

Planning (Scotland) Bill

Supplementary delegated powers memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with rule 9.7 of the Parliament's Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Planning (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. This supplementary memorandum should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

Revised and new delegated powers

3. The amended or new delegated powers in the Bill at Stage 2 are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

Development planning

Section 1A – Open space strategy

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

Provision

4. Section 1A inserts a new section 3G into the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"), which requires planning authorities to prepare and publish open space strategies. The new power

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in section 3G(6) allows the Scottish Ministers, by regulations, to make further provision on how planning authorities are to discharge their functions; and the meaning of “green infrastructure”, “green networks” and “open space”, for the purposes of this section.

Reason for taking power

5. This will allow the Scottish Ministers to make further provision on how planning authorities are to go about preparing and publishing an open space strategy and to provide any further explanation of the definitions of “green infrastructure”, “green networks” and “open space” which have been defined in section 3G(5).

Choice of procedure

6. Negative procedure is considered to be appropriate because this power involves detailed procedural matters which are administrative in nature, and to provide further provision on definitions which have already been defined within the Act. The power will provide flexibility to amend the provisions on the procedural matters in the light of experience. It is considered that negative procedure affords the appropriate level of parliamentary scrutiny for this.

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

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

Provision

7. Section 2A inserts a new section 8A into the 1997 Act, requiring an evidence report to be prepared before a strategic development plan is prepared. Subsection 8A(11) allows Scottish Ministers to make regulations relating to the costs, procedures and matters to be addressed in consideration of an evidence report relating to a strategic development plan.

Reason for taking power

8. This mirrors new section 16A(9) introduced by section 3(4) of the Bill, which sets out provisions for assessment of evidence reports for a local development plan, setting out requirements for strategic development

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plans. The requirement supports other amendments which remove the repeal of strategic development plans. The power is required to enable further detail on costs, procedures and content to be specified.

Choice of procedure

9. 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(4) – Evidence report for preparation of local development plan

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

Provision

10. Section 3(4) introduces section 16A into the 1997 Act, requiring planning authorities to prepare an evidence report before they prepare a local development plan. Stage 2 added a new subsection (2A) into section 16A specifying that the evidence report is to include a statement on steps taken to seek the views of Gypsies and Travellers. Subsection (10) states that “Gypsies and Travellers” has the meaning specified in regulations made by the Scottish Ministers.

Reason for taking power

11. As there is no existing definition of Gypsies and Travellers in Scots law, and there has been no consultation with the community on a definition, is it considered appropriate that a definition be provided in regulations, enabling engagement with the community on the definition to take place.

Choice of procedure

12. As noted above, by adopting the approach of defining this expression in regulations, appropriate consultation can be undertaken to ensure the definition is correct. Once that has been done, the negative procedure provides what the Scottish Government considers to be an appropriate level of scrutiny in the context of a power which is directed at identifying who is to be consulted as part of an evidence report.

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Section 3(4) – Effective Community Engagement: Guidance

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: no procedure
Revised or new power: new

Provision

13. Section 3(4) inserts section 16B into the 1997 Act whereby the Scottish Ministers may issue guidance to planning authorities about undertaking effective community engagement in relation to the local development plan.

14. That guidance may include in particular guidance on: how, in preparing a local development plan, planning authorities are to undertake effective community engagement; ways in which planning authorities should consult communities and encourage them to contribute to the preparation of a local development plan; and any other matters relevant to the functions of planning authorities in relation to community engagement in local development plans.

15. Section 16B(3) requires the Scottish Ministers to consult such persons as they consider appropriate in advance of issuing the guidance. Subsection (4) requires that the Scottish Ministers publish in such manner as they consider appropriate any guidance issued under this section. Subsection (5) requires a planning authority to have regard to any guidance issued to them under section 16B. Subsection (6) provides Scottish Ministers with powers to vary or revoke guidance issued under this section.

Reason for taking power

16. Engagement with communities in all parts of the planning system is an important element in instilling confidence in decision making. The Bill introduces new requirements on planning authorities to engage with the public at large in setting the long term priorities for the spatial development of an area. The power to provide guidance allows flexibility when developing the detail of the matters which, considering community engagement on the local development plan, the planning authority has to have regard to. It also enables the guidance to be amended in line with evolving best practice.

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Choice of procedure

17. It is appropriate for Ministers to provide guidance on this issue, which can include examples and case studies, rather than legislation. The aim is to improve practice rather than to require authorities to take particular steps.

Section 3(4)- Play sufficiency assessment

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

Provision

18. Section 3(4) introduces a new section 16C into the 1997 Act. It requires the planning authority to assess the sufficiency of play opportunities in its area for children in preparing the Evidence Report for its local development plan. It also requires the Scottish Ministers to make provision, by regulation, about (a) the form and content of the assessment, (b) such persons who must be consulted in relation to the assessment, and (c) publication of the assessment.

Reason for taking power

19. This provision was agreed at Stage 2 to ensure Scottish Ministers make further provision on who planning authorities are to consult in relation to the play sufficiency assessment, its form and content and publication.

Choice of procedure

20. Negative procedure is considered appropriate because this power involves detailed procedural matters which are administrative in nature. The power will provide flexibility to amend the requirements (e.g. on the form and content) in the light of experience and emerging best practice.

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Section 7 – Amendment of National Planning Framework

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

Provision

21. Section 7(2) inserts a new section 3CA into the 1997 Act. Subsection (2A) of section 3CA requires the Scottish Ministers to set out the circumstances in which they consider that an amendment would result in a significant change to the policies and proposals for the development and use of land of the most recent National Planning Framework such that would require that the National Planning Framework should be revised under section 3A.

Reason for taking power

22. Section 3CA allows Scottish Ministers to amend the National Planning Framework at any time. 3CA(2A) adds a requirement for regulations to be made to define where a change to the NPF may be so significant that a fuller revision of the document is required.

Choice of procedure

23. It is considered appropriate that the negative procedure is used given that the regulations are to set out when the Scottish Ministers consider that the National Planning Framework should be revised. There is already a significant amount of parliamentary scrutiny afforded to the NPF as a whole as a result of the Bill and a range of other Stage 2 amendments.

Section 9 – Local Place Plans

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

Provision

24. Revised section 9 of the Bill amends schedule 19 of the 1997 Act (local place plans) as introduced by the Bill, which makes provision for the preparation and submission of local place plans.

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25. A stage 2 amendment introduced paragraph 2(1)(aa) into schedule 19 which sets out the community body must comply with any prescribed requirements as to how the views of councillors for the area to which the local place plan are to be taken into account in preparing the plan.

26. At stage 2 an amendment was accepted introducing a new paragraph 2A into schedule 19 which requires the planning authority to maintain a register of local place plans. Paragraph 2A(5) provides that the Scottish Ministers may by regulations make provision about the manner in which such a register must be kept. An amendment was also accepted inserting paragraph 2B to provide that every planning authority must make publicly available, in the manner prescribed, a map of their district that shows the land to which the local place plans in their register of local place plans relate.

Reason for taking power

27. The power in paragraph 2(1)(aa) allows for requirements to be imposed on the community body, when preparing and submitting a local place plan, in terms of how the views of councillors for the area are to be taken into account.

28. Paragraph 2A introduces a requirement that every planning authority must keep a register of local place plans. Paragraph 2A(5) provides that the Scottish Ministers may by regulations make provision about: the manner in which a register must be kept and made available to the public; the information about a local place plan that must be included in a register; and when a planning authority may, or must, remove a local place plan from their register, causing it to cease to be a registered local place plan.

29. In paragraph 2B, the authority must make publicly available, in the manner prescribed, a map of their district that shows the land to which the local place plans in their register of local place plans relate.

30. As these requirements will contain a considerable level of administrative detail, it is considered appropriate that they be dealt with through secondary legislation. 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.

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Choice of procedure

31. As noted above, the matters to be specified in regulations are administrative in nature. The Scottish Government considers, therefore, that the negative procedure provides an appropriate level of scrutiny.

Masterplan Consent Areas

Section 10 – Masterplan consent area schemes; Scheme may also make provision for land value capture by compulsory purchase of land

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Revised or new power: new

Provision

32. Section 10(2) introduces section 54CA into the 1997 Act, which stipulates that the Scottish Ministers must make regulations about the purchase of land by a local authority in a Masterplan Consent Area. The regulations must include provision about the type and characteristics of land that an authority may purchase, the process that an authority must follow to do so, and the compensation that is payable for the land purchased. Subsection (3) specifies certain matters concerning how the compensation payable is to be calculated and provides that the regulations must include provision disapplying or applying with modifications provisions of the Land Compensation (Scotland) Act 1963.

Reason for taking power

33. Masterplan Consent Areas (originally Simplified Development Zones) are a significant new tool for authorities to use to encourage high quality development in their area. In supporting the creation of this new regulation making power, the committee envisaged that reducing the compensation payable for land purchase will enable subsequent uplifts in value to be captured to fund the infrastructure needed to enable development to occur and that the arrangements should be piloted in Masterplan Consent Areas. If an authority is to purchase land to facilitate development and enable land value capture, the committee decided that certain matters regarding the price to be paid for land should be specified, but that regulations would be required to set out the necessary detail.

Choice of procedure

34. The purchase of land by planning authorities to enable land value

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capture is a significant matter and it is therefore considered appropriate that if Scottish Ministers are to specify through regulations certain matters about how that should be undertaken that the affirmative procedure should be utilised to provide an opportunity for full Parliamentary scrutiny. However, the Scottish Government does not consider regulations to be an appropriate vehicle for this type of provision and consider it is more properly a matter for primary legislation.

Section 10, Schedule 5A, paragraph 3 - Places 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
Revised or new power: new

Provision

35. This power is part of a wider amendment which was agreed at stage 2, which added into the Bill details of places that cannot be included in a masterplan consent area (MCA) scheme. Subparagraph (4) provides a list of descriptions of such places. These are: National Scenic Areas, Sites of Special Scientific Interest, World Heritage Sites, European Sites (which covers Special Areas of Conservation and Special Protection Areas), Ramsar sites, sites of special scientific interest, Marine Protected Areas, and places covered by a nature conservation order or land management order under Part 2 of the Nature Conservation (Scotland) Act 2004. Subparagraph (5) defines 'marine protected area' and 'world heritage site'. Subparagraph (6) provides that the Scottish Ministers may by regulations modify sub-paragraphs (4) and (5).

Reason for taking power

36. Following the Delegated Powers and Law Reform Committee's suggestion that types of land that may not be included in a MCA should be set out on the face of the Bill, with a power to add or remove entries by regulations, the Scottish Government undertook to bring forward an amendment to this effect at Stage 2; such amendments were agreed at stage 2. Allowing the list of descriptions to be amended through regulations will allow for changes to be made in the event that designations change.

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Choice of procedure

37. Affirmative procedure is considered to be appropriate as the regulations will amend the primary legislation as regards where Masterplan Consent Areas can be brought forward.

Section 10, 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

Revised or new power: revised

Provision

38. 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. Subparagraph (1A), inserted at stage 2, provides that any such direction must be in writing and must be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is given.

Reason for taking power

39. The power under paragraph 6 will be used in relation to a specific case or location, where the Scottish Ministers consider an MCA 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. Since the power is to be used in relation to individual cases, it is appropriate that it is implemented by directions.

40. In response to concerns about transparency raised by the Delegated Powers and Law Reform Committee, the Scottish Government committed to introduce a statutory requirement for directions to be published, including the reasons for making them. This amendment (not lodged by the Scottish Government) requires that directions made under the power in schedule 5A, paragraph 6, must be in writing and be published.

Choice of procedure

41. 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.

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Culturally significant zones

Section 11A(4) – Designation of culturally significant zones; request to designate

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

Provision

42. Section 11A introduces new section 56A into the 1997 Act, allowing for the creation of culturally significant zones. Section 56A(5) specifies that a request to designate a culturally significant zone is valid if it meets requirements prescribed in regulations by the Scottish Ministers. Section 56A(6) sets out that such regulations may, in particular, include requirements as to how a request is made and steps that must be taken before a request may be made.

Reason for taking power

43. Section 56A(4) requires a planning authority to designate a culturally significant zone if requested to do so in accordance with section 56A(5). As there is no existing provision to designate culturally significant zones, it is appropriate that Scottish Ministers may make regulations to set out the requirements and steps to be followed in making a request for one to be designated.

Choice of procedure.

44. It is considered appropriate that the requirements and steps to be followed should be set out in regulations. The requirements and steps to be followed will be subject to consultation, and the Scottish Government considers that the negative procedure provides an appropriate level of scrutiny once the consultation process has been completed.

Section 11A(4) – Designation of culturally significant zones; discharge of functions and meaning of “culturally significant zone”

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

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Revised or new power: new

Provision

45. New section 56A(7) of the 1997 Act, inserted by section 11A(4) provides that Scottish Ministers may by regulations make provisions on how planning authorities are to discharge their functions and the meaning of ‘culturally significant zones’.

Reason for taking power

46. There is no existing definition of culturally significant zone, statutory procedure to be followed or matters to be considered by a planning authority in determining which parts of their area are culturally significant zones. A definition can be provided, and planning authorities functions established, in regulations.

Choice of procedure

47. It is considered that, following consultation, the negative procedure is appropriate given that the regulations seek to set out procedural matters to be followed by planning authorities.

Section 11A(4) –Designation of culturally significant zones; supplementary provisions

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Revised or new power: new

Provision

48. Section 56B(4) of the 1997 Act, introduced by section 11A(4), requires each planning authority to compile and keep available for public inspection a list of any parts of their district which have been designated as a culturally significant zone. Section 56B(5) sets out that list compiled under section 56B(4) must contain such particulars as the Scottish Ministers may prescribe by regulations.

Reason for taking power

49. It is appropriate that Scottish Ministers have the power to make regulations to ensure that lists of culturally significant zones are prepared in the same manner and contain consistent information across Scotland.

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Choice of procedure

50. The regulations will set out the form and content of lists of culturally significant zones, and are therefore procedural in nature. It is considered appropriate, therefore, 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.

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

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: no procedure
Revised or new power: new

Provision

51. Section 11B amends section 26 of the 1997 Act which set out the meaning of ‘development’ – and so what actions require planning permission – to provide that a change in the use of a dwellinghouse from its use as a dwellinghouse to use as a short term holiday let is to be a material change of use, and so always require planning permission. This section also adds a new subsection (8) to section 26 which allows the Scottish Ministers to make guidance on the interpretation of ‘providing short term holiday lets’.

Reason for taking power

52. The guidance is intended to provide some clarity as to what the Scottish Government considers to be a short-term holiday let, even though such guidance cannot definitively define what that term means for the purposes of section 26 of the 1997 Act.

Choice of procedure

53. As guidance does not have the force of law, requiring the Parliament to scrutinise any guidance made under this section would not be the best use of parliamentary time.

Section 12A – Assessment of health effects

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

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Revised or new power: new

Provision

54. Section 12A inserts a new Section 40A to the 1997 Act requiring Scottish Ministers to make regulations about the consideration to be given to the likely health effects of a proposed national development or major development before planning permission can be granted. This is not limited to grants of planning permission as a result of an application for planning permission made to a planning authority.

Reason for taking power

55. Whilst health can already be a material planning consideration, and relevant health impacts would need to be included in an environmental impact assessment report where one is required under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, these new regulations are to ensure that appropriate consideration is given to likely health effects of any major or national development. The detailed content in terms of what is to be assessed and the procedural arrangements regarding such an assessment will require further consideration. These provisions may need to be amended in light of practical experience or changes in technology affecting, or in knowledge about, health impacts. It is therefore appropriate that the detailed specification of requirements is included in regulations rather than on the face of the Bill.

Choice of procedure

56. There is potentially a very wide range of considerations that may fall under the heading of health, and there are already mechanisms in planning for considering such issues. The affirmative procedure will allow the Parliament to provide the necessary scrutiny to ensure the eventual requirements are relevant and proportionate.

Section 14E – Consultation in connection with the determination of applications

Power conferred on: the Scottish Ministers
Power exercisable by: regulations or development order
Parliamentary procedure: negative
Revised or new power: new

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Provision

57. Section 14E inserts a new section 38(1A) to the 1997 Act requiring that regulations or a development order made under section 38(1) are to prescribe that the Music Venues Trust (registered charity number 1159846) are to be consulted by a planning authority before it makes any determination of an application for planning permission where the proposed development involves any land on which there is a music venue.

Reason for taking power

58. The power would require consultation with the Music Venues Trust for any development of land on which there is a music venue; equivalent in effect to creating the 'statutory consultee' status that exists for some organisations, notably the Theatres Trust.

Choice of procedure

59. The regulations or development order would be entirely procedural therefore negative procedure is appropriate.

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

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative
Revised or new power: new

Provision

60. Section 14G inserts a new section 41B into the 1997 Act which stipulates that a planning authority can only grant planning permission for certain developments, specified in section 41B(2), subject to a condition on the provision of at least one toilet facility, as specified in section 41B(3). Section 41B(4) allows the Scottish Ministers to make regulations to add, amend or remove developments from the list specified in section 41B(2) and to similarly revise the specification of the toilet facility as set out in section 41B(3).

Reason for taking power

61. Further work will be required to ensure that the developments to which this requirement for a condition applies is appropriate, in terms of their nature and scale. Also, over time, as technology and knowledge and practice develop, the specification of the toilet may need to change to

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ensure it remains appropriate. Regulations will allow such provision and amendment to be made as necessary without the need for a Bill.

Choice of procedure

62. As the regulations will amend the primary legislation as regards the developments to which the requirement applies and the specification of the toilet, it is appropriate that the Parliament should have the opportunity to fully scrutinise how that flexibility is used, by use of the affirmative procedure.

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

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

Provision

63. Section 16A adds a new section 46A to the 1997 Act, requiring Ministers to set out in regulations the circumstances in which they consider it appropriate to give directions calling in applications for their own determination instead of those applications being dealt with by planning authorities.

Reason for taking power

64. Circumstances where it may be appropriate to call in applications for determination by Scottish Ministers are likely to change over time as new forms of development evolve and potential new issues arise. Setting that out in regulations would allow the Scottish Ministers the flexibility to update the circumstances from time to time in response to changes in the context of decision-making.

Choice of procedure

65. Section 16A provides that the regulations be subject to the affirmative procedure. This is considered appropriate as the requirement to set out circumstances where call-in would be appropriate will have a significant impact on procedures for decision-making across Scotland. The affirmative procedure will allow the Parliament to provide the necessary scrutiny to ensure the requirements are reasonable.

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Section 16D – Meaning of “material considerations”

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

Provision

66. Section 16D(2) introduces a new definition of “material considerations” into the interpretation of the 1997 Act (section 277(1)). The new definition specifies that “material considerations” has the meaning as prescribed by the Scottish Ministers. Section 16D also amends section 275 of the 1997 Act, on regulations and orders, to add a new sub-paragraph (7B) specifying that the regulations prescribing the meaning of “material considerations” are subject to affirmative procedure.

Reason for taking power

67. The regulations are intended to provide greater clarity as to what constitutes a ‘material consideration’ under the 1997 Act. This term applies in relation to the determining applications for planning permission and to the exercise of various powers under the 1997 Act, including orders revoking or modifying planning permission, or discontinuing the use of land and buildings, or for the exercise of enforcement powers.

Choice of procedure

68. These regulations will prescribe what is and, therefore, what is not a material planning consideration when the planning authority is or, where relevant, the Scottish Ministers are considering the use of various powers under the 1997 Act in relation to a case before them. The fundamental significance of what constitutes a material consideration in the planning system is such that it is considered necessary for any such regulations to be subjected to the scrutiny that the affirmative procedure offer.

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

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: no procedure
Revised or new power: new

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Provision

69. Section 20A inserts a new section 39A to the 1997 Act to require the Scottish Ministers to publish guidance on what constitutes a ‘similar application’ and ‘significant change’ as these terms apply in section 39 of the 1997 Act on declining to determine applications for planning permission.

Reason for taking power

70. Section 39 provides discretion for a planning authority to refuse to deal with (decline to determine) an application for planning permission, in certain circumstances, where a ‘similar application’ was previously refused. The circumstances include where there has been no ‘significant change’ in either the development plan as relevant to the proposal or any other material considerations. Currently a ‘similar application’ is defined in section 39 as one where the development and the land to which applications relate are in the opinion of the planning authority the same or substantially the same. It is for the planning authority to consider this definition in the circumstances of the case. The same is true of ‘significant change’, though there is no further definition in the 1997 Act.

71. The guidance is intended to provide some clarity as to what the Scottish Government considers to be a ‘similar application’ or a ‘significant change’ in different circumstances to assist in the interpretation of this legislation.

Choice of procedure

72. It is appropriate for Ministers to provide guidance on this issue, which can include examples and case studies, rather than legislation. The aim is to improve practice rather than to require authorities to take particular steps.

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

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

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Provision

73. Section 20B repeals existing section 77 of the 1997 Act and adds a new section 77A which gives the Scottish Ministers the power to make provision about the payment of compensation by a planning authority in cases where (a) planning permission granted by a development order is withdrawn, or (b) on an application made under Part III or section 242A of the 1997 Act for planning permission for development formerly permitted by that development order is refused or granted subject to different conditions.

74. Subsection (2) makes clear that the regulations may make provision about the circumstances in which compensation is payable; what compensation is payable in respect of; how the amount of compensation is to be calculated; how a claim for compensation must be made in order to be valid (including the form and content of a claim, and the period within which it must be made). The regulations may also to apply or disapply any of the provisions of the Part of the 1997 Act generally, either with or without modifications in order to enable flexible application of existing provisions.

Reason for taking power

75. Section 77 of the 1997 Act currently sets out provisions for the payment of compensation if planning permission granted by a special development order (SDO) is withdrawn or modified. This includes the circumstances where a development order is revoked (section 77(1)(a)). If a development order is revoked, and an application is made within 12 months for planning permission for development previously permitted by the SDO, then compensation is payable by the planning authority if that planning permission is refused (or granted subject to different conditions than those included in the SDO). This new power will enable detailed compensation and procedural arrangements to be implemented through regulations following a careful and considered approach involving engagement with those who may be affected.

Choice of procedure

76. The regulations would set parameters on a number of specific matters relating to the compensation payable and procedures to be followed for making a claim where an order is revoked or modified. It is considered the negative procedure affords the appropriate level of parliamentary scrutiny for this.

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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
Revised or new power: revised

Provision

77. Section 252(1) of the Town and Country Planning (Scotland) Act 1997 sets out that the Scottish Ministers may make regulations for the payment of a charge or fee to a planning authority in respect of the performance by the authority of any of its functions, and for anything done by the authority which is calculated to facilitate, or is conducive or incidental to, the performance of any such function.

78. Section 21(1A) inserts a specific power to make regulations for fees or charges for anything done by the authority in respect of monitoring compliance with conditions or a planning obligation in respect of a grant of planning permission.

Reason for taking power

79. 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.

Choice of procedure

80. 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 21 – Fees for Planning Applications etc.

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

This document relates to the Planning (Scotland) Bill as amended at Stage 2 (SP Bill 23A)

Parliamentary procedure: negative
Revised or new power: revised

Provision

81. Section 252(1A)(da), (1AA) and (1AB) of the 1997 Act allowed Scottish Ministers to vary the planning application fee payable to individual planning authorities where it is deemed their performance is not satisfactory. Section 21(5A) and (6A) repeals these provisions

Reason for taking power

82. The power in section 252 of the 1997 Act gave the Scottish 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. Subsection (6B) prevents regulations from amending the charge or fee payable to an authority on the basis of whether the functions of the authority are not being, or have not been, performed satisfactorily.

Choice of procedure

83. 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 21 – Fees for Planning Applications etc.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative
Revised or new power: revised

Provision

84. Section 21(7) inserts subsection 252(1D) into the 1997 Act, which enables the Scottish Ministers to make regulations to provide for a surcharge to be imposed over and above the normal fee for making a planning application for development which has already been carried out. The surcharge which is applied in respect of an application for retrospective planning permission will not result in more than double the fee which would normally be chargeable. This ensures that the penalty for circumventing

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the planning process remains proportionately linked to the original fee which should have been paid whilst still acting as a deterrent to those who wilfully neglect to apply for planning permission prior to commencing development.

Reason for taking power

85. 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. This change agreed at Stage 2 revises that existing power to limit the amount of surcharge that could be applied.

Choice of procedure

86. 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 21 – Fees for Planning Applications etc.

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations made by Scottish statutory instrument
Parliamentary procedure:	negative
Revised or new power:	revised

Provision

87. Section 21(6) of the Bill replaces section 252(1A)(e) of the 1997 Act to allow the regulations to permit a planning authority (or the Scottish Ministers) to decide whether to charge an applicant the full fee, a reduced fee or waive the fee entirely. Paragraph (ea) allows the regulations to specify circumstances in which a planning authority or the Scottish Ministers are or are not to waive or reduce the fee.

88. Section 21(7) inserts subsection (1E) into section 252 of the 1997 Act. It establishes that regulations may provide for fees or charges to be waived where the application is for a development whose primary purpose is to benefit a social enterprise or non-profit enterprise, or is likely to improve the health of residents in the area to which the application relates.

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Reason for taking power

89. 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. The Bill as introduced made provision that planning authorities could waive or reduce the fee payable to them in circumstances specified in regulations. This change agreed at Stage 2 revises that provision to allow Scottish Ministers to do likewise.

Choice of procedure

90. 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
Revised or new power:	new power

Provision

91. Section 158E of the 1997 Act, introduced under section 23(3), requires the discharge of a registered charging order in the appropriate land register to be recorded as soon as reasonably practical after the appropriate amount has been paid. Section 158E(2) sets out that a discharge of a registered charging order may not be registered unless it is in the form prescribed by the Scottish Ministers in regulations.

Reason for taking power

92. When new powers are provided to register documents in the land registers, it is usual to require that they must be in a prescribed form. This helps Registers of Scotland by ensuring that the correct information is provided and in a standard format. The Bill includes that requirement in relation to registering the charging order; this amendment adds it in relation to the document registering that the payment has been made and the order has been discharged.

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Choice of procedure

93. Given the administrative nature of this power, it is considered that the negative procedure affords the appropriate level of parliamentary scrutiny for this.

Section 26A – Regulations

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: all
Revised or new power: revised

Provision

94. Section 275 of the 1997 Act makes general provision about regulations to be made under that Act. Subsection (2A) currently provides that any regulations may make different provision for different purposes. Section 26A of the Bill amends this to make it clear that the regulations can make different provision for different areas.

Reason for taking power

95. These are provisions that apply generally to regulations made under the 1997 Act. Having considered a number of the provisions introduced by the Bill and by amendments proposed at stage 2, it was considered that it would be helpful to make it clear that different provision can be made for different areas. This could be used, for example, for different local authority areas or for areas under environmental or other designations, eg conservation areas, National Scenic Areas, masterplan consent areas.

Choice of procedure

96. This is a clarification of an existing power that allows Scottish Ministers to make regulations which set out differing provision for different purposes or areas. Individual regulations will be subject to either the negative or affirmative procedures as set out in the relevant sections of the Act.

Section 26B – Ministerial directions

Power conferred on: the Scottish Ministers
Power exercisable by: direction

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Parliamentary procedure: none
Revised or new power: revised

Provision

97. Section 26B of the Act inserts section 275B into the 1997 Act. This provides that, having given a direction under any power conferred by the 1997 Act, the Scottish Ministers must publish the direction and their reasons for giving it. Subsection (3) provides that “publish” includes electronic publication.

98. Subsection (2) provides exceptions from the general duty. It does not apply to directions issued before section 26B comes into force, or to directions given in the form of a regulation or order, which will be published as a Scottish statutory instrument. It also does not apply to directions given under section 265A, which allows the Scottish Ministers or the Secretary of State to direct that specified evidence to a planning inquiry may only be heard or inspected by specified persons, for security reasons.

Reason for taking power

99. In response to concerns about transparency raised by the Delegated Powers and Law Reform Committee, the Scottish Government committed to introduce a statutory requirement for directions made under the 1997 Act to be published, including the reasons for making them. Since there are several direction-making powers already in the 1997 Act, and others introduced by the Bill, it was felt most appropriate that the requirement to publish and give reasons should apply consistently to all directions that may in future be made under powers in the 1997 Act.

Choice of procedure

These provisions apply to all direction-making powers. The powers themselves have no parliamentary procedure.

Section 26C(4) – Chief planning officers

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: no procedure
Revised or new power: new

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Provision

100. Section 26C introduces section 1A into the 1997 Act, which requires that each planning authority must have a chief planning officer who will advise the authority about the carrying out of their planning and development functions. The new section 1A(4) requires planning authorities to have regard to any guidance issued by the Scottish Ministers on what constitutes appropriate qualifications and experience for the role of chief planning officer.

Reason for taking power

101. The power allows Scottish Ministers to provide greater clarity on the qualifications and experience that chief planning officers should have. The power to provide guidance is discretionary. This will allow for Scottish Ministers to consider whether it is required, and if so what it should contain. Consultation would be beneficial in coming to a view on the need for this guidance, including with professional bodies (RTPI Scotland), Heads of Planning Scotland, CoSLA and others.

Choice of procedure

102. This is a technical matter that would benefit from technical input and fuller detail in the form of guidance rather than legislation. Guidance is considered appropriate as this will allow greater flexibility to respond to future practice.

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

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

Provision

103. This power requires the Scottish Ministers to set out in any regulations made under section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that planning authorities are to give notice of an application for listed building consent to neighbouring properties, and to prescribe the arrangements for doing so. The regulations must also: prescribe information that the applicant must provide for that notice; allow a period before which an application can be determined; and ensure that persons given notice have the same rights to

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make representations as they would where notice is given in relation to applications for planning permission.

Reason for taking power

104. 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 Act. 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

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.

Section 30A(2) – Lapsing of power to provide for levy

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

Provision

105. Section 30A(2) provides that where the regulation-making power conferred by section 27 ceases to be exercisable, by virtue of the sunset clause added by section 30A(1), the Scottish Ministers may by regulations repeal Part 5, and schedule 1. Section 30A(1) provides that the power to make levy regulations expires if it has not been used within 10 years of the Bill receiving Royal Assent.

Reason for taking power

106. At stage 1, MSPs expressed concern about the ongoing uncertainty over whether the powers to establish a levy would be used. As a result, the Scottish Government has proposed a 10-year “sunset clause”, which was agreed at stage 2. Should that 10-year period expire and the power to make regulations to introduce an infrastructure levy cease to be

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exercisable, it would be appropriate to remove those levy provisions from statute.

Choice of procedure

107. These regulations could only remove provisions in the event that they had not been, and could no longer be, exercised. Negative procedure is considered appropriate as the power to make regulations removing the levy provisions from statute would only be triggered if the levy provisions in statute had expired.

Section 31A – Power to replace descriptions with actual dates

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

Provision

108. Section 31A provides for a power to make regulations to amend provisions which refer to a date when a provision comes into force so that instead it includes the actual date on which the provision in question came into force.

109. Subsection (1) relates to the date of liability for expenses in relation to enforcement notices, under a charging order. Section 158B of the 1997 Act is inserted by section 23(3) of the Bill, and section 23(5) of the Bill provides that the modifications made by section 23 do not apply to any liability incurred before that section came into force. Subsection (2) relates to the date from which all directions are required to be published in accordance with section 275B of the 1997 Act inserted by section 26B of the Bill, and subsection (3) refers to the lapsing of the power to establish an infrastructure levy under section 30A of the Bill.

Reason for taking power

110. These provisions refer to a number of points where the reader has to know when a particular provision came into force in order to know whether a requirement or power applies in a particular case. The ability for the Scottish Ministers to use regulations to amend the provisions so that they state the actual date in question will make this easier for those who need to know whether the new provisions apply to them.

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Choice of procedure

111. This is a purely administrative provision, the effect of which is a technical change to clarify when provisions set out in regulations come into force. As such it is considered appropriate to use the negative procedure.

Schedule 2 – Minor and consequential amendments and repeals, Part 2 Masterplan Consent Areas, Masterplan consent area schemes, paragraph 6(6A)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure
Revised or new power: revised

Provision

112. Section 183(1) of the 1997 Act, as amended, allows advertising regulations made under section 182 to make different provision with respect to different areas, and in particular they may make special provision for areas that are listed in that subsection. Paragraph 6(6A) adds masterplan consent areas into section 183(1). This will allow Ministers to amend the advertising regulations and make special provision for masterplan consent areas.

Reason for taking power

113. A key objective for the masterplan consent area (MCA) mechanism was that MCA schemes should be capable of granting a range of consents to allow development to commence on site, including 'non-planning applications', to make the overall consenting process more joined up and streamlined. The amendment would mean that the Control of Advertisement Regulations could make allowance for different provisions in relation to advertisement consents in masterplan consent areas, so that planning authorities could consent advertisements through a masterplan consent area scheme.

Choice of procedure

114. Negative procedure is considered appropriate because this power involves detailed procedural matters which are administrative in nature. Furthermore, the Control of Advertisement Regulations are themselves subject to the negative procedure, and it is the Scottish Government view that it would be appropriate, in terms of consistency, for regulations made under this provision of the Act follow the same procedure.

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Planning (Scotland) Bill

[As amended at stage 2]

Supplementary delegated powers memorandum

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