introduces section 16A into the 1997 Act, requiring the planning authority before preparing a local development plan to prepare an evidence report and submit it to the Scottish Ministers for assessment. This is the “gate-check” stage to resolve issues before the draft plan is prepared. Section 16A(2) requires, at paragraph (a) that the evidence report sets out the planning authority’s view on the matters listed in section 15(5) of the 1997 Act for the land to which the plan will relate. Paragraph (b) of section 16A(2) provides that the evidence report is to include such other matters as may be prescribed in regulations.

Reason for taking power

16. There are a range of matters listed in section 15(5) of the 1997 Act to be covered in the evidence report. Whilst they are wide ranging, they are not exhaustive and additions may be required. The form that the evidence report may take is also likely to vary between authorities. The power therefore allows flexibility to define additional matters and provides for consistency in key matters to be covered. As this is a new stage in the plan preparation process, it may be necessary to adjust the detail of the gate-check in the light of experience.

Choice of procedure

17. The regulations would provide the ability to identify the specific matters to be covered by planning authorities in the evidence report, but does not allow changes to the text of section 15(5). It is considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 3(4) – Assessment of evidence report for local development plan

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

Provision

18. Section 3(4) introduces section 16A into the 1997 Act, requiring the planning authority before preparing a local development plan to prepare an evidence report and submit it to the Scottish Ministers for assessment. This is the “gate-check” stage to resolve issues before the draft plan is prepared. Section 16A(4) enables the Scottish Ministers to appoint a person to assess the evidence report, and subsequent to that section 16A(9) makes provision for regulations to cover:

- Meeting general administrative costs, staff costs and overheads incurred in relation to an assessment under subsection (4),
- The procedure to be followed in such an assessment (including making provision that the procedure is to be at the discretion of the appointed person), and
- What is to be assessed and matters by reference to which the assessment is to be made.

Reason for taking power

19. The gate-check is a new stage being introduced to the plan preparation process to enable issues to be addressed early in the process rather than at the end, at examination, where there are limited opportunities for redress. The provisions allow for further detail on costs, procedures and the matters to be assessed to be specified. The provisions mirror those already in place at section 19(5) of the 1997 Act, relating to the examination of the proposed local development plan, which is not subject to a proposed change through this Bill. This will ensure that any changes to these procedures and arrangements can be made in parallel to both parts of the process if necessary.

Choice of procedure

20. The regulations would provide the ability to set out administrative details and expand on the matters to be assessed set out in the primary legislation. It is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 3(6) – Publication of proposed local development plan

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

Provision

21. Section 3(6) relates to section 18 of the 1997 Act (preparation and publication of proposed local development plan). Paragraphs (b) and (f) provide for publication of the proposed local development plan and the report on modification to be done ‘in such manner as may be prescribed’.

Reason for taking power

22. The 1997 Act requires the publication of various documents during the preparation of the local development plan, and it is common throughout for the publication requirements to be set out in regulations. This is so that there is the potential for amendment, particularly in light of unknown but expected changes in information and communication technology.

Choice of procedure

23. The regulations would provide the ability to specify how the documents should be published, mirroring other such requirements already in the 1997 Act. As this is an administrative issue it is considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 3(7) – Modification of local development plan by Scottish Ministers

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

24. Section 3(7) relates to section 20 of the 1997 Act (constitution of local development plan). Paragraph (c) inserts subsection (8) into section 20 of the 1997 Act, which enables the Scottish Ministers to direct a modification to a proposed plan before approving it, and to approve a plan in part only.

Reason for taking power

25. The Scottish Ministers can, through section 20(7) of the 1997 Act, direct that the proposed local development plan submitted to them may be constituted when approved by them. This relates specifically to the plan submitted to them and does not allow for changes to be made before approval where the Scottish Ministers have a concern. This can result in no plan being adopted or approved for an area. The addition of subsection (8) therefore looks to address this by providing for the Scottish Ministers to modify a plan before approving it or to approve the plan in part. This will enable the plan to be approved to provide an appropriate decision making

context for the majority of development proposals in an area, while withholding approval for the matter of concern to the Scottish Ministers.

Choice of procedure

26. This is an amendment to an existing power of direction, and will be used to require specific modifications to be made to a particular plan, or to approve specified parts of a plan. As the power is to be used on a case-by-case basis an administrative power of direction is the most appropriate vehicle. Ministerial directions are not subject to parliamentary scrutiny..

Section 3(7) – Reporting on proposed local development plan

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

Provision

27. Section 3(7) relates to section 20 of the 1997 Act (constitution of local development plan). Paragraph (c) inserts subsection (9) into section 20 of the 1997 Act, which enables the Scottish Ministers to appoint a person to report to them on any matter either during their period of consideration once a plan has been notified for adoption or once a direction has been made. Paragraph (c) also inserts subsection (10) which provides for the Scottish Ministers to make regulations for the procedure to be followed by the appointed person, including the provision that the procedure is to be at the discretion of the appointed person.

Reason for taking power

28. The provision to be inserted mirrors the provisions in section 19(5) of the 1997 Act relating to examinations of the plan. This provision is replicated to enable a consistency in approach when a person is appointed by the Scottish Ministers to report to them on a particular matter.

Choice of procedure

29. The regulations would provide the ability to specify procedural details, including that they are to be at the discretion of the appointed person. It is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 7(2) – Amendment of National Planning Framework

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

Provision

30. Section 7(2) inserts section 3CA (amendment of National Planning Framework) into the 1997 Act. Section 3CA(2) enables the Scottish Ministers to make provision in regulations about

amendments to the National Planning Framework. Subsection (3) specifies that the regulations may in particular make provisions about: (a) the procedures to be followed, (b) the consultation to be undertaken on proposed amendments, (c) the publication of the amended framework, and (d) the laying of the amended framework before the Scottish Parliament.

Reason for taking power

31. The ability to amend the National Planning Framework is a new process being introduced, which will enable parts of the document to be amended without revisiting the whole document. The provisions allow for detail on procedures, consultation, publication and laying before the Scottish Parliament to be specified. As this is a new stage in the process, it may be necessary to adjust the detail of making an amendment in the light of experience or to tailor it in relation to the nature of the proposed amendment. Arrangements for consultation and publication may also need to be adjusted in the light of future developments in technology.

Choice of procedure

32. The regulations relate to a level of detail on the practical and administrative matters set out in the primary legislation. It is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 7(3) – Direction to amend local development plans

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

33. Section 7(3) inserts section 20AA (amendment of local development plan), into the 1997 Act. Section 20AA(2) enables the Scottish Ministers to direct a planning authority to exercise their power to amend a local development plan and to specify the matters to which the amendment is to relate. Subsection (3) requires the Scottish Ministers to set out their reason for requiring an amendment within the direction.

Reason for taking power

34. The power allows for the Scottish Ministers to request an amendment to the local development plan. This will afford the Scottish Ministers discretion to amend the plan where they consider it appropriate, for example to update a plan to address a nationally significant economic challenge.

Choice of procedure

35. The power is to be used to specify particular matters which are to be amended in individual local development plans. As it is to be used on a case-by-case basis, an administrative power of direction is the most appropriate vehicle. Ministerial directions are not subject to parliamentary scrutiny..

Section 7(3) – Procedure for amendment of local development plans

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

Provision

36. Section 7(3) inserts section 20AA (amendment of local development plan), into the 1997 Act. Section 20AA(5) enables the Scottish Ministers to make provisions about amendments. Subsection (6) specifies that the regulations may in particular make provision about: (a) the procedures to be followed, (b) the consultation to be undertaken on proposed amendments, and (c) the publication of the amended plan. Subsection (7) further provides that regulations made under section (5) may provide that sections 16A to 20A (relating to the evidence report, preparation and publication of the proposed plan, examination, constitution, and publication and publicity of the local development plan) may apply to an amendment as they apply to a local development plan.

Reason for taking power

37. The ability to amend a local development plan is a new process being introduced, which will enable parts of the document to be amended without revisiting the whole document. The provisions allow for detail on procedures, consultation and publication to be specified, as well as the application of other sections of primary legislation. As this is a new stage in the process, it may be necessary to adjust the detail of making an amendment in the light of experience or to tailor it in relation to the nature of the proposed amendment. Arrangements for consultation and publication may also need to be adjusted in the light of future developments in technology.

Choice of procedure

38. The regulations relate to a level of detail on the practical and administrative matters set out in the primary legislation. It is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Local Place Plans

Section 9 – Local Place Plans

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

Provision

39. Section 9 of the Bill amends section 16 of the 1997 Act and inserts schedule 19 (local place plans) which makes provision for the preparation and submission of local place plans.

40. Paragraph 1(1) of new schedule 19 to the 1997 Act states that a community body may prepare a local place plan. Subparagraph (2)(a) sets out the matters which the community body

must have regard to when preparing the local place plan, including such matters as may be prescribed. Subparagraph (2)(b) sets out that a community body, when preparing a local place plan, must comply with any prescribed requirements as to the form and content of the plan and steps which must be taken before preparing the plan. Paragraph 2 requires that 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.

Reason for taking power

41. The power allows flexibility when developing the detail of the matters which the community body has to have regard to and the steps it must take when preparing and submitting a local place plan.

42. Paragraphs 1(2)(a)(i) and (ii) of the schedule require the community body to have regard to documents which address the wider land-use planning context. Subparagraph (2)(a)(iii) allows for other matters to be included so that the requirements keep up to date with other policy developments. Items that may be prescribed may include, for example, a locality plan prepared under section 10 of the Community Empowerment (Scotland) Act 2015 where one is in place.

43. The power also allows flexibility in setting out the matters which the community body must comply with in preparing and submitting a local place plan (see paragraph 1(2)(b) and paragraph 2(1)). In relation to paragraph 1(2)(b), the form and content of the plan are administrative matters. Regulations may also set out steps which must be taken before preparing the plan. This may include requiring consultation before a plan is made. At paragraph 2(1), where a community body submits a local place plan to the planning authority, regulations may set out what (if any) steps must be taken before submitting the plan and any additional information that may be required. Steps to be taken may include further consultation on or publicity about the plan after it is made. Additional information may include supporting information on the form of the body's consultation activity in preparing the plan and how it has considered responses, including those on environmental matters too. Additionally, it may also include a statement as to how the community body has taken into account the statutory requirements in preparing the plan.

44. As these requirements will contain a considerable level of administrative detail, it is considered appropriate that they be dealt with through secondary legislation rather than on the face of the Bill. It may also be necessary to amend the administrative arrangements set out in the regulations from time to time, which is more efficiently achieved through secondary legislation. This will also allow the Scottish Ministers to respond to future developments and evolving expectations especially around the use of new technology and adjust steps to be taken in future to reflect developing best practice.

Choice of procedure

45. As the matters are administrative, it is considered appropriate that the negative procedure is used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Part 2 – Simplified development zones

46. 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). SDZs are similar to simplified planning zones (SPZ), provided for in sections 49 to 54 and schedule 5 of the 1997 Act, but will be broader in scope, being able to cover other types of authorisations than just planning permission. New section 54A introduces new schedule 5A which provides more detail on the process for making and altering SDZ schemes, and gives the Scottish Ministers powers in connection with such schemes, including regulation making powers to allow the Scottish Ministers to provide further detailed requirements, and direction making powers for various purposes.

Schedule 5A, paragraph 1(3) - Content of schemes: General

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

Provision

47. Paragraph 1 of new schedule 5A sets out that a scheme must include a map, written statement, and any other graphic material, diagrams etc that the planning authority considers appropriate for illustrating the scheme's provisions. It must specify the zone to which it relates, the development or descriptions of development for which it grants authorisation, and the time frame in relation to which the scheme will have effect. The core requirements for schemes are therefore included within the schedule, and subparagraph (3) allows the Scottish Ministers to make regulations requiring further information to be included in a scheme.

Reason for taking power

48. It is considered appropriate to have the flexibility to include any additional requirements that schemes should include, which are likely to be detailed in nature, by subordinate legislation, rather than requiring further primary legislation. It may also be necessary to amend the requirements set out in the regulations from time to time, which is more efficiently achieved through secondary legislation.

Choice of procedure

49. Since the core requirements for schemes are set out in the schedule, additional requirements are likely to be matters of detail. It is therefore considered appropriate for these regulations to be subject to the negative procedure, to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Schedule 5A, paragraph 3(1) - Land that cannot be included in a scheme

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provision

50. Paragraph 3 of new schedule 5A provides that the Scottish Ministers can make regulations restricting the type of land that can be included in an SDZ scheme, and that schemes cannot include, or be altered to include such land.

Reason for taking power

51. Currently section 54 of the 1997 Act provides that an SPZ scheme cannot be designated within certain categories or descriptions of land, which are listed in the Act. This has caused some difficulty, as having the restrictions prescribed in the primary legislation limits the opportunity to make changes or additions to the list, to respond to other designations that could come forward. For example, various types of nature conservation areas are listed, but Special Protection Areas are not covered by section 54 of the 1997 Act because they were created more recently. It may also be necessary to amend the restrictions to reflect changes in development practice and local needs. By providing for equivalent restrictions on SDZs to be set out in regulations, it will allow them to be amended and updated more efficiently, without the need for further primary legislation.

Choice of procedure

52. The restrictions to be set out by these regulations are equivalent to those set in primary legislation for SPZs. While the use of secondary legislation can provide more effective protection for sensitive sites, by allowing the restrictions to be updated to reflect new types of designation, it can also be used to remove restrictions which the Scottish Ministers consider are no longer helpful. It is appropriate that the Parliament should have the opportunity to fully scrutinise how that flexibility is used, by use of the affirmative procedure.

Schedule 5A, paragraph 5 - Duty to periodically consider making a scheme

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

Provision

53. Paragraph 5 of new schedule 5A places a duty on planning authorities to consider which part(s) of their area it would be desirable to make a scheme for and to publish a statement setting out details of their consideration, their decision and reasons. The Scottish Ministers may use regulations to prescribe how frequently planning authorities must consider this question, and to set out requirements about the statement's content, publication and circulation.

Reason for taking power

54. Planning authorities are currently required to consider in which part or parts of their area it is desirable to create SPZs and to keep that question under review. Where they decide that it would be desirable to make an SPZ scheme, they must prepare one. Given the extremely limited number of SPZs which have come forward to date, it is considered that planning authorities may not have been regularly and rigorously considering this matter. Accordingly, it would be more transparent if planning authorities had to consider this issue in relation to SDZs more frequently and that they should publish a formal record of how they have fulfilled their duty to consider preparing SDZs.

55. The frequency of how often a planning authority must consider which part or parts of their area it is desirable to create SDZs for, is a detailed administrative matter. It might be linked to local development plan preparation and delivery, or other time periods dictated by other activities, and there is therefore a need for the flexibility provided by secondary legislation rather than setting a fixed period in primary legislation. The content of a statement of this consideration, how it is to be published and who should receive copies are detailed administrative matters and it is appropriate for them to be set out in regulations. This also allows for updating of the requirements in response to evolving practice and expectations, and future developments in technology.

Choice of procedure

56. As the matters are administrative, it is considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Schedule 5A, paragraph 6 - Duty to seek to make or alter a scheme when directed to do so

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

57. Paragraph 6 of new schedule 5A provides that the Scottish Ministers can at any time direct a planning authority to make or alter a scheme, in such terms or manner as are set out in the direction.

Reason for taking power

58. The power under paragraph 6 will be used in relation to a specific case or location, where the Scottish Ministers consider an SDZ should be made or altered. This could be where Ministers consider a particular scheme would be of benefit in supporting development, such as in the national interest or to support a key policy. This power can also be used by Ministers in fulfilling their duty under paragraph 9, to consider a case which has been referred to them as someone is aggrieved that a planning authority has turned down or not responded to their request to make or alter a scheme; following their consideration Ministers will be able to direct that a

scheme be made or altered, if they consider that is appropriate. Since the power is to be used in relation to individual cases, it is appropriate that it is implemented by directions.

Choice of procedure

59. As the power is to be used to address specific individual circumstances, an administrative power of direction is the most appropriate vehicle. Ministerial directions are not subject to parliamentary scrutiny.

Schedule 5A, paragraph 7 - Duty to consider making or altering scheme on request

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

Provision

60. Paragraph 7 of new schedule 5A covers requests to a planning authority for them to make an SDZ scheme for a part of their district, or alter a scheme that relates to a zone in their district. Subparagraph (2) allows the Scottish Ministers to make regulations prescribing the requirements to be met for a request to be treated as valid, and subparagraph (3) sets out that the requirements in regulations may cover how a request is to be made, and steps that must be taken before a request may be made.

Reason for taking power

61. The requirements about how a request must be made and the steps to be taken before it is made will be detailed and largely administrative. It is appropriate for this level of detail to be set out in secondary legislation, which also allows flexibility for the requirements to be amended from time to time in light of experience and new developments in technology.

Choice of procedure

62. The regulations would provide the ability to set detailed technical requirements on what makes a request valid. It is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Schedule 5A, paragraph 8 - Steps that must be taken where scheme not made or altered on request: Referral to Scottish Ministers

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

Provision

63. Paragraph 8 of new schedule 5A covers instances where someone has made a request for an SDZ scheme to be made or altered under paragraph 7 of schedule 5A and the planning authority has 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. Subparagraph (3) requires the Scottish Ministers to prescribe in regulations the deadline for making such a referral, and any further requirements that anyone referring a question to the Scottish Ministers must comply with.

Reason for taking power

64. In practice this provision will operate as a form of appeal. It is considered preferable for the deadline to be set by regulations rather than being on the face of the Bill, for consistency with how the deadline for making appeals on planning decisions is set out in section 47(3) of the 1997 Act. Any further requirements will be detailed procedural or information provision requirements which it is more appropriate to cover in secondary legislation. It may be necessary to amend the deadline, and other requirements set out in the regulations from time to time, for example to align with any changes to the deadline for appeals and local reviews, which is more efficiently achieved through secondary legislation.

Choice of procedure

65. As the deadline for making referrals and other requirements are procedural matters, it is considered appropriate that these regulations are subject to the negative procedure, to achieve the best balance of parliamentary time and resources on the one hand and the nature of the content of the regulations on the other.

Schedule 5A, paragraph 11 - Process for planning authority making or altering scheme: Consultation on possible proposals

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

Provision

66. Paragraph 11 of new schedule 5A provides the Scottish Ministers with powers to prescribe in regulations who a planning authority must consult before determining the content of any proposals to make or alter an SDZ scheme, how such consultation is to be undertaken, and how representations must be made by those consulted so that they are 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.

Reason for taking power

67. The power allows flexibility to define specific matters on who should be consulted, how consultation is to be carried out and how representations must be made. This is a detailed, procedural area and by including these matters in regulations, the Scottish Ministers will be able to respond to future developments and evolving expectations around community engagement, including around the use of new technology, and adjust steps to be taken in future to reflect developing best practice.

Choice of procedure

68. As these are detailed procedural matters, it is considered appropriate that these regulations are subject to the negative procedure, to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

Schedule 5A, paragraph 12 & 13 - Publicity for proposals and representations

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

Provision

69. Paragraph 12(2) of new schedule 5A 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 for representations. Paragraph 13(2)(b) provides for regulations to prescribe requirements about how representations must be submitted.

Reason for taking power

70. The 1997 Act requires the publication for the purpose of inviting representations of various proposals, linked to development management and development planning. It is common throughout for the publication requirements, period for representations and requirements for making representations to be set out in regulations. This is so that there is the potential for amendment, particularly in light of unknown but expected changes in information and communication technology, including around the use of the internet and social media, so that publicity requirements in future reflect emerging best practice. Providing for similar requirements to be set in regulations in relation to SDZs will allow these to be amended in the same way, providing for consistency in the requirements for publication and representations across the planning system.

Choice of procedure

71. This is a detailed, procedural area, and it is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Schedule 5A, paragraph 14 - Requirement to hold hearings

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

Provision

72. Paragraph 14 of new schedule 5A provides that 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 before the scheme is made. Rules about the procedures for such hearings are to be made by each planning authority.

Reason for taking power

73. This provision is to allow the Scottish Ministers flexibility in determining the details of which persons should be given the opportunity of a hearing before a committee of the authority before a scheme is made, and in what circumstances. These details may change over time, for example as development practice and public expectations change, and potentially as public sector agencies change their form and responsibilities, so it is appropriate for them to be specified in secondary legislation. Equivalent provisions around pre-determination hearings on planning applications are included within the Development Management Regulations, made under section 38A of the 1997 Act. Making the same provision for SDZs through regulations will also allow for consistency.

Choice of procedure

74. These regulations deal with a procedural issue in relation to representations before a scheme is made, and it is therefore considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Schedule 5A, paragraph 15 - Requirement to notify Scottish Ministers of certain proposals

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

75. Paragraph 15 of new schedule 5A allows the Scottish Ministers to direct a planning authority to notify them of any proposals for making or altering a scheme that the authority has publicised in accordance with paragraph 12 of schedule 5A. The direction may be addressed to one or all authorities and may require the Scottish Ministers to be notified of particular types of proposals, or if a particular event occurs in connection with the proposals. The direction will specify a standstill period, during which the planning authority may not make the proposed scheme or alteration.

Reason for taking power

76. The power in paragraph 15 is to provide proportionate checks and scrutiny of particular schemes, prior to them being made. It allows the Scottish Ministers to issue a general notification direction, with triggers for schemes to be notified to them. It also allows Ministers to issue a specific direction, where they wish to be notified of a specific scheme that has come to their attention, for them to consider whether they would wish to call in the scheme for further scrutiny. We envisage this general notification operating in a similar manner to that for notification of planning applications. That is covered by the current Town And Country Planning (Notification Of Applications) (Scotland) Direction 2009. It is appropriate for a direction to be used for this purpose because it may be used for individual cases, and may require

to be issued or amended at short notice when a particular case or type of case arises which would merit Ministers' consideration.

Choice of procedure

77. This is an administrative direction-making power of the Scottish Ministers rather than a legislative power, therefore it is not appropriate for individual decisions to be subject to parliamentary scrutiny.

Schedule 5A, paragraph 17 - Calling in planning authorities' proposals: Power to call in proposals

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

78. Under paragraph 17 of new schedule 5A the Scottish Ministers may give a "calling-in direction" to a planning authority, at any time before a proposed scheme or alteration is made. Having received a calling-in direction, the planning authority may not make their proposed scheme or alteration and must not begin or proceed with any hearings in relation to the proposals.

Reason for taking power

79. This power will be used in relation to specific schemes that the Scottish Ministers consider should be determined by them, this could be following a scheme being notified to them, as above under paragraph 15 of schedule 5A, or where Ministers become aware of a scheme by other means and wish to proceed directly to call it in. This direction making power is to be used in specific instances that it would not be possible to cover in the primary legislation. Additionally, Ministers may be called to intervene in particular cases swiftly by issuing a site specific calling in direction which it would be necessary to take forward without further procedure.

Choice of procedure

80. This is an administrative direction-making power of the Scottish Ministers rather than a legislative power, therefore it is not appropriate for individual decisions to be subject to parliamentary scrutiny.

Schedule 5A, paragraph 22 - Excluding kinds of development from schemes: Power to exclude kinds of development

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

Provision

81. Paragraph 22 of new schedule 5A gives the Scottish Ministers the power to make regulations setting out types of development that schemes may not grant authorisation for. These restrictions can be in relation to the development being on land or a type of land that is specified, or the type of development, but as set out in subparagraph (3), these two types are not to be seen as the only types of ways in which development to be restricted can be covered in the regulations.

Reason for taking power

82. By including these matters in regulations, the Scottish Ministers will be able to respond to future developments, for example if there is a desire to exclude particular new types of development or technologies that might emerge, or development on land subject to new designations.

Choice of procedure

83. As new types of development or technologies emerge, it may be necessary for the Scottish Ministers to respond quickly by restricting their authorisation by SDZs. It is therefore considered the negative procedure affords the appropriate balance between the level of parliamentary scrutiny and the need for prompt action.

Schedule 5A, paragraph 24 - Directions about procedure and provision of information

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

84. Paragraph 24 of new schedule 5A gives the Scottish Ministers power to make directions about procedures for how a planning authority are to carry out their functions under schedule 5A, and directions requiring the planning authority to provide the Scottish Ministers with information specified in the direction.

Reason for taking power

85. This power will enable the Scottish Ministers to require a planning authority to undertake additional procedures in preparing a specific scheme that it would not be necessary to prescribe for in the general regulations, for example directing that a particular local or interested body or

organisation be consulted, or for particularly significant schemes to require further engagement activities prior to the scheme being made.

86. On the second part of this power, whilst regulations under paragraph 25 of schedule 5A could provide the ability to specify information to be provided by planning authorities, they will not be exhaustive and further specific details may be required which is pertinent to Ministers' consideration of a particular proposed scheme or alteration.

Choice of procedure

87. As the power is to be used to address specific individual circumstances, an administrative power of direction is the most appropriate vehicle. Ministerial directions are not subject to parliamentary scrutiny.

Schedule 5A, paragraph 25 - Regulations about form, content and procedure

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

Provision

88. Paragraph 25 of new schedule 5A gives the Scottish Ministers powers to make regulations about the form and content of SDZ schemes, and the procedure to be followed in making or altering a scheme. The regulations may 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 of a document setting out alterations that have been made, or are to be, made to a scheme. Regulations under paragraph 25 can also make provisions in relation to copies of documents. Sub-paragraphs (2)(d) and (e) require a planning authority, in circumstances prescribed in the regulations, to give to anyone who requests copies of documents which have been made public, and allows that they may impose a reasonable charge for providing such copies. Under subparagraph (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.

Reason for taking power

89. This delegated power relates to very detailed matters, on process and content. These regulations will contain a considerable level of administrative detail, which it is considered appropriate to be dealt with through secondary legislation rather than on the face of the Bill. It may also be necessary to amend the administrative arrangements set out in the regulations from time to time, which is more efficiently achieved through secondary legislation.

Choice of procedure

90. It is considered appropriate that these regulations are subject to the negative procedure, to achieve the best balance of parliamentary time and resource on the one hand and the nature of

the content of the regulations on the other. It is not considered the administrative matters warrant being subject to a higher level of scrutiny by the Parliament.

Part 3: Development Management

Section 12 – Pre-application consultation

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

Provision

91. Section 12(2) amends the existing section 35A of the 1997 Act, which allows classes of development to be prescribed for which pre-application consultation (PAC) is required, i.e. consultation before an application for planning permission is made. Subsection (2)(a)(ii) amends section 35A(1A) of the 1997 Act to allow the Scottish Ministers to specify in regulations circumstances in which PAC is not required.

92. Section 35A of the 1997 Act also currently sets out a screening mechanism which allows proposed applicants to establish, prior to submission of an application, whether a proposal meets the requirements for PAC. Section 35A(5) currently specifies that a notice from a proposed applicant requiring a planning authority to provide a screening decision is to be in such form as may be prescribed in the regulations under section 35A and is to include specific information listed in section 35B of the 1997 Act. Section 12(2)(c) of the Bill extends this power to prescribe so that it will now also include the content of such notices, beyond the particular requirements as to content that are currently listed in section 35B.

93. Section 12(4) amends section 35C of the 1997 Act, which currently requires the preparation of a report (PAC report) setting out what has been done to comply with PAC requirements, and provides that the PAC report is to be in such form as may be prescribed by the Scottish Ministers. Section 35C(2) of the 1997 Act is amended to also allow the content of the PAC report to be prescribed.

Reason for taking power

94. The introduction of a power to specify circumstances in which PAC is not required recognises that sometimes, where a proposed development has already been subject to PAC and circumstances change (for example a change to the proposal), a new planning application needs to be made for the proposal. Currently, that subsequent application is also subject to the PAC requirement, which may cause delay to the proposal and unnecessary re-running of the previous engagement activity. This is because the 1997 Act restricts regulations to specifying only the “classes of development” for which PAC is required. The extension to the power would allow the Scottish Ministers to specify exempting circumstances, such as those set out above, even where the development was of a class that otherwise required PAC. This change is to allow a more nuanced approach to existing powers to require PAC, and, in light of experience, the precise circumstances and developments to which PAC applies may need to be revised. The

Scottish Government intends to consider carefully and consult on the precise circumstances in which PAC would not be required for developments.

95. The new power to prescribe additional content for screening notices reflects the fact that if regulations prescribe circumstances in which PAC is not required, a screening notice may need to include additional information to allow an assessment to be carried out in relation to those circumstances.

96. The ability to prescribe the content of a PAC report reflects concerns that PAC reports may not be rigorous or consistent in describing how compliance with PAC requirements has been achieved. This level of detail, which may evolve in light of experience, is considered more appropriate for regulation, rather than being specified in primary legislation.

Choice of procedure

97. The powers to prescribe in regulations the classes of development to which PAC requirements apply are currently subject to negative procedure. The additional powers to specify circumstances add nuance to specifying those cases to which the requirements for PAC apply but are still fundamentally procedural. The negative procedure is to be used to achieve the best balance of parliamentary time and resource on the one hand and the nature and content of the regulations on the other.

98. The regulations on the content of screening notices and PAC reports are largely administrative matters, and the current powers to regulate these notices and reports are subject to negative procedure. Again, given the administrative nature of the power, use of that procedure would achieve the appropriate balance mentioned in the preceding paragraph.

Section 13 – Regulations about procedure for certain applications

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

Provision

99. Section 13 substitutes a new subsection (3) in section 42 of the 1997 Act (determination of applications without compliance with conditions previously attached) regarding the existing powers for the Scottish Ministers to make special provisions regarding the procedure to be followed in connection with applications for planning permission made under section 42. Currently, subsection (3) allows such provision to be made in a development order. The substituted subsection also allows such provisions to be made in regulations.

Reason for taking power

100. Currently the provisions relating to the procedures to be followed for standard applications for planning permission and related approvals are specified in regulations. It therefore makes sense for the provisions regarding these particular applications for planning permission to be included in the same regulations.

Choice of procedure

101. The detailed administrative procedures for processing applications for planning permission are currently a matter for regulations subject to negative procedure under, amongst others, section 30 of the 1997 Act. They can be subject to change and this procedure is to be used to achieve the best balance of parliamentary time and resource on the one hand and the nature and content of the regulations on the other. For the same reasons it is considered appropriate to use negative procedure for the regulations relating to applications under section 42.

Section 16 - Schemes of delegation: Inserted section 43AB – further provision and guidance - regulations

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

Provision

102. Section 16 replaces section 43A of the 1997 Act with new sections 43A, 43AA, 43AB, 43AC and 43AD. New section 43AB(1) restates existing powers, in section 43A(4) of the 1997 Act, for the Scottish Ministers to make regulations regarding the form and content of schemes of delegation and the procedures for preparing and adopting such a scheme. In doing so, new section 43AB(1)(b) provides expressly that these powers allow the Scottish Ministers to make regulations regarding the procedures for preparing, adopting, reviewing and changing a scheme of delegation (in contrast to the previous provision which specified only ‘preparing and adopting’). This reflects the slight change in approach to how schemes of delegation are prepared and reviewed and ensures the power can address each stage of that process.

Reason for taking power

103. The detailed requirements in relation to preparing and adopting schemes of delegation are already the subject of regulation making powers. The extension of powers in new section 43AB(1)(b) to specify procedures on reviewing and changing existing schemes allows clarification of the processing of schemes so that it is proportionate, consistent and the role of the Scottish Ministers in relation to the adoption of revised schemes of delegation is clearer.

Choice of procedure

104. The detailed administrative procedures for processing schemes of delegation are routine and for the most part reflect the practicalities of managing the process. Also, the negative procedure allows for speed and flexibility in the event amendment to procedures is needed. The negative procedure is to be used to achieve the best balance of parliamentary time and resource on the one hand and the nature and content of the regulations on the other.

Section 16 - Schemes of delegation: Inserted section 43AB – further provision and guidance - directions

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

105. New section 43AB(2) contains new provisions to the effect that the regulations under section 43AB(1) may include requirements for planning authorities to submit draft schemes of delegation or proposed changes to the Scottish Ministers, to make any modifications specified by the Scottish Ministers before adopting a scheme, and to comply with directions from the Scottish Ministers in relation to the form, content or procedures for a scheme of delegation.

Reason for taking power

106. The additional detail in new section 43AB(2) of what the Scottish Ministers can specify in regulations under section 43AB(1) is to ensure a measure of consistency of approach across planning authorities. Directions will allow the Scottish Ministers to set out more precise requirements in relation to individual schemes of delegation.

Choice of procedure

107. Direction making powers are intended for use in specific cases where there are concerns about the form and content of or the need for additional processing of a particular authority's scheme of delegation. This is an administrative rather than legislative power and it is not appropriate for this to be subject to parliamentary scrutiny.

Section 16 - Schemes of delegation: Inserted section 43AB – further provision and guidance - guidance

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: none

Provision

108. New section 43AB(3) provides that a planning authority must have regard to any guidance issued by the Scottish Ministers when preparing, adopting reviewing or changing a scheme of delegation.

Reason for taking power

The requirement to have regard to guidance is intended to complement the regulation making powers, provide assistance to planning authorities and promote consistency of approach in respect of those aspects where prescribing matters by regulations would be inappropriate or disproportionate. The intended approach is light touch as regards regulating schemes of delegation, whilst at the same time promoting a degree of consistency. For example, rather than using regulations to require certain types of local development to be delegated for decision by an officer, it can be left to the planning authority to decide in light of local circumstances, but with guidance indicating the considerations the Scottish Government expect the planning authority to have regard to in preparing their scheme of delegation.

Choice of procedure

109. Given the intended light touch approach, guidance will therefore indicate considerations the Scottish Government wants planning authorities to have regard to when preparing schemes of delegation, recognising there will likely be scope for local variation between different planning authorities' schemes, based on their individual circumstances. As guidance does not have the force of law, requiring the Parliament to scrutinise guidance would not be the best use of parliamentary time.

Inserted Section 43AD - Review of decisions of appointed person: further provision

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

Provision

110. Section 16 introduces new section 43AD into the 1997 Act (review of decisions of appointed person: further provision). Subsections (1) and (2) restate existing powers, currently set out in section 43A(10), (11), (13) and (14) of the 1997 Act, to make provision in regulations or a development order for the form and procedures for local reviews of decisions made by a person appointed by the planning authority. Subsection (3) similarly restates powers in section 43A(12) of the 1997 Act regarding prescribing the content of a notice of decision on such a review.

Reason for taking power

111. The detailed procedural arrangements for conducting local reviews are at a level appropriate to regulations or a development order rather than being set out in primary legislation. We will be consulting on any new steps and thereafter, amendment may be needed in light of experience.

Choice of procedure

112. The detailed administrative procedures for processing local reviews are routine and for the most part reflect the practicalities of managing the process. Also, the negative procedure allows for speed and flexibility in the event amendment to procedures is needed. The negative

procedure is to be used to achieve the best balance of parliamentary time and resource on the one hand and the nature and content of the regulations on the other.

Section 16(4) - Appeals against refusal or failure to give decision on application for certificates under section 150 and 151

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

Provision

113. Section 16(4) amends section 154 of the 1997 Act (appeals against refusal or the failure to give decisions on applications for certificates under sections 150 and 151). The new paragraph (c) inserted in section 154(1) adds a right of appeal to the Scottish Ministers for an applicant where a planning authority fails to determine a local review within a period prescribed by regulations or a development order, or such extended period agreed between the parties.

Reason for taking power

114. The period for determination for any type of application or appeal is a matter of detailed procedure which is usual to be prescribed in secondary legislation. Such periods may need to be changed from time to time and it is appropriate if they are able to be changed together, without the need for further primary legislation. The period within which appeals and local reviews on other types of planning application are to be determined is prescribed in regulations (rather than, for example, being set on the face of the Act and able to be amended by regulations). For consistency, the same approach is taken to the period for this new right of appeal.

Choice of procedure

115. This is a detailed procedural issue, and as such the negative procedure provides an appropriate level of scrutiny.

Section 20 - Planning obligations: modification or discharge

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

Provision

116. Section 75A(9) of the 1997 Act gives the Scottish Ministers the ability to make regulations about the form and content of an application for modification or discharge of a planning obligation, the publication of notice of an application, the procedures for considering representations made, and the form and content of any notice of determination. Section 20 of the Bill makes slight amendments to the provisions of section 75A of the 1997 Act, in particular to introduce a new ability for the decision-maker to propose an alternative modification or discharge of a planning obligation to that proposed in an application. There is therefore a need

to adjust the regulation-making power for interested parties to be notified of these proposed modifications to enable them to make representations.

117. Section 20(4)(g)(i) expands the existing provisions for regulations in section 75A(9) of the 1997 Act to make provision about not only publication of notice of an application, but also direct notification of any such application (e.g. where it is more appropriate for the notice to be sent directly to interested parties, rather than just being publicised more generally).

118. Section 20(4)(g)(ii) inserts a new paragraph (ba) after section 75A(9)(b) of the 1997 Act which enables regulations also to make provision for the giving of notice of proposed determinations to which new section 75A(4A) applies. Section 20(4)(g)(iii) of the Bill includes proposed determinations in the power to make regulations about the procedure for considering representations.

Reason for taking power

119. The Scottish Ministers already have powers to make regulations about the publication of notice of applications for modification or discharge, so it is appropriate that the detail of giving more targeted notice of applications should be treated in the same way. This also allows for the requirements to be adjusted more easily, in particular to take account of new developments in technology. Similarly, it is appropriate for the existing powers to regulate arrangements for giving notice and considering representations about applications for modification or discharge to be expanded to include cases where the decision-maker proposes an alternative determination.

Choice of procedure

120. Regulations under section 75(A)(9) of the 1997 Act are subject to the negative procedure and the amendments to these powers do not change the procedure. Since these provisions are matters of administrative procedure it is considered that this choice of parliamentary procedure strikes a balance between the use of parliamentary time and resource on one hand and the nature and content of the regulations on the other.

Part 4: Other matters

Section 21 - Fees for planning applications etc.

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

Provision

121. Section 252 of the 1997 Act gives the Scottish Ministers powers to make regulations about the payment of fees or charges to planning authorities in respect of the performance of planning functions. Section 21 amends these powers. Subsection (2) adds provision that regulations may provide for the payment of fees or charges for functions carried out by a person appointed by a planning authority by virtue of a scheme of delegation. Subsection (3) provides for regulations to make provision for fees or charges to be paid to the Scottish Ministers, for

planning activities undertaken by them or persons appointed by them. Subsections (5), (6) and (7) provide that regulations may include provision for circumstances in which a charge or fee may or must be waived or reduced, steps that a planning authority must take before or after doing so, and power for a planning authority to determine how a charge or fee is to be calculated.

122. Section 252(7) of the 1997 Act provides that the income from fees and charges must not exceed the cost of the performance of the function for which they are charged. Section 21(7) of the Bill inserts section 252(1D) into the 1997 Act, which states that regulations may provide for a surcharge to be imposed in relation to a planning application made after the development has been carried out (retrospective applications). Section 21(10) inserts section 252(9) to provide that in such cases, section 252(7) does not apply.

Reason for taking power

123. The existing delegated power in section 252 of the 1997 Act gives Ministers a power to make regulations setting out not only the circumstances in which a fee is to be paid to a planning authority, but also the amount to be paid, or how the amount is to be calculated. Since fee levels are likely to change relatively frequently, it is appropriate that this should be done through secondary legislation, allowing for any changes to be made without the need for amendments to primary legislation. The Bill expands these powers to allow regulations to set fees for planning activities carried out by the Scottish Ministers or a person appointed by them, and by a person appointed by a planning authority. The same reasoning applies in these cases, that fee levels may change frequently and should therefore be set in secondary rather than primary legislation.

124. The Bill also introduces the ability for authorities to reduce or waive the payment of fees in specified circumstances, and for regulations to allow planning authorities to determine how a charge or fee is to be calculated. Setting the circumstances where this may be allowed in regulations means that they can be more responsive to changes in the economic climate, and that they can evolve as planning authorities develop their understanding of the impact of differential charging. The detail of how these provisions will operate in practice will be subject to public consultation before any new regulations are made.

125. The power to introduce higher charges, possibly exceeding the cost of processing, for retrospective planning applications is intended to operate as a penalty in relation to breaches of planning control, to discourage such breaches. The level of the fee and circumstances in which it may be charged will be determined as part of the overall setting of fees, and therefore requires to be included in the regulation-making power. It may also be subject to the provision allowing authorities to waive or reduce a fee, for example where it is clear that an honest mistake has been made. All proposed changes to fees will be subject to consultation and parliamentary scrutiny, and this penalty will need to be set at a reasonable level in order to comply with the European Convention on Human Rights.

Choice of procedure

126. Regulations under section 252 of the 1997 Act are subject to the negative procedure. The provisions of the Bill do not change this. Since fees regulations are likely to be amended relatively frequently, and most often to simply change the amount of the fees, this strikes a

balance between the use of parliamentary time and resource on one hand and the nature and content of the regulations on the other.

Section 23 – Liability for expenses under enforcement notice

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

Provision

127. Section 23(2) of the Bill introduces various new provisions into the 1997 Act to allow planning authorities (“the charging body”) to make and register a charging order. A charging order may be made and registered where a planning authority, having issued an enforcement notice which has not been complied with, takes action under section 135(1) of the 1997 Act to carry out any required works themselves and seeks to recover the costs of such works from the landowner.

128. In order to be of any effect for the purpose of the statute, a charging order must be registered with Registers of Scotland in the appropriate land register. Section 23 inserts, among other provisions, new section 158D into the 1997 Act. This sets out at subsection (1) that a charging order may not be registered unless it is in the form prescribed by the Scottish Ministers in regulations. Inserted section 158D(2) sets out a number of pieces of information that must be included in any form set out by regulations.

Reason for taking power

129. Requiring the charging order to be registered in a standard format will ensure consistency. The Scottish Government will work with Registers of Scotland to ensure that correct completion of the standard form provides sufficient information to enable the charging order to be registered without the need to seek additional information which could delay the registration process.

130. Similar provisions for Ministers to make regulations setting out the form of a notice are in place in respect of charging orders made in regard to certain offences under section 49 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended by the Historic Environment (Amendment) (Scotland) Act 2011. This type of detail is most appropriately dealt with by regulations as it is an administrative matter and does not affect the substance of how the provisions will operate, and may require to be updated in line with changes in practice by Registers of Scotland.

Choice of procedure

131. As this is a matter of administrative procedure it is considered that the negative procedure provides the most appropriate level of parliamentary scrutiny.

Section 24 – Power to impose training requirement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provision

132. Section 24 of the Bill provides that where a member of a planning authority has not undertaken specified training, they may not perform specified functions on the planning authority's behalf as a member of a committee or any other decision making body. The functions affected (which must be functions conferred by the Planning Acts) are to be specified by regulations. The Scottish Ministers may make regulations setting out what training is required, which may cover attendance on a course or the completion of an examination, or both. The training requirements may also be specified on the basis that they must be accredited by the Scottish Ministers.

Reason for taking power

133. Requirements for training on planning will inevitably change over time as legislation changes (including secondary legislation and related legislation such as environmental regulations) and new issues arise. Allowing for the detail of training requirements to be set out in regulations allows the Scottish Ministers the flexibility to update the content of the training as and when required, and if necessary to accredit new courses and new providers. The power to specify functions which may not be performed until an elected member has completed training allows for different training requirements to be specified for different functions, for example for members sitting on local review bodies.

Choice of procedure

134. The regulations will be subject to the affirmative procedure. This is considered appropriate as the requirement for training imposes restrictions on the actions of elected members of planning authorities. Correctly defining the training requirements, including whether an examination has to be passed, will be essential to achieving the aim of ensuring that planning authority members are adequately trained for their role. The affirmative procedure will allow the Parliament to provide the necessary scrutiny to ensure the requirements are reasonable for this purpose.

Section 25(1) – Power to transfer functions where insufficient trained persons

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

135. Section 25(1) of the Bill provides for the Scottish Ministers to transfer the functions of a planning authority which is unable to carry out their functions because of the prohibition created by section 24 to another planning authority or the Scottish Ministers.

Reason for taking power

136. From time to time it may happen that a planning authority will be unable to discharge their functions because they have an insufficient number of members who meet the training requirements imposed by regulations under section 24. This may, for example, be the case following a local government election, where a number of trained outgoing members are replaced by new members who have not yet completed the required training. While the members of a planning authority are going through the required training, it may be desirable to relieve pressure on the planning system by allowing that authority's functions to be discharged in the meantime either by another planning authority or by the Scottish Ministers. As this will be done on a case by case basis, and may be required at short notice, it is appropriate for it to be done through a power of direction.

Choice of procedure

137. As the power is to be used to address specific individual circumstances, and may be required at short notice to avoid delays in the planning system, an administrative power of direction is the most appropriate vehicle. Ministerial directions are not subject to parliamentary scrutiny..

Section 25(5) – Power to transfer functions where insufficient trained persons

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provision

138. As set out above, section 25(1) enables the Scottish Ministers to make a direction transferring the planning functions of one planning authority to another, or to the Scottish Ministers, in certain circumstances. Section 25(5) allows the Scottish Ministers to make provision related to such directions by regulations, in particular:

- Paragraph (a) provides for regulations to modify the operation of legislation as it applies to cases in which planning functions are being exercised by virtue of a direction. For example, it may be necessary to state that in a case where a particular planning function is being exercised on a planning authority's behalf by the Scottish Ministers, references to "a planning authority" in an enactment dealing with appeal rights should be read as a reference to the Scottish Ministers for the purposes of that case.
- Paragraph (b) provides for regulations to allow the person who has been exercising a planning authority's functions by virtue of a direction to charge that planning authority for what doing so has cost the person.

Reason for taking power

139. The regulation-making power conferred by section 25(5)(a) (to make provision applying enactments with modifications) is required because the modifications required to other parts of the statute book will change as the statute book changes.

140. The regulation-making power conferred by section 25(5)(b) (to make provision allowing planning authorities to be charged for exercising functions on their behalf) is being taken because rules about the re-charging arrangements between public-sector bodies are detailed, and need to be flexible, in ways which make them ill-suited to being in primary legislation.

Choice of procedure

141. The regulations will be subject to the affirmative procedure. This is considered appropriate as regulations under subsection (5)(a) in particular may modify the operation of primary legislation (albeit in very limited circumstances).

Section 26 – Performance of Planning Authorities

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

Provision

142. Section 26 inserts a new Part 12A into the 1997 Act, comprising sections 251A to 251G. New section 251A requires authorities to produce an annual report on the performance of their functions, or such functions as are specified within regulations made by the Scottish Ministers. Section 251A(3) allows the Scottish Ministers to make provision by way of regulations to set out the form and content of that report, how it is to be prepared and how it should be published.

Reason for taking power

143. Currently planning authorities produce, on a voluntary basis, an annual planning performance framework report. Section 251A will now require planning authorities to produce a report on a statutory basis. Regulations will set out the form, content and process for preparing the report and how the report should be published. The way in which the performance of a planning authority is measured may change over time, therefore it is appropriate for the content and process of preparing the report to be set out in secondary legislation, to allow such changes to be made without the need to amend primary legislation. The form of the report and how it is to be published are administrative matters that are appropriate to be specified through secondary legislation; this also allows for the requirements to be updated to take account of future developments in technology.

Choice of procedure

144. Regulations under new section 251A of the 1997 Act will be subject to the negative procedure. These are essentially administrative and technical issues and it is considered that this procedure strikes a balance between the use of parliamentary time and resource on one hand and the nature and content of the regulations on the other.

Section 26 – National planning performance co-ordinator

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

Provision

145. New section 251B of the 1997 Act, inserted by section 26 of the Bill, allows the Scottish Ministers to appoint a person to act as the national planning performance co-ordinator who will be responsible for monitoring planning authorities' performance and providing advice to authorities as to how they can improve the performance of their functions. Section 251B(3) allows Ministers to bring forward regulations to make further provision about the appointment and functions of the appointed person and reports to be submitted to the Scottish Ministers.

Reason for taking power

146. Subsections (1) and (2) of new section 251B set out the main functions of a national planning performance co-ordinator and the requirements in relation to the reports they are to submit. The additional provision to be made by regulations under subsection (3) will be essentially administrative, and may change over time to reflect current practice in making such appointments and producing such reports. The content of the reports is also likely to change to reflect adjustments to the measures by which the performance of planning authorities is assessed. It is therefore appropriate that these provisions are made through secondary legislation to allow them to be updated from time to time.

Choice of procedure

147. Regulations under new section 251B of the 1997 Act will be subject to the negative procedure. These matters will be essentially administrative and it is considered that this strikes a balance between the use of parliamentary time and resource on one hand and the nature and content of the regulations on the other.

Section 26 – Directions to planning authority following an assessment of performance

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: none

Provision

148. Under new section 251E of the 1997 Act, inserted by section 26 of the Bill, an appointed person is required to prepare a report following completion of their assessment of a planning authorities performance, which may recommend improvements which the planning authority should make. Planning authorities will be required to prepare and submit to the Scottish Ministers a report outlining how they intend to implement the recommendations of the assessment report and the period in which they propose to do so, or if they decline to implement those recommendations. New section 251G(1) allows the Scottish Ministers to issue a direction to a planning authority to take action as they specify if the authority decline to implement

recommendations of an assessment report, if the actions they propose to implement the recommendations are unsatisfactory, or if they are not carrying out improvements in a timeous manner. The Scottish Ministers may also vary or revoke any such direction. Any direction, variation or revocation made under this section must be published.

Reason for taking power

149. An assessment report may recommend actions which a planning authority should take to improve their performance, and the planning authority has an opportunity to respond to those recommendations. The power for the Scottish Ministers to issue directions provides a further measure by which they can ensure compliance with the recommendations within an appropriate timescale. The requirements will be specific to the individual authority, depending on the recommendations of the assessment report and the authority's response, therefore it is appropriate that they are implemented by a direction from the Scottish Ministers rather than through any parliamentary procedure.

Choice of procedure

150. This is an administrative direction-making power of the Scottish Ministers rather than a legislative power, therefore it is not appropriate for individual decisions to be subject to parliamentary scrutiny.

Part 5: Infrastructure levy

Section 27 – Power to provide for infrastructure levy

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provision

151. Section 27(1) provides that the Scottish Ministers may by regulations establish and make provision for an infrastructure levy, which will be payable to a local authority in respect of development in the authority's area, and the income from which will be used by local authorities to fund infrastructure projects. Schedule 1 makes more detailed provisions about what may be included in regulations on the infrastructure levy made under section 27. Paragraph 2 of schedule 1 notes that the schedule (apart from paragraph 17 which relates to maximum penalties) 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.

152. Paragraph 3 sets out that infrastructure-levy regulations may make incidental, supplementary, consequential, transitional, transitory or saving provision, and paragraph 4 states that any provision which infrastructure-levy regulations may make may be made by the regulations modifying another enactment.

153. Paragraph 5 states that infrastructure-levy regulations may set out the kinds of development in respect of which the levy will be payable, who is liable to pay, when liability arises and the amount to be paid.

154. Paragraph 6 states that infrastructure-levy regulations may give local authorities the discretion to waive or reduce infrastructure levy for development in their area and may also set conditions for the use of this power.

155. Paragraphs 7 – 12 of schedule 1 relate to collection, enforcement and appeals for the levy process. Specifically, paragraph 7 allows infrastructure-levy regulations to make provision about the collection of payable amounts and penalties, to enable local authorities to confer powers of entry and powers to seize things found while investigating liability for the levy, and to make it an offence to take actions to evade or reduce the liability to pay. Paragraph 8 allows regulations to allow or require local authorities to charge a financial penalty for late payment of the levy, paragraph 9 allows them to enable local authorities to defer planning permission when pursuing payment of the levy, and paragraph 10 states that regulations may empower local authorities to direct that development be stopped until payment has been made, and to make it an offence to disobey such a direction. Paragraph 11 establishes the power for regulations to provide for levy sums to be waived or repaid. Paragraph 12 gives the power for regulations to set out a process for appealing against certain decisions, for example, that the levy is payable or the payable amount.

156. Paragraphs 13 – 15 of schedule 1 relate to accounting and use of the levy funds. Paragraph 13 establishes the power for regulations to make provision about the accounts that local authorities are to keep in connection with levy income. Paragraph 14 establishes that regulations may require local authorities to transfer funds to the Scottish Ministers and makes provision about the re-distribution of those funds. Any such regulations must provide that all income transferred to the Scottish Ministers must be distributed to local authorities. Paragraph 15 allows regulations to make provision about the use of levy income.

157. Paragraph 16 allows regulations to make provision about how related legislation may be exercised. This relates specifically to section 75 of the 1997 Act and section 53 of the Roads (Scotland) Act 1984. Paragraph 16(2) includes a provision that limits this power to ensure that it is only used for the effective operation of the levy itself.

158. Paragraph 17 sets out the maximum penalties which regulations may specify in relation to enforcement of levy liability.

Reason for taking power

159. The independent review of planning recommended that options for an infrastructure levy should be considered, and consultation respondents generally supported the principle of such a levy. However, it is essential that the detailed arrangements are carefully considered in the context of economic circumstances at the time when they are proposed to be implemented, and able to be amended as circumstances change, including the market conditions affecting land values, investment and development. For this reason, the establishment of the levy is to be provided for through regulations, giving greater flexibility for its implementation to take into

account the potential impacts of future events. It is considered appropriate to include an enabling power in this Bill, because the levy is an integral part of measures to support planning reform and its focus on development delivery, rather than a standalone issue which would merit primary legislation in its own right.

160. The scope of the regulations is restricted by the provisions of section 27(2), providing that an infrastructure levy is to be payable to a local authority, in respect of development in that authority's area, and the income is to be used to fund infrastructure projects, with "infrastructure" defined in section 29. Paragraph 14 of schedule 1 further provides that if infrastructure levy income is aggregated by the Scottish Ministers (for example to allow for pooled funding of regional-level projects), all the income must be redistributed to local authorities.

161. The Scottish Government commissioned research to assess the options for an infrastructure levy and to consider the detailed design of the preferred options(s) which emerged. Although further work and consultation will be required to finally define a practical model, taking account of market circumstances and development viability, this research has helped to clarify the parameters of the approach that is expected to be taken.

162. The key provisions of the regulations will be those described in paragraph 5 of schedule 1, "Who is liable for what". The intention is that the levy will be applied through a formula, set nationally, based on the market value of development once useable. The link to development value provides a factor adjusting for the economic circumstances of different areas. It is intended that the levy will be factored into the land acquisition process, therefore capturing an element of land value uplift. The formula will make provision for a threshold below which development will not be required to contribute, in order to not adversely affect development viability. The precise formula and threshold level may need to be adjusted from time to time to reflect changing market conditions, therefore it is appropriate that these are set through regulations.

163. It is proposed that the levy will be applied widely across most types of development which are not themselves infrastructure, with very few exemptions, although the threshold, which would be part of the formula, will have the effect of exempting lower value developments. The power to specify the kinds of development in respect of which the levy is payable will allow for the application of the levy to be adjusted and for further exemptions to be provided, where these have been appropriately justified.

164. In terms of who is liable to pay and when, it is intended that it would be the title holder, at the point of completion of the development (which in most cases will be the developer). This would be "back ended liability", which would assist with developer's cash flow. There is however, the prospect for the market to change allowing more payments at an earlier stage, which would also assist with the front funding of infrastructure which is a key challenge at present. Therefore, having the power to adjust who is liable to pay and when will allow the Scottish Government to react to changing market circumstances, which would benefit the levy process.

165. Paragraph 6 of schedule 1 provides that the regulations may give local authorities the discretion to waive or reduce the levy being applied in their area, subject to conditions, in order to best meet local circumstances. This would add to the local adjustment provided by the inclusion of land values in the charging formula. Regional approaches to economic development are emerging, and regional or joint-authority working is expected to develop further as a result of the changes made to development planning by the Bill, especially in local authorities which are not currently covered by strategic development plans. The provision for regulations to make provision about waiving or reducing the levy will allow such arrangements to develop in line with emerging practice.

166. Any legislation requiring payment of sums needs to be accompanied by measures to ensure compliance. This is provided in paragraphs 7 to 12 of schedule 1, together with a process for appeals and remission or repayment of payable sums. It is expected that local authorities will for the most part be able to utilise existing systems for collection and enforcement of the levy. However, consideration needs to be given to local differences in operating systems and the fact that changes to the process of the levy may have an effect on the approach to collection and enforcement. For example, if a change in market circumstances mean early payment of the levy is preferable, then being able to stop development once commenced, if the payment is not made, becomes more important. Since the levy is to be established in regulations, it is necessary for these associated provisions to have the flexibility to be adjusted to reflect the levy approach as implemented, and as potentially amended from time to time. Paragraph 17 restricts these powers by setting the maximum penalties that can be specified for any offence under the infrastructure-levy regulations.

167. Paragraph 15 of schedule 1 provides for more detail to be given on the purposes for which the levy income is to be applied, supplementing the definition of infrastructure in section 29. The priorities for levy spend are likely to change over time, therefore it is appropriate to have these details set out in regulations to allow these changing circumstances to be addressed.

168. It is important that the levy mechanism aligns well with other related powers, for example, section 75 of the 1997 Act. Paragraph 16 of schedule 1 provides the flexibility for any such powers to be adjusted, when the levy is implemented, to fit in with the approach taken.

Reason for choice of procedure

169. The affirmative procedure is considered appropriate due to the significance of the powers and the wide-ranging nature of the regulations that may be made. It is recognised that introducing a levy of this kind through regulations is a substantial issue. It is important, therefore, that the Parliament has the opportunity to scrutinise the final proposals in detail, and that they should not be introduced without the active approval of the Parliament.

Section 28 – Guidance (on infrastructure levy)

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: none

Provision

170. Section 28 allows the Scottish Ministers to issue guidance to local authorities on how they are to discharge the infrastructure levy functions and how infrastructure-levy income is to be spent. The guidance may be addressed to all authorities or to one or more authorities identified in the guidance; local authorities must have regard to any such guidance addressed to them. The Scottish Ministers may vary or revoke guidance issued, and must make any guidance issued under this section publicly available.

Reason for taking power

171. While section 27 allows for the arrangements for an infrastructure levy to be set out in regulations, it will also be helpful for the Scottish Ministers to be able to issue guidance on these matters, which can describe best practice and set out examples and case studies. It may be appropriate to address the guidance, or different parts of it, to different authorities or different types of authorities, depending on the provisions of the regulations. It will be important that local authorities have regard to such guidance to provide consistency in the implementation of the regulations.

Section 30 – Power to change meaning of “infrastructure”

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provision

172. Section 30 allows the Scottish Ministers, by regulations, to change, or clarify, the meaning of “infrastructure”. The definition of “infrastructure” is set out in section 29.

Reason for taking power

173. This power is required as infrastructure priorities and requirements may change over time, therefore it is important to have this flexibility in place to change the definition of infrastructure to respond to these potential future changes when needed.

Reason for choice of procedure

174. The power to change the meaning of “infrastructure” is an important power as it will directly affect what infrastructure can be funded through proceeds of the levy. This is a key element of the infrastructure levy provisions, and it is therefore appropriate that it should be subject to the affirmative power, enabling the Parliament to give full consideration to any changes.

Part 6: Final provisions

Section 31 – Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative if amending primary legislation, otherwise negative

Provision

175. Section 31 provides the Scottish Ministers with the power to make, by regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate in connection with or for giving full effect to the Bill.

Reason for taking power

176. As with any new body of law, the Bill may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplementary and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters that are necessary to give full effect to the original Bill. This would not be an effective use of either the Parliament's or the Government's resources. In addition, a number of the changes made through the Bill will require transitional, transitory or savings provisions to ensure a smooth change from the current regime to the new approach. It is appropriate for significant such provisions (as opposed to routine provision connected to commencement) to be subject to parliamentary procedure.

Choice of procedure

177. Regulations made under this section which contain a provision which adds to, replaces or omits any part of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. This approach is typical for ancillary powers of this type.

Section 34 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: laid, no further procedure

Provision

178. Section 34 confers a power on the Scottish Ministers, by regulations, to bring the provisions of the Bill into force on such day as the Scottish Ministers appoint. That section also provides that such regulations may include transitional, transitory or saving provision. In addition, subsection (4) makes specific provision in relation to section 23. Section 23 provides that the ability to make a charging order, and the related adjustments to section 135 of the 1997 Act, do not apply to any liability incurred before the day that section 23 comes into force. Regulations bringing section 24 into force may replace that text with the actual date, to improve accessibility and give greater clarity.

Reason for taking power

179. Some formal sections of the Bill are commenced on the day after Royal Assent. The Scottish Ministers consider it appropriate for the substantive provisions of the Bill to be commenced at such a date as they appoint to be suitable; this will allow subordinate legislation and guidance to be put in place and for users of the legislation to have time to prepare before the new arrangements come into effect. It is usual practice for such commencement provisions to be dealt with by subordinate legislation. Such provisions may require to make transitional or transitory provision, or the saving of repealed or amended provisions, to allow for a smooth transfer. It is usual to enable such provision in conjunction with a power to commence the provisions of a Bill. Allowing the commencement regulations to state the actual date of commencement of section 23 will make the law more readily intelligible to users of the statute book: anyone looking at an amended version of the legislation will be able to see immediately whether or not the rules apply, without having to investigate when commencement occurred.

Choice of procedure

180. As is usual for commencement regulations, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies. Commencement regulations bring into force provisions whose underlying policy has already been considered by the Parliament during the passage of the Bill. The fact that section 34(4) will allow commencement regulations to make an extremely modest change to section 23 of the Bill does not change the analysis that no parliamentary procedure beyond laying the regulations is required. Substituting an actual date in place of a description of that date is a purely mechanical exercise which contains no policy discretion or technical complexity. Any regulations under this section will be laid before the Parliament as soon as practicable after being made.

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

PLANNING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM