



# Planning etc. (Scotland) Act 2006

## 2006 asp 17

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th November 2006 and received Royal Assent on 20th December 2006**

An Act of the Scottish Parliament to make further provision relating to town and country planning; to make provision for business improvement districts; and for connected purposes.

VALID FROM 01/04/2007

### PART 1

#### NATIONAL PLANNING FRAMEWORK

#### **1 National Planning Framework**

After Part 1 of the principal Act insert—

#### “PART 1A

#### NATIONAL PLANNING FRAMEWORK

#### **3A National Planning Framework**

- (1) There is to be a spatial plan for Scotland to be known as the “National Planning Framework”.
- (2) The National Planning Framework is to set out in broad terms how the Scottish Ministers consider that the development and use of land could and should occur.
- (3) The National Planning Framework must contain—
  - (a) a strategy for Scotland's spatial development, and
  - (b) a statement of what the Scottish Ministers consider to be priorities for that development.

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- (4) The framework may—
  - (a) contain an account of such matters as the Scottish Ministers consider affect, or may come to affect, the development and use of land,
  - (b) describe—
    - (i) a development and designate it, or
    - (ii) a class of development and designate each development within that class,
 a “national development”, and
  - (c) contain any other matter which the Scottish Ministers consider it appropriate to include.
- (5) If the framework contains a designation under subsection (4)(b), the framework—
  - (a) must contain a statement by the Scottish Ministers of their reasons for considering that there is a need for the national development in question, and
  - (b) may contain a statement by the Scottish Ministers as regards other matters pertaining to that designation.
- (6) The Scottish Ministers are to—
  - (a) prepare and publish the framework, and
  - (b) keep it under review.
- (7) Within 5 years after publishing the framework under subsection (6)(a), the Scottish Ministers are either—
  - (a) to revise the framework, or
  - (b) to publish an explanation of why they have decided not to revise it.
- (8) If the Scottish Ministers revise the framework, they are to publish it as revised.
- (9) Within 5 years after publishing the framework under subsection (8) or an explanation either under paragraph (b) of subsection (7) or under paragraph (b) of this subsection, the Scottish Ministers are either—
  - (a) to revise the framework, or
  - (b) to publish an explanation of why they have decided not to revise it.
- (10) The Scottish Ministers are to prepare and publish an account (in this Part referred to as their “participation statement”) of when consultation as regards the preparation or review of the framework is likely to take place and with whom and of its likely form and of the steps to be taken to involve the public at large in the preparation or review.

### **3B Proposals for National Planning Framework: Parliamentary consideration**

- (1) After complying with section 3A(10), the Scottish Ministers—
  - (a) are to lay the proposed National Planning Framework (or of the framework as proposed to be revised) before the Scottish Parliament, and

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(b) are not to complete their preparation or revision of the framework until the period for Parliamentary consideration has expired.

(2) In this section, the “period for Parliamentary consideration” means the period of 60 days beginning on the day on which the draft is so laid; and in reckoning that period no account is to be taken of any time during which the Scottish Parliament—

(a) is dissolved, or

(b) is in recess for more than 4 days.

(3) In preparing or revising the framework, the Scottish Ministers are to have regard to any resolution or report of, or of any committee of, the Scottish Parliament made, during the period for Parliamentary consideration, as regards the proposed framework (or as the case may be the framework as proposed to be revised).

### 3C National Planning Framework to be laid before Parliament

(1) The Scottish Ministers are to lay a copy of the National Planning Framework published, or published as revised, under section 3A before the Scottish Parliament.

(2) Together with any copy laid under subsection (1), the Scottish Ministers are to lay—

(a) a report as to the extent to which their actings with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) their current participation statement, and

(b) a statement giving details of—

(i) any resolution or report falling within subsection (3) of section 3B, and

(ii) the changes (if any) which in the light of any such resolution or report the Scottish Ministers have made to what was laid under subsection (1)(a) of that section.

### 3D Sustainable development: exercise of functions by Scottish Ministers

(1) This section applies to the Scottish Ministers in the exercise of their functions of preparing and revising the National Planning Framework.

(2) The Scottish Ministers must exercise those functions with the objective of contributing to sustainable development.

(3) In construing the expression “sustainable development” for the purposes of this section, regard may be had to any guidance issued, for the purposes of section 3E, under subsection (3) of that section.”.

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VALID FROM 19/05/2008

## PART 2

### DEVELOPMENT PLANS

#### 2 Development plans

For Part 2 of the principal Act substitute—

#### “PART 2

#### DEVELOPMENT PLANS

##### *Sustainable development*

#### 3E Sustainable development

- (1) This section applies to a planning authority in the exercise of any function under this Part.
- (2) The planning authority must exercise the function with the objective of contributing to sustainable development.
- (3) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and that authority must have regard to any guidance so issued.

##### *Strategic development planning*

#### 4 Strategic development planning authorities

- (1) The Scottish Ministers may by order designate a group of planning authorities as authorities which are jointly—
  - (a) to prepare a plan (to be known as a “strategic development plan”)—
    - (i) whenever required to do so by the Scottish Ministers, and
    - (ii) (subject to sub-paragraph (i) and to section 10(8)) whenever the group think it appropriate to do so,
 for an area (to be known as a “strategic development plan area”) to be determined under section 5(3), and
  - (b) to keep under review the plan so prepared.
- (2) No part of the strategic development plan area is to be outwith the districts of the designated group.
- (3) The Scottish Ministers may direct—

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- (a) that an employee of a constituent authority of the designated group is to be assigned to manage the process of preparing and reviewing the strategic development plan, and
  - (b) that other employees of the constituent authorities are to be assigned to assist in that process.
- (4) The Scottish Ministers are not to issue a direction to an authority under subsection (3) within the period of 3 months beginning with the day on which the order under subsection (1) designating the authority as a constituent authority of the designated group was made.
- (5) A group of planning authorities acting jointly by virtue of subsection (1) may be referred to as a “strategic development planning authority”; and an employee assigned as is mentioned in paragraph (a) of subsection (3) may be referred to as a “strategic development plan manager”.
- (6) For any strategic development plan area there is at no time to be more than one strategic development plan.
- (7) The Scottish Ministers may, for the purposes of this section, issue guidance to the constituent authorities of the designated group; and those authorities must have regard to any guidance so issued.
- (8) The Scottish Ministers may request a planning authority to provide them with information regarding arrangements for the assignment of any employee of that authority to manage, or assist in, the process of preparing and reviewing a strategic development plan and the authority must provide such information within 14 days of receipt of the request.
- (9) In carrying out their duty under paragraph (b) of subsection (1), a strategic development planning authority are in particular to monitor—
- (a) changes in the characteristics referred to in section 7(4)(a), and
  - (b) the impact of the policies and proposals contained within the strategic development plan.
- (10) A strategic development plan authority are—
- (a) from time to time, and
  - (b) in any event whenever they publish a main issues report by virtue of that paragraph,
- to publish a statement as to the carrying out by them of their duty under that paragraph.
- (11) In subsection (10), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## 5 Strategic development plan area

- (1) Within 3 months after designation under section 4(1), the strategic development planning authority are to submit to the Scottish Ministers—
- (a) a plan showing the boundary which the authority propose as the boundary of the strategic development plan area, and
  - (b) a statement in justification of that proposal,

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with the request that a determination be made under subsection (3).

- (2) If the individual planning authorities which the strategic development planning authority comprises are not unanimous as to the boundary to be proposed, any of those individual planning authorities may, in conjunction with the submission under subsection (1), submit an alternative plan and statement under that subsection.
- (3) The Scottish Ministers may determine that the boundary of the strategic development plan area is—
  - (a) a boundary proposed in a submission under subsection (1),
  - (b) any such boundary with such modifications as they think fit, or
  - (c) such other boundary as they think fit.
- (4) If before making a determination under subsection (3) the Scottish Ministers consider they require further information from the strategic development planning authority or from a planning authority of the designated group, they may request the authority in question to provide them with that information.
- (5) The Scottish Ministers are to give notice to the strategic development planning authority of any determination under subsection (3); and where the determination is under paragraph (b) or (c) of that subsection the notice is to include a statement as to their reasons for making the determination.
- (6) Subject to section 6, a determination under subsection (3) is final and conclusive.

## **6 Re-determination of boundary of strategic development plan area**

- (1) Where at any time a strategic development planning authority conclude (whether or not by virtue of a requirement under section 4(1)(a)(i)) that, because of a material change in circumstances, the boundary of their strategic development plan area is no longer appropriate, they are, within three months after so concluding, to submit to the Scottish Ministers—
  - (a) a plan showing a boundary which they propose in place of the determined boundary, and
  - (b) a statement in justification of that proposal.
- (2) Subsections (2) to (6) of section 5 apply in respect of a submission under subsection (1) of this section as they apply in respect of a submission under subsection (1) of that section.

## **7 Form and content of strategic development plan**

- (1) A strategic development plan is a plan in which is set out—
  - (a) a vision statement, being a broad statement of the strategic development planning authority's views as to how the development of the strategic development plan area could and should occur and as to the matters (including the matters mentioned in subsection (4)) which might be expected to affect that development,
  - (b) a spatial strategy, being a broadly based statement of proposals as to the development and use of land within the strategic development plan area,

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- (c) an analysis of the relationship of the vision statement and spatial strategy to general proposals for the development and other use of land in districts which are contiguous to any part of the strategic development plan area, being general proposals which may be expected to affect that area,
  - (d) such other matters as may be prescribed, and
  - (e) any other matter which the strategic development planning authority consider it appropriate to include.
- (2) A strategic development plan is, for the purpose of explaining or illustrating the proposals in the plan, to contain or be accompanied by—
  - (a) such maps, diagrams, illustrations and descriptive matter as may be prescribed, and
  - (b) such other maps, diagrams, illustrations and descriptive matter (if any) as the strategic development planning authority think appropriate.
- (3) Diagrams, illustrations and descriptive matter which, by virtue of subsection (2), are contained in or accompany a strategic development plan are to be treated as forming part of that plan.
- (4) The matters referred to in subsection (1)(a) are—
  - (a) the principal physical, economic, social and environmental characteristics of the strategic development plan area,
  - (b) the principal purposes for which land is used in that area,
  - (c) the size, composition and distribution of the population of that area,
  - (d) the infrastructure of that area (including communications, transport and drainage systems and systems for the supply of water and energy),
  - (e) how that infrastructure is used, and
  - (f) any change which the strategic development planning authority think may occur in relation to any of the matters mentioned in paragraphs (a) to (e).

## 8 Preparation of strategic development plan etc.: general

- (1) In preparing a strategic development plan or a main issues report the strategic development planning authority—
  - (a) are to take into account the National Planning Framework,
  - (b) are to have regard to such information and considerations as may be prescribed, and
  - (c) may have regard to such other information and considerations as appear to them to be relevant.
- (2) The Scottish Ministers may, in making a requirement under section 4(1)(a)(i), direct that preparation of the strategic development plan is to be completed by a date specified in the requirement.

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## 9 Main issues report for preparation of strategic development plan

- (1) With a view to facilitating and informing their work in preparing a strategic development plan, a strategic development planning authority are to compile a report (a “main issues report”).
- (2) A main issues report compiled under this section is a report in which are set out—
  - (a) general proposals by the authority for development in the strategic development plan area and in particular proposals as regards where the development should be carried out (and where it should not), and
  - (b) general proposals which constitute a reasonable alternative (or reasonable alternatives) to those mentioned in paragraph (a).
- (3) The report is also—
  - (a) to include information sufficient to secure—
    - (i) that what is proposed can readily be understood by those persons who may be expected to desire an opportunity of making representations to the authority with respect to the report, and
    - (ii) that such representations can be meaningful, and
  - (b) to draw attention to any differences between the proposals for development mentioned in paragraphs (a) and (b) of subsection (2) and the spatial strategy set out in the authority's strategic development plan (if any such plan is for the time being current).
- (4) In compiling the report the strategic development planning authority are to seek the views of, and have regard to any views expressed by—
  - (a) the key agencies,
  - (b) each planning authority the district of which is contiguous with the strategic development plan area, and
  - (c) such persons as may be prescribed.
- (5) It is the duty of a key agency to co-operate with the strategic development planning authority in the compilation of the authority's main issues report.
- (6) The strategic development planning authority are to publish their main issues report in such manner as may be prescribed; and without prejudice to the generality of this subsection the regulations in question must so far as practicable secure—
  - (a) that the persons mentioned in subsection (3) are made aware that they are entitled to make such representations as are mentioned in that subsection, and
  - (b) that those persons are given an adequate opportunity to do so.
- (7) Subsection (6) is without prejudice to the right of any person whatsoever to make representations to the authority as respects the report.
- (8) Publication under that subsection is to include specification of a date by which any representations under this section must be made.



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(9) On the report being published under that subsection, the authority are to send a copy of it to the Scottish Ministers.

(10) In subsection (6), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## 10 Preparation and publication of proposed strategic development plan

(1) After the date specified by virtue of subsection (8) of section 9, the strategic development planning authority are—

- (a) having regard to such representations as timeously may have been made to them as respects their main issues report, to prepare, and to publish in such manner as was prescribed under subsection (6) of that section, a proposed strategic development plan,
- (b) to send a copy of that document to—
  - (i) each key agency, and
  - (ii) each planning authority the district of which is contiguous with the strategic development plan area,
- (c) to notify any person who timeously has made representations under section 9 of where a copy of that document is available for inspection (and at what reasonable times), and
- (d) to consult, with regard to that document, the key agencies and such persons as may be prescribed.

(2) Publication under subsection (1)(a) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the proposed strategic development plan must be made to the authority.

(3) After the date specified by virtue of subsection (2), the strategic development planning authority—

- (a) may modify the proposed strategic development plan so as to take account of—
  - (i) any representations timeously made to them as respects that proposed plan (or of any matters arising out of representations so made),
  - (ii) any matters arising in consultation under subsection (1)(d), and
  - (iii) any minor drafting or technical matters, and
- (b) are to submit it (whether or not modified) to the Scottish Ministers together with—
  - (i) a note of such representations as were timeously made to the authority and of whether those representations are taken account of in the plan (and if so to what extent),
  - (ii) a report as to the extent to which the authority's actions with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) their current participation statement, and
  - (iii) a copy of their proposed action programme for the plan.

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- (4) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan (in subsection (5) referred to as the “original plan”) they are not to modify it (or submit it unmodified to the Scottish Ministers) but are to prepare and publish under subsection (1) a new proposed strategic development plan.
- (5) In its application to any such new plan subsection (1) is to be construed as if references to representations made timeously as respects the main issues report (and to any person timeously making representations) included references to representations so made as respects the original plan (and to any person so making representations with respect to the original plan).
- (6) Where a proposed strategic development plan is modified under subsection (3), the modified plan is to be published in such manner as was prescribed under section 9(6).
- (7) On submitting a proposed strategic development plan under subsection (3) (b), the strategic development planning authority are to advertise, in such manner as may be prescribed, that they have done so.
- (8) Where there is a current strategic development plan, a proposed strategic development plan must be submitted under subsection (3)(b) within 4 years after the date on which that current plan was approved under section 13(1).
- (9) It is the duty of a key agency to co-operate with the strategic development planning authority in the preparation of the authority's proposed strategic development plan.

## 11 **Alternative proposals**

- (1) If the individual planning authorities which a strategic development planning authority comprises are unable to agree on the content of the proposed strategic development plan to be submitted under section 10(3)(b), then the proposed plan so submitted may include alternative proposals in respect of particular matters.
- (2) Alternative proposals so submitted are to be accompanied by a statement of the reasoning behind them.

## 12 **Examination of proposed strategic development plan**

- (1) On receiving a proposed strategic development plan by virtue of paragraph (b) of section 10(3), the Scottish Ministers are, if—
  - (a) representations timeously made were not taken account of (or not fully taken account of) in modifications under paragraph (a) of that section and have not been withdrawn,
  - (b) by virtue of section 11(1) the proposed plan includes alternative proposals, or
  - (c) they consider it appropriate that such a direction be made,
 to direct that a person appointed by them examine under this subsection the proposed plan.

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- (2) But where an appointment is made by virtue of subsection (1), the appointed person is firstly to examine under this subsection the extent to which the strategic development planning authority's actings with regard to consultation and the involvement of the public at large as respects the proposed plan have conformed with (or have been beyond the requirements of) the participation statement of the authority which was current when the proposed plan was published under section 10(1)(a).
- (3) The Scottish Ministers may make regulations as to—
- (a) meeting general administrative costs, staff costs and overheads incurred in relation to an examination under subsection (1) or (2),
  - (b) procedures to be followed at such an examination, and
  - (c) what is to be assessed in such an examination and matters by reference to which the assessment is to be made;
- but the form the examination is to take (as for example whether it should be in public or as to whether persons who have made representations and other persons are to be heard or are to present written submissions) is to be at the discretion of the person appointed.
- (4) When they make a direction under subsection (1) the Scottish Ministers are—
- (a) to advertise its making in a local newspaper within the strategic development plan area,
  - (b) to serve notice of its making on the strategic development planning authority, and
  - (c) if it is made by virtue of paragraph (a) of subsection (1), to serve notice of its making on each of the persons making the representations in question.
- (5) On receiving notice under subsection (4)(b) as respects a direction, the strategic development planning authority are to advertise, in the public libraries within the strategic development plan area, the making of that direction.
- (6) No such examination as is mentioned in subsection (1) is to be commenced—
- (a) within 4 weeks after the direction is made, and
  - (b) where a report is submitted under subsection (1)(b) of section 12A, before a direction is given under subsection (3)(b) of that section.
- (7) On completing his examination under subsection (1) the appointed person is to—
- (a) prepare a report—
    - (i) setting out, and giving reasons for, his conclusions and recommendations (which may include recommendations for amendments to the proposed strategic development plan), and
    - (ii) as to the matters considered by him under subsection (2),
  - (b) submit it to the Scottish Ministers,
  - (c) send a copy of it to the strategic development planning authority,
  - (d) publish it, and

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(e) serve on the persons mentioned in subsection (4)(c) notice of its submission and publication (including the means of publication).

(8) In subsection (7)(d), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

#### 12A Further provision as regards examination under section 12(2)

(1) If, having conducted an examination under subsection (2) of section 12, the appointed person is not satisfied with the actings mentioned in that subsection he is to—

(a) prepare a report setting out his reasons for not being satisfied and recommending that the strategic development planning authority take such further steps with regard to—

(i) consultation, or

(ii) involving the public at large,

as are specified in the report,

(b) submit it to the Scottish Ministers, and

(c) send a copy of it to the authority.

(2) The authority may, within 4 weeks after receiving that copy, make representations to the Scottish Ministers as regards the report.

(3) The Scottish Ministers, provided that 4 weeks have elapsed since they received the report, may—

(a) direct the authority to take such further steps with regard to—

(i) consultation, or

(ii) involving the public at large,

as are specified in the direction, or

(b) direct the appointed person to proceed to an examination under subsection (1) of section 12.

(4) In giving a direction under paragraph (a) of subsection (3) the Scottish Ministers are to have regard to the appointed person's recommendations under paragraph (a) of subsection (1) and to any representations made under subsection (2).

(5) Where such a direction is given—

(a) the appointed person is not to proceed to an examination under subsection (1) of section 12, and

(b) after the further steps specified in the direction have been taken the authority—

(i) may modify the proposed strategic development plan so as to take account of any representations made to them in consequence of their taking those steps (and of any minor drafting or technical matters), and

(ii) are to submit it (whether or not modified) to the Scottish Ministers together with a note of any representations so made and of whether those representations are taken account of in the plan (and if so to what extent) and a

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report as to the extent to which the authority's actings with regard to consultation and involving the public at large have conformed with (or have gone beyond the requirements of) the specification of further steps.

- (6) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan they are not to modify it (or submit it unmodified to the Scottish Ministers) but are to prepare and publish under section 10(1) a new proposed strategic development plan.
- (7) Where a proposed strategic development plan is modified under subsection (5)(b)(i), the modified plan is to be published in such manner as was prescribed under section 9(6).
- (8) On submitting a proposed strategic development plan under subsection (5)(b)(ii), the strategic development planning authority are to advertise, in such manner as may be prescribed, that they have done so.
- (9) Sections 11 and 12, this section and section 13 apply in relation to a proposed strategic development plan so submitted as they apply in relation to such a plan submitted under section 10(3)(b).
- (10) Except that for the purposes of the application provided for in subsection (9), section 12 is to be construed as if—
  - (a) in subsection (1)(a), for the words “paragraph (a) of that section” there were substituted “section 12A(5)(b)(i)”, and
  - (b) in subsection (2), for the words “the participation statement of the authority which was current when the proposed plan was published under section 10(1)(a)” there were substituted “the further steps specified in the direction under section 12A(3)(a)”.

### 13 **Proposed strategic development plan: approval or rejection**

- (1) The Scottish Ministers may, after receiving—
  - (a) a proposed strategic development plan by virtue of paragraph (b) of section 10(3), and
  - (b) (if they make a direction under subsection (1) of section 12), a report prepared under subsection (7)(a) of that section,
 either approve the proposed plan (in whole or in part and with or without modifications) or reject it.
- (2) If so approved, the proposed plan is constituted (as so approved) as the strategic development plan.
- (3) Subsection (1) is subject to the following subsections.
- (4) Where the Scottish Ministers—
  - (a) modify a proposed strategic development plan which has been examined under section 12, they are, in approving the plan, to set out in the instrument by which approval is given the modifications and the reasons for making them,

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- (b) in considering a proposed strategic development plan which has not been so examined, from the intention of modifying it under subsection (1), they are—
  - (i) to publish in such manner as they think fit the modifications they intend to make and the reasons for making them, and
  - (ii) to consult with regard to the modifications the key agencies, the strategic development planning authority and such other persons (if any) as they consider appropriate.
- (5) Publication under subsection (4)(b)(i) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the intended modifications must be made to the Scottish Ministers.
- (6) Where a date is so specified, approval under subsection (1) is not to be given before that date.
- (7) The reference in subsection (1) to “modifications” is, where there has been publication under subsection (4)(b)(i), to be construed as a reference to—
  - (a) the intended modifications so published, or
  - (b) such modifications as the Scottish Ministers, having regard to any representations timeously made by virtue of subsection (5) and to any matters arising in consultation under subsection (4)(b)(ii), think fit.
- (8) The Scottish Ministers are to notify the strategic development planning authority of any representations made by virtue of subsection (5).

#### 14 **Publication of and publicity for strategic development plan**

- (1) As soon as is reasonably practicable after the strategic development plan is constituted as mentioned in section 13(2), the strategic development planning authority are to—
  - (a) send two copies of it to the Scottish Ministers,
  - (b) publish it,
  - (c) place a copy of it in each public library in the strategic development plan area,
  - (d) both—
    - (i) notify each person who made representations under section 10 or 13 or by virtue of section 12A, and
    - (ii) advertise, in a local newspaper,
 that the strategic development plan has been published (including the means of publication) and is available for inspection in those libraries.
- (2) In subsection (1)(b), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

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### *Local development plans*

#### **15 Form and content of local development plans**

- (1) A local development plan is a plan in which is set out, for land in the part of the district to which it relates—
  - (a) a spatial strategy, being a detailed statement of the planning authority's policies and proposals as to the development and use of the land,
  - (b) such other matters as may be prescribed, and
  - (c) any other matter which the planning authority consider it appropriate to include.
- (2) Where the land is not within a strategic development plan area, a local development plan is also to set out a vision statement, that is to say a broad statement of the planning authority's views as to how the development of the land could and should occur and as to the matters (including the matters mentioned in subsection (5)) which might be expected to affect that development.
- (3) Where a local development plan contains policies or proposals for, or views as to, the occurrence of development on land owned by the planning authority, there is to be appended to the plan a schedule, in such form as may be prescribed, which identifies the land, states that it is so owned and refers to the policies, proposals or views in question.
- (4) A local development plan is, for the purpose of explaining or illustrating the proposals in the plan, to contain or be accompanied by—
  - (a) such maps, diagrams, illustrations and descriptive matter as may be prescribed, and
  - (b) such other diagrams, illustrations and descriptive matter (if any) as the planning authority think appropriate.
- (5) The matters referred to in subsection (2) are—
  - (a) the principal physical, economic, social and environmental characteristics of the district,
  - (b) the principal purposes for which the land is used,
  - (c) the size, composition and distribution of the population of the district,
  - (d) the infrastructure of the district (including communications, transport and drainage systems and systems for the supply of water and energy),
  - (e) how that infrastructure is used, and
  - (f) any change which the planning authority think may occur in relation to any of the matters mentioned in paragraphs (a) to (e).

#### **16 Preparation and monitoring of local development plans: general**

- (1) A planning authority are—

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- (a) as soon as practicable after the coming into force of section 2 of the Planning etc. (Scotland) Act 2006 (asp 17) and thereafter—
    - (i) whenever required to do so by the Scottish Ministers, or
    - (ii) subject to sub-paragraph (i), at intervals of no more than five years,
 to prepare local development plans for all parts of their district, and
  - (b) to keep under review the plans so prepared.
- (2) In preparing a local development plan the planning authority—
- (a) are to take into account the National Planning Framework,
  - (b) are to have regard to such information and considerations as may be prescribed, and
  - (c) may have regard to such other information and considerations as appear to them to be relevant.
- (3) Different local development plans may be prepared for different purposes for the same part of any district.
- (4) Parts of districts for which local development plans are prepared for some purpose need not have the same boundaries as parts for which they are prepared for another purpose.
- (5) Two (or more) planning authorities may prepare a joint local development plan extending to parts of each (or all) of their districts.
- (6) Where the land to which a local development plan (or joint local development plan) relates is within a strategic development plan area—
- (a) the planning authority are in preparing the local development plan, or
  - (b) the planning authorities are in preparing the joint local development plan,
- to ensure that the plan prepared is consistent with the strategic development plan.

(7) Where a planning authority fail to comply with subsection (1)(a), the Scottish Ministers may direct them to prepare a report as to the reasons for such failure and to submit that report to the Scottish Ministers.

(8) In carrying out their duty under paragraph (b) of subsection (1), a planning authority are in particular to monitor—

- (a) changes in the characteristics referred to in section 15(5)(a), and
- (b) the impact of the policies and proposals contained within the local development plans.

(9) A planning authority are—

- (a) from time to time, and
- (b) in any event whenever they publish a main issues report by virtue of that paragraph,

 to publish a statement as to the carrying out by them of their duty under that paragraph.



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- (10) In subsection (9), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

#### 17 **Main issues report for preparation of local development plan**

- (1) With a view to facilitating and informing their work in preparing a local development plan, a planning authority are to compile a report (a “main issues report”).
- (2) A main issues report compiled under this section is a report in which are set out—
- (a) general proposals by the authority for development in their district and in particular proposals as regards where the development should be carried out (and where it should not), and
  - (b) general proposals which constitute a reasonable alternative (or reasonable alternatives) to those mentioned in paragraph (a).
- (3) The report is also—
- (a) to include information sufficient to secure—
    - (i) that what is proposed can readily be understood by those persons who may be expected to desire an opportunity of making representations to the authority with respect to the report, and
    - (ii) that such representations can be meaningful, and
  - (b) to draw attention to any differences between the proposals for development mentioned in paragraphs (a) and (b) of subsection (2) and the spatial strategy set out in the authority's local development plan (if any such plan is for the time being current).
- (4) In compiling the report the planning authority are to seek the views of, and have regard to any views expressed by—
- (a) the key agencies, and
  - (b) such persons as may be prescribed.
- (5) It is the duty of a key agency to co-operate with the planning authority in the compilation of the authority's main issues report.
- (6) The planning authority are to publish their main issues report in such manner as may be prescribed; and without prejudice to the generality of this subsection the regulations in question must so far as practicable secure—
- (a) that the persons mentioned in subsection (3) are made aware that they are entitled to make such representations as are mentioned in that subsection, and
  - (b) that those persons are given an adequate opportunity to do so.
- (7) Subsection (6) is without prejudice to the right of any person whatsoever to make representations to the authority as respects the report.
- (8) Publication under that subsection is to include specification of a date by which any representations under this section must be made.

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(9) On the report being published under that subsection, the authority are to send a copy of it to the Scottish Ministers.

(10) In subsection (6), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## 18 Preparation and publication of proposed local development plan

(1) After the date specified by virtue of subsection (8) of section 17, the planning authority are—

- (a) having regard to such representations as timeously may have been made to them as respects their main issues report, to prepare, and to publish in such manner as was prescribed under subsection (6) of that section, a proposed local development plan,
- (b) to send a copy of that proposed plan to each key agency,
- (c) to notify any person who timeously has made representations under section 17 that the proposed plan has been published and of where a copy of it is available for inspection (and at what reasonable times),
- (d) to consult, with regard to the proposed plan, the key agencies and such persons as may be prescribed, and
- (e) in such circumstances as may be prescribed, to give notice—
  - (i) in such form,
  - (ii) of such matter, and
  - (iii) to such persons,
 as may be specified in the regulations in question.

(2) Publication under subsection (1)(a) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the proposed local development plan must be made to the authority.

(3) After the date specified by virtue of subsection (2), the planning authority may modify the proposed local development plan so as to take account of—

- (a) any representations timeously made to them as respects that proposed plan (or of any matters arising out of representations so made),
- (b) any matters arising in consultation under subsection (1)(d), and
- (c) any minor drafting or technical matters.

(4) Where the authority decide to make no modifications under subsection (3), or any modifications under that subsection are not of a kind prescribed for the purposes of subsection (5) (or mentioned in subsection (8)), the authority—

- (a) are to submit the proposed local development plan to the Scottish Ministers together with—
  - (i) a report as to the extent to which the authority's actions with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) the authority's current participation statement, and
  - (ii) a copy of their proposed action programme for the plan,

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- (b) are to publish the plan in such manner as may be prescribed, and
  - (c) if no request is to be made under section 19(1) are, in so publishing it, to advertise their intention to adopt it.
- (5) Where the authority make under subsection (3) modifications of a prescribed kind, the authority are—
- (a) to publish in such manner as was prescribed under section 17(6) the proposed local development plan as modified, and
  - (b) to give notice—
    - (i) in such form,
    - (ii) of such matter, and
    - (iii) to such persons,
 as may be specified in the regulations in question.
- (6) Publication under subsection (5)(a) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the proposed local development plan must be made to the authority and, after that date, the authority may further modify the proposed plan so as to take account of—
- (a) any representations timeously made to them as respects that proposed plan (or of any matters arising out of representations so made), and
  - (b) any minor drafting or technical matters.
- (7) Subsections (4) and (5) apply in respect of modifications under subsection (6) as they apply in respect of modifications under subsection (3).
- (8) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan (in subsection (9) referred to as the “original plan”) they are not to modify it (or submit it or publish it unmodified) but are to prepare and publish under subsection (1) a new proposed local development plan.
- (9) In its application to any such new plan subsection (1) is to be construed as if references to representations made timeously as respects the main issues report (and to any person timeously making representations) included references to representations so made as respects the original plan (and to any person so making representations with respect to the original plan).
- (10) It is the duty of a key agency to co-operate with the planning authority in the preparation of the authority's proposed local development plan.

## 19 Examination of proposed local development plan

- (1) On submitting a proposed local development plan under paragraph (a) of section 18(4), a planning authority are, if the circumstances are as mentioned in subsection (2), to request the Scottish Ministers to make an appointment under subsection (3).
- (2) The circumstances are that representations timeously made were not taken account of (or not fully taken account of) in modifications under subsection (3) or (6) of section 18 and have not been withdrawn.

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- (3) If, when a proposed development plan is submitted to the Scottish Ministers under paragraph (a) of section 18(4)—
- (a) a request is made under subsection (1), or
  - (b) no such request is made but it appears to them that the circumstances are as mentioned in subsection (2),
- they are to appoint a person to examine under this subsection the proposed plan.
- (4) But where an appointment is made under subsection (3), the appointed person is firstly to examine under this subsection the extent to which the planning authority's actings with regard to consultation and the involvement of the public at large as respects the proposed plan have conformed with (or have been beyond the requirements of) the participation statement of the authority which was current when the proposed plan was published under section 18(1)(a).
- (5) The Scottish Ministers may make regulations as to—
- (a) meeting general administrative costs, staff costs and overheads incurred in relation to an examination under subsection (3) or (4),
  - (b) procedures to be followed at such an examination, and
  - (c) what is to be assessed in such an examination and matters by reference to which the assessment is to be made;
- but the form the examination is to take (as for example whether it should be in public or as to whether persons who have made representations, and other persons, are to be heard or are to present written submissions) is to be at the discretion of the appointed person.
- (6) When a person is appointed under subsection (3), the planning authority are—
- (a) to advertise the forthcoming examination of the proposed plan in a local newspaper and in the public libraries within the part of the authority's district to which the proposed plan relates, and
  - (b) to serve notice of that examination on each of the persons who have made the representations mentioned in subsection (2).
- (7) No such examination as is mentioned in subsection (3) is to be commenced—
- (a) within 4 weeks after the appointment is made, and
  - (b) where a report is submitted under subsection (1)(b) of section 19A, before a direction is given under subsection (3)(b) of that section.
- (8) On completing his examination under subsection (3) the appointed person is to—
- (a) prepare a report—
    - (i) setting out, and giving reasons for, his conclusions and recommendations (which may include recommendations for amendments to the proposed local development plan), and
    - (ii) as to the matters considered by him under subsection (4),
  - (b) submit it to the planning authority,
  - (c) publish it, and

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- (d) serve on the persons mentioned in paragraph (b) of subsection (6), and on any person who made representations by virtue of section 19A, notice of the report's submission and publication (including the means of publication).
- (9) In subsection (8)(c), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).
- (10) The planning authority are, on receiving a report submitted under subsection (8)(b)—
- (a) to make—
    - (i) (except in so far as they decline to do so, on such grounds as may be prescribed for the purposes of this sub-paragraph) such modifications, if any, to the proposed local development plan as the appointed person recommends, and
    - (ii) such other modifications to it, if any, as appear to them to be requisite having regard to the report,
  - (b) to publish the modifications made, together with the proposed plan as modified (or, if no modifications are made, to publish the proposed plan) in such manner as may be prescribed,
  - (c) in so publishing the proposed plan (whether or not modified), to advertise their intention to adopt it, and
  - (d) to notify each person who made representations under section 18 that the proposed plan has been published and of where a copy of it is available for inspection (and at what reasonable times).
- (11) But the authority may, before complying with subsection (10), secure the carrying out of an environmental assessment (within the meaning of the Environmental Assessment (Scotland) Act 2005 (asp 15)) in relation to the proposed plan as so modified; and if they do so then paragraph (a) of that subsection is to be construed as subject to the qualification that any modification made must, in the opinion of the authority, be acceptable having regard to that assessment.
- (12) The planning authority are, within 3 months after receiving a report submitted under subsection (8)(b), to send to the Scottish Ministers a copy of each of the following—
- (a) the modifications, if any, made under sub-paragraph (i) of subsection (10)(a),
  - (b) where a modification recommended by the appointed person is not made, a statement setting out the recommendation and explaining (by reference to the grounds prescribed for the purposes of that sub-paragraph) why it is not made,
  - (c) the proposed plan (whether or not modified),
  - (d) the report,
  - (e) any environmental assessment carried out by virtue of subsection (11), and
  - (f) the advertisement mentioned in subsection (10)(c).

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

- (1) If, having conducted an examination under subsection (4) of section 19, the appointed person is not satisfied with the actings mentioned in that subsection he is to—
  - (a) prepare a report setting out his reasons for not being satisfied and recommending that the authority take such further steps with regard to—
    - (i) consultation, or
    - (ii) involving the public at large,
 as are specified in the report,
  - (b) submit it to the Scottish Ministers, and
  - (c) send a copy of it to the planning authority.
- (2) The authority may, within 4 weeks after receiving that copy, make representations to the Scottish Ministers as regards the report.
- (3) The Scottish Ministers, provided that 4 weeks have elapsed since they received the report, may—
  - (a) direct the authority to take such further steps with regard to—
    - (i) consultation, or
    - (ii) involving the public at large,
 as are specified in the direction, or
  - (b) direct the appointed person to proceed to an examination under subsection (3) of section 19.
- (4) In giving a direction under paragraph (a) of subsection (3) the Scottish Ministers are to have regard to the appointed person's recommendations under paragraph (a) of subsection (1) and to any representations made under subsection (2).
- (5) Where such a direction is given—
  - (a) the appointed person is not to proceed to an examination under subsection (3) of section 19, and
  - (b) after the further steps specified in the direction have been taken the authority—
    - (i) may modify the proposed local development plan so as to take account of any representations made to them in consequence of their taking those steps (and of any minor drafting or technical matters), and
    - (ii) are to submit it (whether or not modified) to the Scottish Ministers together with a note of any representations so made and of whether those representations are taken account of in the plan (and if so to what extent) and a report as to the extent to which the authority's actings with regard to consultation and involving the public at large have conformed with (or have gone beyond the requirements of) the specification of further steps.
- (6) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan they are

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not to modify it (or submit it unmodified to the Scottish Ministers) but are to prepare and publish under section 18(1) a new proposed local development plan.

- (7) Where a proposed local development plan is modified under subsection (5) (b)(i), the modified plan is to be published in such manner as is prescribed under section 18(4)(b).
- (8) On submitting a proposed local development plan under subsection (5) (b)(ii), the planning authority are to advertise, in such manner as may be prescribed, that they have done so.
- (9) Section 19 and this section apply in relation to a proposed local development plan so submitted as they apply in relation to such a plan submitted under section 18(4)(a).
- (10) Except that for the purposes of the application provided for in subsection (9), section 19 is to be construed as if—
  - (a) in subsection (2), for the words “subsection (3) or (6) of section 18” there were substituted “ section 19A(5)(b)(i) ”, and
  - (b) in subsection (4), for the words “the participation statement of the authority which was current when the proposed plan was published under section 18(1)(a)” there were substituted “ the further steps specified in the direction under section 19A(3)(a) ”.

## 20 Constitution of local development plan

- (1) On being adopted by the planning authority the proposed local development plan is constituted as the local development plan.
- (2) But subsection (1) is subject to any direction made under subsection (7) and does not apply if such adoption is in contravention of subsection (3) or (6) (the reference to subsection (3) including a reference to subsection (3) as applying by virtue of a direction made under subsection (4)).
- (3) A proposed local development plan is not to be so adopted before a period of 28 days has elapsed after the planning authority's intention to adopt it is advertised under section 18(4)(c) or 19(10)(c).
- (4) The Scottish Ministers may, as regards a particular proposed local development plan submitted to them, direct that subsection (3) is to apply as if, for the period mentioned in the subsection there were substituted such longer period as is specified in the direction.
- (5) At any time during the period mentioned in subsection (3), or as the case may be specified in a direction under subsection (4), the Scottish Ministers may, if it appears to them that the proposed plan is unsatisfactory, direct the authority to consider modifying it in such respects as are indicated in the direction.
- (6) A planning authority given a direction under subsection (5) are not to adopt the proposed plan unless—
  - (a) they satisfy the Scottish Ministers that they have made the modifications necessary to conform with the direction, or
  - (b) the Scottish Ministers withdraw the direction.

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- (7) At any time before a proposed local development plan submitted to the Scottish Ministers has been adopted by the planning authority, the Scottish Ministers may direct that the proposed plan is to be constituted not on being so adopted but if and when approved by the Scottish Ministers.

#### 20A **Publication of and publicity for local development plan**

- (1) As soon as is reasonably practicable after the local development plan is constituted as mentioned in section 20(1), the planning authority are to—
- (a) send two copies of it to the Scottish Ministers,
  - (b) publish it,
  - (c) place a copy of it in each public library in the part of the district to which it relates,
  - (d) both—
    - (i) notify each person who made representations under section 18 or by virtue of section 19A, and
    - (ii) advertise, in a local newspaper,
 that the local development plan has been published (including the means of publication) and is available for inspection in those libraries.
- (2) In subsection (1)(b), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

#### *Development plan schemes and action programmes*

#### 20B **Development plan schemes**

- (1) A development plan scheme is to be prepared by each strategic development planning authority and by each planning authority.
- (2) The authority in question is to prepare the scheme—
  - (a) whenever required to do so by the Scottish Ministers, and
  - (b) (subject to paragraph (a)) whenever the authority think it appropriate to do so but in any event within 1 year after last preparing such a plan.
- (3) A development plan scheme is a document setting out the authority's programme for preparing and reviewing their strategic development plan or as the case may be their local development plans.
- (4) Without prejudice to the generality of subsection (3), “programme” in that subsection includes, having regard to the provisions of this Part—
  - (a) proposed timetabling,
  - (b) details of what is likely to be involved at each stage of preparation or review, and
  - (c) an account (in this Part referred to as an authority's “participation statement”) of when consultation is likely to take place and with whom and of its likely form and of the steps to be taken to involve the public at large in the stages of preparation or review.



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- (5) As soon as is reasonably practicable after a development plan scheme has been adopted, the authority which prepared it are to—
  - (a) send two copies of it to the Scottish Ministers,
  - (b) publish it, and
  - (c) place a copy of it in each public library in the strategic development plan area or the area of the planning authority, as the case may be.
- (6) In subsection (5)(b), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).
- (7) Regulations may make provision as to—
  - (a) the form and content of, and
  - (b) the procedures for preparing and adopting, a development plan scheme.

## 21 **Action programmes**

- (1) A strategic development planning authority who prepare a strategic development plan are to prepare an action programme for the plan.
- (2) A planning authority who prepare a local development plan are to prepare an action programme for the plan.
- (3) In preparing the action programme the authority in question are to seek the views of, and have regard to any views expressed by—
  - (a) the key agencies, and
  - (b) such persons as may be prescribed.
- (4) When an authority publish a proposed—
  - (a) strategic development plan under section 10(1)(a), or
  - (b) local development plan under section 18(1)(a),they are to publish a proposed action programme for the plan.
- (5) It is the duty of a key agency to co-operate with the authority in question in the preparation of the authority's action programme or proposed action programme.
- (6) An action programme is a document setting out how the authority in question propose to implement the plan to which it relates.
- (7) Regulations may make provision as to—
  - (a) the form and content of, and
  - (b) the procedures for preparing and adopting, an action programme.
- (8) The authority are to adopt and publish the action programme within 3 months after the date on which the plan to which it relates is constituted.
- (9) The authority must keep the action programme under review and must update and re-publish it—
  - (a) whenever required to do so by the Scottish Ministers, and

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- (b) (subject to paragraph (a)) whenever they think it appropriate to do so but in any event within 2 years after last publishing (or re-publishing) it.
- (10) When they publish, or re-publish, an action programme, the authority are to—
- (a) send two copies of it to the Scottish Ministers, and
  - (b) place a copy of it in each public library—
    - (i) in the case of a strategic development planning authority, in the strategic development plan area, and
    - (ii) in the case of a planning authority, in the part of the authority's district to which the local development plan in question relates,
 and such publication, or re-publication, is to include by electronic means (as for example by means of the internet).

#### *Supplementary guidance*

## 22 **Supplementary guidance**

- (1) A strategic development planning authority may, under this subsection, adopt and issue guidance in connection with a strategic development plan and a planning authority may, under this subsection, adopt and issue guidance in connection with a local development plan (such guidance being, in either case, referred to in this Part as “supplementary guidance”).
- (2) Regulations may make provision as to—
  - (a) procedures for, and as to consultation which must precede, the adoption of, and
  - (b) the matters which may be dealt with in, supplementary guidance.
- (3) Subject to any such regulations, the authority proposing to adopt and issue supplementary guidance are to take such steps as will in their opinion secure—
  - (a) that adequate publicity of the proposal is given in their district or as the case may be in their strategic development plan area,
  - (b) that persons who may be expected to wish to make representations to the authority about the proposal are made aware that they are entitled to do so, and
  - (c) that such persons are given an adequate opportunity of making such representations.
- (4) Such publicity as is given under subsection (3)(a) is to include intimation of a date by which any such representations require to be received by the authority.
- (5) The authority are, before adopting and issuing the supplementary guidance, to consider any such representations timeously made to them.

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- (6) A copy of the proposed supplementary guidance must be submitted to the Scottish Ministers and a period of at least 28 days must then elapse before the supplementary guidance is adopted and issued.
- (7) The Scottish Ministers may, as regards a particular submission to them under subsection (6), direct that the subsection is to apply as if, for the period mentioned in it, there were substituted such longer period as is specified in the direction.
- (8) At any time before the supplementary guidance is adopted the Scottish Ministers may by notice require the authority to make such modifications to it as are specified in the notice or may direct the authority not to adopt and issue it.
- (9) Guidance may be adopted and issued other than under subsection (1)—
  - (a) by a strategic development planning authority, in connection with a strategic development plan, or
  - (b) by a planning authority, in connection with a local development plan,
 provided that the matters dealt with in that guidance are not matters for the time being specified, in regulations under subsection (2)(b), as matters which may be dealt with in supplementary guidance.

#### *Supplementary provisions*

### 23 **Disregarding of representations with respect to development authorised by or under other enactments**

- (1) Where subsection (2) applies—
  - (a) neither the Scottish Ministers nor a strategic development planning authority need consider representations with respect to—
    - (i) a main issues report compiled under section 9, or
    - (ii) a proposed strategic development plan, and
  - (b) neither the Scottish Ministers nor a planning authority need consider representations with respect to—
    - (i) a main issues report compiled under section 17, or
    - (ii) a proposed local development plan.
- (2) This subsection applies where it appears to the Scottish Ministers or the authority, as the case may be, that those representations are in substance representations with respect to things done or proposed to be done in pursuance of—
  - (a) an order or scheme under section 5, 7, 9 or 12 of the Roads (Scotland) Act 1984 (c. 54) (trunk road orders, special road schemes and orders for other public roads), or
  - (b) an order under section 1 of the New Towns (Scotland) Act 1968 (c. 16) (designation of sites of new towns).

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### 23A Regulations under this Part

- (1) Regulations under this Part may extend throughout Scotland or to specified areas only and may make different provision for different cases.
- (2) Subject to the previous provisions of this Part and to any such regulations, the Scottish Ministers may give directions to any planning authority or strategic development planning authority, or to planning authorities or strategic development planning authorities generally for—
  - (a) formulating the procedure for the carrying out of functions under this Part, or
  - (b) requiring them to give the Scottish Ministers such information as the Scottish Ministers may require for carrying out functions under this Part.

### 23B Default powers of the Scottish Ministers

- (1) This section applies where—
  - (a) under any of the previous sections of this Part, any strategic development plan or local development plan requires to be prepared, any main issues report requires to be compiled or any proposed strategic development plan or proposed local development plan requires to be submitted to the Scottish Ministers, or steps are required to be taken for the adoption of a proposed local development plan, and
  - (b) the Scottish Ministers are satisfied that the authority in question—
    - (i) are not, within a reasonable period, doing what is required, or
    - (ii) have not met a time limit specified in any of those provisions for doing what is required (or some part of what is required).
- (2) Where this section applies, the Scottish Ministers may—
  - (a) direct the authority in question (the “defaulting authority”) to carry out that authority’s functions in relation to the matter and may specify in the direction the factors to be taken into account or objectives to be achieved by that authority in so doing, or
  - (b) prepare a strategic development plan or local development plan.
- (3) Where this section applies and the defaulting authority is a strategic development planning authority, the Scottish Ministers may authorise one of the planning authorities which the defaulting authority comprises to do what is required on behalf of the defaulting authority.
- (4) The previous sections of this Part apply, so far as applicable and with any necessary modifications, in relation to the doing of anything—
  - (a) under subsection (2)(b) by the Scottish Ministers, or
  - (b) by virtue of subsection (3) by an individual planning authority, as they apply in relation to the doing of anything by the defaulting authority.
- (5) The defaulting authority—

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- (a) must on demand repay to the Scottish Ministers so much of any expenses incurred by the Scottish Ministers in connection with the doing of anything which should have been done by the defaulting authority as the Scottish Ministers certify to have been incurred in the performance of the defaulting authority's functions, and
- (b) must repay to a planning authority who by virtue of subsection (3) do anything which should have been done by the defaulting authority, any expenses certified by the Scottish Ministers to have been reasonably incurred by the planning authority in connection with the doing of that thing.

### 23C **Reviews of plans in enterprise zones**

As soon as practicable after an order has been made under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (c. 65) (designation of enterprise zone scheme) or a notification has been given under paragraph 11 of that Schedule (modification of such a scheme)—

- (a) a strategic development planning authority for a strategic development plan area in which the enterprise zone is wholly or partly situated are, in the light of the provisions of the scheme or modified scheme, to review the strategic development plan for that area, and
- (b) a planning authority for a district in which the enterprise zone is wholly or partly situated are, in that light, to review any local development plan which relates to land situated both in the district and in the zone.

### 23D **Meaning of “key agency”**

Any reference in a provision of this Part to a “key agency” is to a body which the Scottish Ministers specify as such for the purposes of that provision by regulations.

### 24 **Meaning of “development plan”**

- (1) For the purposes of this Act, any other enactment relating to town and country planning and the Land Compensation (Scotland) Act 1963 (c. 51), the development plan for any strategic development plan area is to be taken as consisting—
  - (a) of the provisions of the strategic development plan for the time being in force for the area, together with—
    - (i) the Scottish Ministers' notice of approval of that plan, and
    - (ii) any supplementary guidance issued in connection with that plan, and
  - (b) of the provisions of any local development plan for the time being applicable to the area, together with—
    - (i) the planning authority's resolution of adoption of, or as the case may be the Scottish Ministers' notice of approval of, that plan, and
    - (ii) any supplementary guidance issued in connection with that plan.

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- (2) For the purposes mentioned in subsection (1), the development plan for any other area (whether the whole or part of the district of a planning authority) is to be taken as consisting as mentioned in paragraph (b) of that subsection.
- (3) A reference in subsection (1)(b) to provisions of a plan, to a notice of approval or to a resolution of adoption is, in relation to an area forming part of the district to which they are, or as the case may be it is, applicable, to be construed as a reference to so much of the provisions, notice or resolution as is applicable to the area.
- (4) A reference in subsection (1) to a notice of approval is, in relation to any plan made by the Scottish Ministers under section 23B, to be construed as a reference to a notice of the making of the plan.
- (5) This section has effect subject to Schedule 1 (old development plans).

### *General*

## 25 **Status of development plan**

- (1) Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise—
  - (a) to be made in accordance with that plan, and
  - (b) if the development in question is a national development, to be made in accordance with any statement under section 3A(5) which—
    - (i) relates to that national development,
    - (ii) is expressed as applying for the purposes of development management, and
    - (iii) is to the effect that the development in question (or a development such as the development in question) could and should occur.
- (2) For the purposes of paragraph (b) of subsection (1)—
  - (a) statements in the National Planning Framework which do not fall within sub-paragraphs (i) and (ii) of the paragraph are to be treated as “material considerations” (but this paragraph is without prejudice to the generality of that expression), and
  - (b) in the event of any incompatibility between the National Planning Framework and the development plan, whichever of them is the later in date is to prevail.
- (3) For the purposes of subsection (2)(b)—
  - (a) the date of the National Planning Framework is the latest date on which it was published under section 3A(6) or (8),
  - (b) the date of a strategic development plan is the date on which it was published under section 14(1) (the date of any supplementary guidance issued being disregarded), and
  - (c) the date of a local development plan is the date on which it was constituted under section 20 (the date of any supplementary guidance issued being disregarded).”.

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VALID FROM 06/02/2007

## PART 3

### DEVELOPMENT MANAGEMENT

#### *Meaning of development*

### 3 Meaning of “development”

(1) In section 26 of the principal Act (meaning of “development”)—

- (a) at the end of subsection (1) add “, or the operation of a marine fish farm in the circumstances specified in section 26AA ”,
- (b) after subsection (2) insert—

“(2AA) The Scottish Ministers may in a development order specify any circumstances, or description of circumstances, in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.

(2AB) The development order may make different provision for different purposes.”,

- (c) in subsection (6)—
  - (i) for the words “inland waters, transitional water or coastal water” substitute “waters which—
    - (a) are inland waters,
    - (b) not being inland waters, are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, or
    - (c) are seaward of those baselines up to a distance of 12 nautical miles,”,
  - (ii) for the word “subsection” where it second occurs substitute “ section ”,
  - (iii) the definitions of “ coastal water ” and “ transitional water ” are repealed, and
  - (iv) at the end add—

““nautical miles” means international nautical miles of 1,852 metres”,
- (d) after that subsection insert—

“(6AA) Where the making of any material change in the use of equipment so placed or assembled for that purpose would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the making of any such material change was development of that land.”, and
- (e) after subsection (6B) insert—

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- “(6C) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of, or in connection with, the application of this Act to—
- (a) any such placing or assembly as is mentioned in subsection (6) in waters described in paragraph (b) or (c) of that subsection; or
  - (b) any material change in the use of equipment placed or assembled in those waters.
- (6D) Any order under subsection (6C) may in particular provide that a planning authority specified in the order is to be the planning authority for the purposes of such an application of this Act despite the placing or assembly being something done, or the material change of use being made, outwith the district of the authority.
- (6E) But in the application of subsections (6C) and (6D) to a case where, by virtue of paragraph (a) of section 10(1) of the National Parks (Scotland) Act 2000 (asp 10) the planning authority is a National Park authority, the reference in subsection (6D) to the district of the authority is to be construed as a reference to the National Park.
- (6F) And the Scottish Ministers may direct that subsections (6C) and (6D) are to apply to a case where—
- (a) by virtue of paragraph (b) of that section 10(1), a National Park authority is to be treated as the planning authority, or
  - (b) by virtue of paragraph (c) of that section 10(1), a National Park authority is to have certain functions in relation to planning.
- (6G) For the purposes of any such application as is provided for in—
- (a) paragraph (a) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be” in subsection (6D) there is to be substituted “ National Park authority specified in the order is to be treated as ”,
  - (b) paragraph (b) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be the planning authority” in subsection (6D) there is to be substituted “ National Park authority specified in the order is to have functions in relation to planning ”.
- (6H) Before making an order under subsection (6C), the Scottish Ministers—
- (a) must consult—
    - (i) every planning authority, and
    - (ii) the Scottish Environment Protection Agency, and
  - (b) may consult such other persons as they think fit.



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- (6I) An order under subsection (6C) may (without prejudice to the generality of that subsection)—
- (a) modify any enactment, instrument or document,
  - (b) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) provide for the delegation of functions,
  - (d) make different provision for different purposes and different areas.
- (6J) For the purposes of the exercise by a National Park authority of any planning functions which it has by virtue of subsections (6C) and (6D) in respect of waters described in paragraph (b) or (c) of subsection (6), any reference in section 9 of the National Parks (Scotland) Act 2000 (asp 10) (general purposes and functions of National Park authority) to the National Park itself is to be construed as including a reference to those waters.”.
- (2) A development order under section 26(2AA) of that Act does not affect any operations begun before it is made.
- (3) A certificate under section 151 of that Act (certificate of lawfulness of proposed use or development) is of no effect if—
- (a) subsection (2) of section 26 of that Act is, by virtue of a development order under subsection (2AA) of that section, disapplied in respect of any operations,
  - (b) at the date the development order comes into force the certificate is in force in respect of the operations, and
  - (c) before that date no such operations have been begun.
- (4) In section 275 of that Act (regulations and orders)—
- (a) in subsection (4), for the words “and (6A)” substitute “, (6A) and (6C), 31A”, and
  - (b) in subsection (5A), after the words “26(6A)” insert “ or (6C) ”.

VALID FROM 01/04/2007

#### **4 Marine fish farms**

- (1) After section 26 of the principal Act insert—

##### **“26AA Marine fish farms: circumstances referred to in section 26(1)**

- (1) The circumstances to which section 26(1) refers are—
- (a) that the marine fish farm is being operated after—
    - (i) the date which is the appropriate date in respect of that fish farm, or
    - (ii) if earlier than that date, the date on which planning permission is granted, or an application for planning permission is refused, under section 31A, and

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*Changes to legislation: There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)*

- (b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that placing or assembly did not constitute development under this Act.
- (2) For the purposes of subsection (1)(a), the appropriate date in respect of a fish farm is whichever is the later of—
- (a) a date prescribed by the Scottish Ministers for the purposes of this subsection, and
  - (b) the date on which any authorisation which—
    - (i) relates to the operation of that fish farm, and
    - (ii) is in effect at the date of commencement of section 4 of the Planning etc. (Scotland) Act 2006 (asp 17), ceases to have effect.
- (3) In this section and in section 31A—
- “authorisation” means—
- (a) a consent for fish farming issued by the Crown Estate Commissioners,
  - (b) a licence granted under section 11 of the Orkney County Council Act 1974 (c.xxx), or
  - (c) a licence granted under section 11 of the Zetland County Council Act 1974 (c.viii),
- “equipment” has the same meaning as in section 26(6), and
- “marine fish farm” means a fish farm situated in any part of any waters referred to in paragraphs (b) and (c) of section 26(6).”
- (2) After section 31 of that Act insert—

*“Planning permission in respect of operation of marine fish farm*

**31A Planning permission in respect of operation of marine fish farm**

- (1) This section applies to planning permission for the operation of a marine fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b).
- (2) Any planning permission is to be granted by the Scottish Ministers.
- (3) Without prejudice to the generality of subsection (2), planning permission may be granted under that subsection as respects a class of development.
- (4) Any planning permission granted by virtue of subsection (3) is to be granted by order, the class of development in question being specified in the order.
- (5) Planning permission may be granted either unconditionally or subject to conditions or limitations.
- (6) The conditions or limitations which may be imposed include conditions or limitations specified in any authorisation which is at the time of imposition in effect in relation to the fish farm.

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- (7) The principal matters to be taken into account by the Scottish Ministers in coming to a decision as to whether to grant planning permission are the likely impact of the development on—
- (a) any European site within the meaning of regulation 10 of the Conservation (Natural Habitats & c.) Regulations 1994 (S.I. 1994/2716), and
  - (b) the environment generally.
- (8) The Scottish Ministers may by regulations make provision—
- (a) specifying those cases where an application for planning permission must be made,
  - (b) as to the form of such an application,
  - (c) specifying documents and information which require to accompany such an application,
  - (d) as to consultation in connection with such an application, and
  - (e) as to any other matters concerning procedure on such an application.”.

VALID FROM 12/12/2008

## **5 Hierarchy of developments for purposes of development management etc.**

After section 26AA of the principal Act (inserted into that Act by section 4 of this Act) insert—

### **“26A Hierarchy of developments**

- (1) For the purposes of the planning Acts, a development belongs to one of the following categories—
  - (a) the first (designated under section 3A(4)(b)), to be known as “national developments”,
  - (b) the second, to be known as “major developments”, and
  - (c) the third, to be known as “local developments”.
- (2) The Scottish Ministers are by regulations to describe classes of development other than national developments and assign each class to one or other of the categories mentioned in paragraphs (b) and (c) of subsection (1).
- (3) But the Scottish Ministers may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.
- (4) Different provision may be made under subsection (2) for different areas.
- (5) Regulations under subsection (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

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VALID FROM 12/12/2008

### *Initiation and completion of development*

## **6 Initiation and completion of development**

- (1) After section 27 of the principal Act insert—

### *“Initiation and completion of development*

#### **27A Notification of initiation of development**

- (1) A person who intends to carry out development for which planning permission has been given must, as soon as practicable after deciding on a date on which to initiate the development and in any event before commencing the development, give notice to the planning authority as to that date and as to such further matters as the Scottish Ministers may prescribe.
- (2) In granting planning permission for the carrying out of any development of land, a planning authority are by notice to direct the attention of the applicant to the requirements of subsection (1), setting out the terms of subsection (1) and of section 123(1) in that notice.

#### **27B Notification of completion of development**

- (1) A person who completes development for which planning permission has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.
- (2) If an application to a planning authority for planning permission discloses, in the opinion of the authority, that the development in question is to be carried out in phases then any such permission granted is to be granted subject to a condition, imposed under section 37(1)(a) in respect of each phase except the last (notice of the completion of which is to be given under subsection (1)), that as soon as practicable after the phase is completed the person carrying out the development is to give notice of that completion to the planning authority.

### *Display of notice while development is carried out*

#### **27C Display of notice while development is carried out**

- (1) A person carrying out development of a prescribed class must until the development is completed display a notice containing prescribed information.
- (2) The Scottish Ministers may by regulations make provision as to—
- (a) the form of the notice required by subsection (1), and
  - (b) where such a notice is to be displayed.”

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- (2) In section 123(1) of that Act (expressions used in connection with enforcement), after paragraph (b) insert “or
- (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
  - (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act,”.

VALID FROM 12/12/2008

*Applications for planning permission and certain consents*

**7 Applications for planning permission and certain consents**

- (1) For section 32 of the principal Act (form and content of applications for planning permission) substitute—

**“32 Applications for planning permission**

- (1) Regulations or a development order may make provision as to applications for planning permission made to a planning authority or the Scottish Ministers.
- (2) Provision referred to in subsection (1) includes provision as to—
- (a) the form and manner in which an application must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application,
  - (d) evidence to be provided in support of anything in, or relating to, the application.
- (3) The regulations or development order must—
- (a) require that an application for planning permission of such description as is specified in the regulations or order is to be accompanied by a statement (either or both and if both then either in one document or in two)—
    - (i) about the design principles and concepts applied to the development,
    - (ii) about how issues relating to access for the disabled to the development have been dealt with,
  - (b) include provision as to the form and content of any such statement as is mentioned in paragraph (a), and
  - (c) require that an application in respect of which compliance with section 35B is required is to be accompanied by a pre-application consultation report prepared in accordance with section 35C.
- (4) Different provision may be made under this section—
- (a) for different cases or classes of case,
  - (b) for different areas, and

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- (c) according to whether a development is a national development, a major development or a local development.”.
- (2) In section 182 of that Act (regulations controlling display of advertisements), after subsection (2) insert—
- “(2A) The regulations may also make provision as to—
- (a) the form and manner in which an application for consent must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application.”.
- (3) In section 9 of the listed buildings Act (making of applications for listed building consent)—
- (a) in subsection (2), the words “ shall be made in such form as the planning authority may require and ” are repealed,
  - (b) in subsection (3), for paragraph (a) there is substituted—
    - “(a) the form and manner in which such applications must be made,
    - (aa) particulars of such matters as are to be included in such applications,
    - (ab) any documents or other materials which are to accompany such applications,”, and
  - (c) after subsection (3) insert—
    - “(4) The regulations must require that an application for listed building consent of such description as is prescribed must be accompanied by a statement about how issues relating to access for the disabled to the building have been dealt with.
    - (5) The form and content of such a statement are to be such as is prescribed.”.

## 8 Variation of planning applications

After section 32 of the principal Act insert—

### *“Variation of application*

#### **32A Variation of application other than one referred to the Scottish Ministers**

- (1) An application for planning permission (other than an application referred to the Scottish Ministers under section 46 instead of being dealt with by the planning authority) may, with the agreement of the planning authority, be varied after it is made.
- (2) And if the planning authority consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.

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- (3) Without prejudice to the generality of subsection (1), regulations or a development order may make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application may be varied; but in any event an application is not to be varied after there is an appeal as respects it under section 47.
- (4) The planning authority may, when an application is varied under this section, give such notice of the variation as they consider appropriate.
- (5) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” (other than the first such reference in subsection (1)) were a reference to the Scottish Ministers.

### **32B Variation of application referred to the Scottish Ministers**

- (1) An application for planning permission referred to the Scottish Ministers under section 46 instead of being dealt with by the planning authority may, with the agreement of the Scottish Ministers, be varied after it is made.
- (2) And if the Scottish Ministers consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.
- (3) Without prejudice to the generality of subsection (1), regulations or a development order may make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application may be varied.
- (4) The Scottish Ministers may, when an application is varied under this section, give such notice of the variation as they consider appropriate.”.

## **9 Development already carried out**

- (1) After section 33 of the principal Act insert—

### **“33A Notice requiring application for planning permission for development already carried out**

Where there is a breach of planning control the planning authority may issue a notice—

- (a) requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
  - (b) describing the development in a way that is sufficient to identify it,
  - (c) specifying a date by which the application is to be made, and
  - (d) setting out the terms of section 123(1).”.
- (2) In section 123(2) of that Act (expressions used in connection with enforcement), at the end add “ as does the issuing of a notice under section 33A ”.

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(3) In section 147(1) of that Act (register of enforcement, breach of condition and stop notices), for the words “and stop notices” substitute “ , notices under section 33A, stop notices and temporary stop notices ”.

(4) The title of section 147 becomes “**Enforcement etc.: register of notices**”.

VALID FROM 12/12/2008

### *Publicity for applications*

## **10 Publicity for applications**

(1) For section 34 of the principal Act substitute—

### **“34 Notice by planning authority of certain applications made to them**

(1) A planning authority are to give notice—

- (a) to such persons or categories of person,
- (b) in such manner,
- (c) for such period, and
- (d) on such number of occasions,

as may be prescribed in regulations or in a development order, of such applications mentioned in subsection (2) as are made to the authority.

(2) The applications are—

- (a) for planning permission,
- (b) for an approval required by a development order,
- (c) for a consent, agreement or approval required by a condition imposed on a grant of planning permission, and
- (d) for agreement under section 75A(2).

(3) The regulations or development order may—

- (a) make provision in relation to the applications generally or in relation to such of those applications as are of a class or classes prescribed in the regulations or order,
- (b) make different provision for different classes so prescribed.

(4) No such application is to be determined until after—

- (a) the expiry of a period which is to be so prescribed,
- (b) any requirement imposed by virtue of this section has been satisfied, and
- (c) any sum recoverable from the applicant in respect of costs incurred by the planning authority in giving notice under subsection (1) has been paid to the authority.

(5) For the purposes of this section an applicant is to provide—

- (a) to such person or persons,
- (b) such information with respect to the application,



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as may be so prescribed.

(6) A planning authority are to provide the Scottish Ministers with such information relating to the exercise by the authority of functions under this section (whether in relation to applications generally or in relation to a particular application or class of application) as the Scottish Ministers may request from them.”.

(2) In section 38(1) of that Act (consultation in connection with determination of applications)—

- (a) for the words “to which section 34(1) applies” substitute “ mentioned in section 34(2) ”, and
- (b) for the words “(1)(h)” substitute “ (4)(a) ”.

## **11 Pre-application consultation**

After section 35 of the principal Act insert—

### **“35A Pre-application consultation: preliminary**

- (1) Before submitting an application for planning permission for a development of a class prescribed under this section the prospective applicant is, subject to the following provisions of this section, to comply with section 35B.
- (2) The regulations in question may, in prescribing classes of development, make different provision for different cases or classes of case and for different areas.
- (3) A prospective applicant for planning permission for a development may, by notice, require the planning authority to state whether or not, in their opinion, the development is of a class prescribed under subsection (1).
- (4) But the regulations may, in prescribing a class of development, provide that subsections (3) and (5) to (9) are not to apply—
  - (a) as respects that class, or
  - (b) as respects that class in circumstances specified in the regulations.
- (5) Any notice under subsection (3) is to be in such form as may be prescribed in the regulations but must in any event contain the information mentioned in paragraphs (a) to (d) of section 35B(4).
- (6) A planning authority receiving such a notice may, if they do not consider that it contains sufficient information to enable them to provide the statement sought, request the prospective applicant to provide additional information specified by them.
- (7) Where such a notice is given it is the duty of the planning authority to provide the requisite statement within the period of 21 days after it is given (or within such other period as may be substituted for that period by the regulations).
- (8) The period of 21 days mentioned in subsection (7) (or any other period substituted for that period) does not include any period between a request

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for information being made under subsection (6) and that information being provided to the planning authority

- (9) If the authority respond by stating that in their opinion the development is not of a class prescribed under subsection (1), then provided that the application for planning permission for the development in question is submitted within 12 months after the notice was given and does not differ materially from the information regarding it contained in the notice and mentioned in paragraphs (a) to (c) of section 35B(4) the prospective applicant need not comply with section 35B.
- (10) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” or “the authority” were a reference to the Scottish Ministers.

### **35B Pre-application consultation: compliance**

- (1) The following subsections apply where compliance with this section is required by virtue of section 35A(1).
- (2) The prospective applicant is to give notice (to be known as a “proposal of application notice”) to the planning authority that an application for planning permission for the development is to be submitted.
- (3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.
- (4) A proposal of application notice is to be in such form, and have such content, as may be prescribed but must in any event contain—
- (a) a description in general terms of the development to be carried out,
  - (b) if the site at which the development is to be carried out has a postal address, that address,
  - (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and
  - (d) details as to how the prospective applicant may be contacted and corresponded with.
- (5) Regulations may—
- (a) require that the proposal of application notice be given to persons specified in the regulations,
  - (b) specify—
    - (i) persons who are to be consulted as respects a proposed application, and
    - (ii) what form that consultation is to take.
- (6) Different provision may be made under subsection (5) for different cases or classes of case and for different areas.
- (7) The planning authority may, provided that they do so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that they require (either or both)—

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- (a) that the proposal of application notice be given to persons additional to those specified under subsection (5) (specifying in the notification who those persons are),
  - (b) that consultation additional to any required by virtue of subsection (5)(b) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).
- (8) In considering whether to give notification under subsection (7) the planning authority are to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.
- (9) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” were a reference to the Scottish Ministers.

### **35C Pre-application consultation report**

- (1) A person who, before submitting an application for planning permission for a development, is required to comply with section 35B and who proceeds to submit that application is to prepare a report (a “pre-application consultation report”) as to what has been done to effect such compliance.
- (2) A pre-application consultation report is to be in such form as may be prescribed.”.

VALID FROM 03/08/2009

## **12 Public availability of information as to how planning applications have been dealt with**

In section 36 of the principal Act (registers of applications etc.)—

- (a) in subsection (1)—
  - (i) after paragraph (a) insert—
    - “(aa) any variation, by virtue of section 32A(1), to such an application,
    - (ab) documents to which regard was had in dealing with each such application (including documents to which regard was had in considering whether to agree to such a variation),
    - (ac) material considerations to which regard was had by virtue of section 37(2),
    - (ad) any pre-application consultation report prepared under section 35C(1) and submitted with such an application,”
  - (ii) in paragraph (b), for the words “such applications have been dealt with” substitute “ each such application has been dealt with and a copy of any notice given by virtue of paragraph (d)

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- or (e) of section 43(1) in respect of an application (or, in the case of an application in respect of which notice does not fall to be so given, a statement of the reasons on which the authority based their decision on the application) ”,
- (iii) the word “ and ” which immediately follows paragraph (b) is repealed,
- (iv) after paragraph (b) insert—
- “(ba) applications under section 242A(2) for planning permission in respect of development in the district of that authority,” and
- (v) after paragraph (c) insert “and
- (d) any planning obligation entered into under section 75”, and
- (b) in subsection (3)(a)—
- (i) after the word “applications” insert “ and variations to applications ”, and
- (ii) for the word “them” substitute “ such applications and variations and copies of documents to which regard was had in dealing with such applications and in considering whether to agree to such variations ”.

#### Commencement Information

- 11** S. 12(a)(i)(ii)(v)(b) in force at 12.12.2008 for specified purposes by S.S.I. 2008/411, **art. 2(2)(3)(a)**
- 12** S. 12(a)(iii)(iv) in force at 1.4.2007 by S.S.I. 2007/130, **art. 2(2)(3), Sch.**

### 13 Keeping and publication of lists of applications

After section 36 of the principal Act insert—

#### “36A Lists of applications

- (1) Every planning authority are, in such manner as may be prescribed by regulations or a development order, to keep a list of—
- (a) the applications mentioned in section 36(1)(a) which are made to them (including any variations, by virtue of section 32A(1), to those applications),
- (b) the applications mentioned in section 36(1)(ba) which are made in respect of development in their district, and
- (c) the proposal of application notices received by them under section 35B(2).
- (2) Weekly, or at such intervals as may be so prescribed, the authority are—
- (a) to revise the list by removing from it the entries relating to—
- (i) such applications as have been determined, and
- (ii) such proposal of application notices as have ceased to be current, and

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- (b) in such manner as may be so prescribed (or, if and in so far as the regulations or development order may admit, in such manner as the authority consider appropriate), to publish that revised list.
- (3) The availability of the list is to be advertised by the authority in a local newspaper at such intervals as may be so prescribed.
- (4) The regulations or development order may make provision as to how any costs incurred by the authority by virtue of this section are to be recovered from the applicants.
- (5) In this section “publish”, without prejudice to that expression's generality, may include publish by electronic means (as for example by means of the internet).
- (6) For the purposes of subsection (2)(a)(ii), a notice ceases to be current when—
  - (a) an application for planning permission is submitted for the development in question,
  - (b) the prospective applicant gives notice in writing under this paragraph to the planning authority that no application is to be submitted for the development in question, or
  - (c) 12 months have elapsed since the date on which the proposal of application notice was given.”.

VALID FROM 01/03/2007

### *Determination of applications*

VALID FROM 12/12/2008

#### **14 Pre-determination hearings**

(1) After section 38 of the principal Act insert—

##### **“38A Pre-determination hearings**

- (1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.
- (2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the authority consider appropriate.

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(3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.

(4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a planning authority may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the authority do so elect, subsections (2) and (3) apply accordingly.”.

(2) In section 56 of the Local Government (Scotland) Act 1973 (c. 65) (arrangements for discharge of functions by local authorities), after subsection (6) there is inserted—

“(6A) A local authority's function of determining an application for planning permission for a development of a class mentioned in section 38A(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8) shall be discharged only by the authority.”.

VALID FROM 12/12/2008

## **15 Additional grounds for declining to determine application for planning permission**

Section 39 of the principal Act (power of planning authority to decline to determine application) is amended as follows—

(a) for subsection (1) substitute—

“(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—

(a) if—

(i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and

(ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,

(b) if—

(i) in that period of two years the planning authority have refused more than one similar application,

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- (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (c) if—
  - (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (d) if—
  - (i) in that period of two years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
  - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or
- (e) if—
  - (i) in that period of two years two similar applications have been made to the planning authority,
  - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
  - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in the

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development plan (so far as material to the current application) or in any other material consideration.

(1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—

- (a) compliance with section 35B was required as respects the development, and
- (b) there has not been such compliance.

(1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.

(1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.

(1D) Subsection (1A) is subject to section 35A(9).”,

- (b) “ subsection (3) ” is repealed, and
- (c) the title of the section becomes “**Declining to determine an application**”.

## 16 Manner in which applications for planning permission are dealt with etc.

In section 43 of the principal Act (directions etc. as to method of dealing with applications)—

- (a) in subsection (1)—
  - (i) after paragraph (a) insert—
    - “(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
      - (i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
      - (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;”,
  - (ii) after paragraph (b) insert—
    - “(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars,



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documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);”, and

(iii) in paragraph (f), for the words from “the planning authority” to “order” substitute “, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be prescribed by or under the regulations, order or directions ”,

(b) after subsection (1) insert—

“(1A) Any notice given by virtue of paragraph (d) or (e) of subsection (1)—

(a) is to include a statement of—

- (i) the terms of the planning authority's decision,
- (ii) any conditions to which that decision is subject, and
- (iii) the reasons on which the authority based that decision, and

(b) may include such other information as may be prescribed by the regulations or the order.”, and

(c) after subsection (2) add—

“(3) Paragraphs (a) and (f) of that subsection shall apply in relation to applications under section 75A(2) as they apply in relation to applications for planning permission.

(4) For the purposes of the application provided for in subsection (3), the reference in paragraph (a) of subsection (1) to restricting the grant of planning permission is to be construed as a reference to restricting the giving of any agreement under subsection (2) of section 75A or the making of any determination under subsection (4) of that section.”.

VALID FROM 12/12/2008

## 17 **Local developments: schemes of delegation**

After section 43 of the principal Act insert—

### “43A **Local developments: schemes of delegation**

(1) A planning authority are—

- (a) as soon as practicable after the coming into force of section 17 of the Planning etc. (Scotland) Act 2006 (asp 17), and thereafter—

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- (i) whenever required to do so by the Scottish Ministers, or
  - (ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations under this section, to prepare a scheme (to be known as a “scheme of delegation”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and
  - (b) to keep under review the scheme so prepared.
- (2) Other than for the purposes of subsections (8) to (16) or section 47, the determination of any person so appointed is to be treated as that of the authority.
- (3) References in subsection (1) to a development do not include references to a development of a class mentioned in section 38A(1).
- (4) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—
- (a) the form and content of, and
  - (b) the procedures for preparing and adopting, a scheme of delegation.
- (5) Where an application for planning permission falls to be determined by a person so appointed, sections 37(1) to (3), 38, 39, 41(1) and (2) and 42 and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (18)), as they apply to an application which falls to be determined by the planning authority.
- (6) The planning authority may, if they think fit, decide themselves to determine an application which would otherwise fall to be determined by a person so appointed.
- (7) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.
- (8) Where a person so appointed—
- (a) refuses an application for planning permission or for consent, agreement or approval,
  - (b) grants it subject to conditions, or
  - (c) has not determined it within such period as may be prescribed by regulations or a development order,
- the applicant may require the planning authority to review the case.
- (9) Where a requirement to review is made by virtue of paragraph (c) of subsection (8), the person so appointed is, for the purposes of the review, to be deemed to have decided to refuse the application.

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- (10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).
- (11) Without prejudice to the generality of subsection (10), the regulations or order may—
  - (a) make different provision for different cases or classes of case,
  - (b) make different provision for different stages of a case,
  - (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
  - (d) make provision in relation to time limits (including a time limit for requiring the review), and
  - (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with.
- (12) Any notice given by virtue of paragraph (e) of subsection (11)—
  - (a) is to include a statement of—
    - (i) the terms in which the planning authority have decided the case reviewed, and
    - (ii) the reasons on which the authority based that decision, and
  - (b) may include such other information as may be prescribed by the regulations or the order.
- (13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to—
  - (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or
  - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions,and, subject to section 43B, as to what matters may be raised in the course of the review.
- (14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.
- (15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8).
- (16) Subject to subsection (17) and except as provided under section 239, the decision of a planning authority in a case reviewed under this section is final.
- (17) Where a requirement to review is made by virtue of paragraph (c) of subsection (8) and the planning authority have not conducted the review within such period as may be prescribed by regulations or a

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development order, the authority are to be deemed to have decided to refuse the application and section 47(1) is to apply accordingly.

(18) The modification is that, in paragraph 1(6) of Schedule 3, for paragraph (b) there is substituted—

“(b) is to be regarded for the purposes of section 43A as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under subsection (8) of that section.”.

### **43B Matters which may be raised in a review under section 43A(8)**

(1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate—

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

- (a) the provisions of the development plan, or
- (b) any other material consideration.”.

VALID FROM 01/04/2007

## *Powers of Scottish Ministers in relation to planning applications and decisions*

### **18 Call-in of applications by Scottish Ministers**

In section 46 of the principal Act (call-in of applications by Scottish Ministers)

(a) after subsection (1) insert—

“(1A) A direction under subsection (1) may be withdrawn or modified by a subsequent direction.”, and

(b) in subsection (3), for “this section” substitute “ subsection (1) ”.

VALID FROM 12/12/2008

### **19 Appeals etc.**

(1) In section 47 of the principal Act (right to appeal against planning decisions and failure to take such decisions)—

- (a) in subsection (1), at the end add “ against the decision ”, and
- (b) after subsection (1) insert—

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“(1A) But subsection (1) does not apply in relation to any such action on the part of a planning authority as is mentioned in section 237(3A).”.

(2) After that section insert—

**“47A Matters which may be raised in an appeal under section 47(1)**

(1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate—

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

- (a) the provisions of the development plan, or
- (b) any other material consideration.”.

(3) In section 237 of that Act (validity of certain plans, schemes, orders and actions)

- (a) in subsection (1)(f), at the end add “ or on the part of a planning authority as is mentioned in subsection (3A) ”,
- (b) after subsection (3) insert—

“(3A) The action on the part of a planning authority is any decision or determination (other than a deemed decision) in a review conducted by them by virtue of section 43A(8).”, and

- (c) at the end of subsection (4), add “ or on the part of a planning authority to take any such action as is mentioned in subsection (3A) ”.

(4) In section 239 of that Act (proceedings for questioning the validity of certain orders, decisions and directions)—

- (a) in subsection (1)(b), before the words “to which” insert “ , or on the part of a planning authority, ”, and
- (b) in subsection (4), at the end add “ or on the part of a planning authority as is mentioned in subsection (3A) of that section ”.

(5) In section 267 of that Act (procedure on certain appeals and applications)—

- (a) in subsection (1), for the words from “proceedings” to the end substitute “ appeals and applications under this Act and as to the manner in which such appeals and applications are to be conducted ”,
- (b) after subsection (1) insert—

“(1A) Without prejudice to the generality of subsection (1), the regulations may—

- (a) make different provision for different cases or classes of case and in particular according to whether an appeal is under subsection (1) of section 47 or under subsection (2) of that section,

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- (b) as regards the manner in which an appeal or application is to be conducted, make different provision for different stages of a case,
- (c) make provision in relation to oral or written submissions and to documents in support of such submissions, and
- (d) make provision in relation to time limits.

(1B) The provision which may be made by virtue of subsections (1) and (1A) includes provision as to—

- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions,
- (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions, and
- (c) subject to section 47A, as to what matters may be raised in the course of the appeal or application.

(1C) The provision which may be made by virtue of subsections (1) and (1A) includes provision that the manner in which an appeal or application, or any stage of an appeal or application, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under or by virtue of this Act).”

- (c) in subsection (2)(a), the word “ such ” is repealed, and
- (d) subsection (3) is repealed.

(6) The title of section 267 becomes “**Appeals and applications under this Act: procedure etc.**”.

VALID FROM 12/12/2008

*Duration of planning permission and listed building consent etc.*

## **20 Duration of planning permission and listed building consent etc.**

(1) In section 58 of the principal Act (general condition limiting duration of planning permission)—

- (a) for subsections (1) to (3) substitute—

“(1) Subject to subsection (2), a planning permission to which this section applies, whether granted or deemed to be granted, lapses on the expiration of a period of 3 years (beginning with the date on which the permission is granted or as the case may be deemed to be granted) unless the development to which the permission relates is begun before that expiration.

(2) The authority concerned may, in granting any such planning permission (or as the case may be in making a direction under

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section 57), direct that subsection (1) is not to apply as respects the permission but that the permission is to lapse on the expiration of a period, whether longer or shorter than 3 years, specified in the direction (under this section) unless the development to which the permission relates is begun before that expiration.

(3) For the purposes of section 47(1)(a), (3) and (4)(a)—

- (a) any such direction, or
- (b) the effect of subsection (1) as that subsection applies in consequence of the authority electing not to make such a direction,

is to be treated as a condition subject to which the application is granted.

(3A) A period specified under subsection (2) is to be a period—

- (a) beginning as mentioned in subsection (1), and
- (b) which the authority concerned consider appropriate having regard to the provisions of the development plan and to any other material considerations.”, and

(b) in subsection (4)—

(i) for the words “Nothing in this section applies to” substitute “ This section applies to every planning permission with the exception of ”,

(ii) after paragraph (c) insert—

“(ca) any planning permission granted before the date on which section 20 of the Planning etc. (Scotland) Act 2006 came into force,” and

(iii) in paragraph (g), for the words “outline planning permission” substitute “ planning permission in principle ”.

(2) The title of section 58 becomes “**Duration of planning permission**”.

(3) In section 16 of the listed buildings Act (limit of duration of listed building consent), for subsections (1) and (2) substitute—

“(1) A listed building consent lapses—

- (a) on the expiration of such period (beginning with the date on which the consent is granted) as the planning authority may, for the purposes of this section, specify in the consent, or
- (b) if no period is so specified, on the expiration of a period of 3 years (beginning with that date),

unless the works permitted by the consent are begun before that expiration.

(1A) Subsection (1) does not apply to a listed building consent granted before the date on which section 20 of the Planning etc. (Scotland) Act 2006 came into force.

(2) For the purposes of sections 18(1)(a) and 19(1) and (2)(a)—

- (a) any such specification as is mentioned in subsection (1)(a), or
- (b) the effect of subsection (1) as that subsection applies in consequence of the authority electing not to make such a specification,

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is to be treated as a condition subject to which the application is granted.”.

## 21 Planning permission in principle

(1) For section 59 of the principal Act substitute—

### “59 Planning permission in principle

- (1) “Planning permission in principle” is planning permission (granted in accordance with the provisions of regulations or a development order)—
- (a) in respect of the carrying out of building, engineering, mining or other operations in, on, over or under land, and
  - (b) subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have been approved by the planning authority or as the case may be the Scottish Ministers.
- (2) Application for the approval mentioned in subsection (1)(b)—
- (a) must be made before whichever is latest of the following—
    - (i) the expiration of 3 years from the date of the grant of the permission,
    - (ii) the expiration of 6 months from the date on which an earlier application for the requisite approval was refused, and
    - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed, and
  - (b) may be made for—
    - (i) different matters, and
    - (ii) different parts of the development,
 at different times.
- (3) But, in relation to any matter, only one application may be made by virtue of sub-paragraphs (ii) and (iii) of subsection (2)(a) after the expiration of the 3 year period mentioned in sub-paragraph (i) of that subsection.
- (4) Subject to subsection (5), a planning permission in principle lapses on the expiration of 2 years from the requisite approval being obtained (or, in the case of approval of different matters on different dates, from the requisite approval for the last such matter being obtained) unless the development to which the permission relates is begun before that expiration.
- (5) Where a planning permission in principle is to be granted, the authority concerned with the terms of the permission may direct that (either or both) —
- (a) subsections (2)(a)(i) and (3) are to apply as respects the permission with the substitution, for the period of 3 years referred to in each of those subsections,
  - (b) subsection (4) is to apply as respects the permission with the substitution, for the period of 2 years referred to in that subsection,



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of such other periods respectively (whether longer or shorter) as they consider appropriate.

- (6) For the purposes of section 47(1)(a), (3) and (4)(a)—
- (a) any such direction, or
  - (b) the effect of subsection (4) as that subsection applies in consequence of the authority electing not to make such a direction, is to be treated as a condition subject to which the application is granted.
- (7) A direction under subsection (5) may provide for the substitution of different periods for different parts of the development (or for no substitution to be made for some part of the development).
- (8) In considering whether to exercise their powers under subsections (5) and (7), the authority is to have regard to the provisions of the development plan and to any other material considerations.”.

- (2) Subsection (1) does not affect section 59 in that section's application as respects any outline planning permission granted before the date on which this section comes into force.

## **22 Further provision as regards duration of planning permission etc.**

- (1) In section 60 of the principal Act (provisions supplementary to sections 58 and 59) —
- (a) in subsection (1), for the words “58(1)(b)” substitute “ 58(2) and (3A)(b) ”,
  - (b) in subsection (2), the word “ reserved ” is repealed, and
  - (c) subsections (3) and (4) are repealed.
- (2) In section 61(1) of that Act (termination of planning permission by reference to time limit: completion notices), for paragraph (a) substitute—
- “(a) a development to which a planning permission relates has been begun but not completed by the date on which the permission would have lapsed had the development not been begun.”.
- (3) In section 71(7) (orders requiring discontinuance of use or alteration or removal of buildings or works), for the words “58(1)(b)” substitute “ 58(2) and (3A)(b) ”.
- (4) In section 88(5) (circumstances in which purchase notices may be served), for the words “conditions referred to in” substitute “ provisions of ”.
- (5) In section 232(7) (right to compensation in respect of certain decisions and orders), for the words “conditions referred to in” substitute “ provisions of ”.

VALID FROM 12/12/2008

### *Planning obligations and good neighbour agreements*

## **23 Planning obligations**

- (1) For section 75 of the principal Act substitute—

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### “75 Planning obligations

- (1) A person may, in respect of land in the district of a planning authority—
  - (a) by agreement with that authority, or
  - (b) unilaterally,
 enter into an obligation (referred to in this section and in sections 75A to 75C as a “planning obligation”) restricting or regulating the development or use of the land, either permanently or during such period as may be specified in the instrument by which the obligation is entered into (referred to in this section and in those sections as the “relevant instrument”).
- (2) Without prejudice to the generality of subsection (1), the reference in that subsection to restricting or regulating the development or use of land includes—
  - (a) requiring operations or activities specified in the relevant instrument to be carried out in, on, under or over the land, or
  - (b) requiring the land to be used in a way so specified.
- (3) A planning obligation may—
  - (a) be unconditional or subject to conditions,
  - (b) require the payment—
    - (i) of a specified amount or an amount determined in accordance with the relevant instrument, or
    - (ii) of periodical sums either indefinitely or for such period as may be specified in that instrument, and
  - (c) contain such incidental and consequential provisions as—
    - (i) in the case of an agreement, appear to the planning authority to be necessary or expedient for the purposes of the agreement, or
    - (ii) in the case of a unilateral obligation, appear to the person entering into the obligation to be necessary or expedient for the purposes of that obligation.
- (4) Without prejudice to the generality of subsection (3)(a), the relevant instrument may provide for the postponement of the effectiveness of the planning obligation to a date specified in the instrument (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (5) A relevant instrument to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the instrument is so recorded or registered then the planning obligation is (unless the instrument provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the planning authority—
  - (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (2) or (3)(b), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,

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in so far as the obligation comprises any other requirement.

- (6) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the relevant instrument being so recorded or registered.
- (7) If there is a breach of a requirement, in a planning obligation, to carry out any operations in, on, under or over the land to which the obligation relates, the planning authority may—
  - (a) enter the land and carry out the operations, and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (8) Before a planning authority exercise their power under subsection (7)
  - (a) they are to give any person against whom the planning obligation is enforceable not less than twenty-one days' notice of their intention to do so.
- (9) A person wilfully obstructing someone who is acting in the exercise of a power under subsection (7)(a) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section, “owner” means a person who has right to the land to which the planning obligation relates whether or not that person has completed title; but if, in relation to the land (or, if the land is held *pro indiviso*, in relation to any *pro indiviso* share in the land) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.
- (11) But where a heritable creditor is in lawful possession of security subjects which comprise the land, then “owner” includes the heritable creditor.
- (12) For the purposes of subsection (5) it is immaterial whether the person who is owner of the land when the relevant instrument is recorded or registered was owner when the obligation was entered into.

#### **75A Modification and discharge of planning obligations**

- (1) A planning obligation may not be modified or discharged except—
  - (a) by agreement, by virtue of subsection (2), between the planning authority and a person against whom that obligation is enforceable, or
  - (b) in accordance with this section and section 75B.
- (2) A person against whom a planning obligation is enforceable may apply to the planning authority for their agreement that the obligation—
  - (a) have effect subject to such modifications as may be specified in the application, or
  - (b) be discharged.
- (3) An application under subsection (2)(a) is not to specify a modification imposing an obligation on any non-applicant against whom the planning obligation is enforceable.
- (4) On an application under subsection (2), the authority may determine that the planning obligation—

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- (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
- (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to—
- (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (5).
- (10) In relation to any application referred to the Scottish Ministers by virtue of subsections (1) to (3) of section 46, the references in subsections (4) and (5) (above) to the authority are to be construed as references to the Scottish Ministers.

### **75B Appeals**

- (1) Where a planning authority—
- (a) fail to comply with section 75A(5), or
  - (b) determine that a planning obligation is to continue to have effect without modification,
- the applicant may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
- (a) within such period, and
  - (b) in such manner,
- as may be prescribed.

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- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the planning obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
  - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to the form and content of any notice—
  - (a) served under subsection (3), or
  - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

#### **75C Planning obligations: continuing liability of former owner etc.**

- (1) In so far as a planning obligation comprises an appropriate requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation (unless the relevant instrument provides that he does cease to be so bound).
- (2) The relevant instrument may provide that, in so far as a planning obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation.
- (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in subsection (2) or (3)(b) of section 75 which is due for performance.
- (4) A person who becomes an owner of land the development or use of which is subject to a planning obligation enforceable as is mentioned

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in section 75(5) is, unless the relevant instrument otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.

(5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.

(6) In this section, “owner” has the same meaning as in section 75.”.

(2) Subsections (3) and (4) of section 75 of that Act, as they apply immediately before the coming into force of subsection (1) (above), are to continue so to apply in relation to any agreement entered into under that section before that coming into force.

## 24 Good neighbour agreements

After section 75C of the principal Act (inserted into that Act by section 23(1) of this Act) insert—

### “75D Good neighbour agreements

(1) A person may, by agreement with a community body, enter into an obligation governing operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement.

(2) A body is a community body for the purposes of subsection (1) if—

- (a) it is the community council for an area in which is situated any part of the land to which the agreement relates, or
- (b) it has been notified by the planning authority for the area in which is situated the land to which the agreement relates that, in the opinion of the authority, it is—
  - (i) a body which falls within subsection (3), or
  - (ii) a trust which falls within subsection (4).

(3) A body falls within this subsection if—

- (a) its members have a substantial connection with the land to which the agreement relates, and
- (b) the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.

(4) A trust falls within this subsection if—

- (a) its trustees have a substantial connection with the land to which the agreement relates, and
- (b) the object, or function, of the trust (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.

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- (5) An agreement entered into under subsection (1) may be referred to as a “good neighbour agreement”.
- (6) Without prejudice to the generality of subsection (1), an obligation entered into under that subsection may—
  - (a) require operations or activities specified in the agreement to be carried out in, on, under or over the land, or
  - (b) require the land to be used in a way so specified.
- (7) The obligation—
  - (a) may be unconditional or subject to conditions,
  - (b) may require the provision to the community body of information regarding the development and use of the land to which the agreement relates, and
  - (c) is not to require the payment of money.
- (8) Without prejudice to the generality of subsection (7)(a), the agreement may provide for the postponement of the effectiveness of the obligation to a date specified in the agreement (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (9) A good neighbour agreement to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the agreement is so recorded or registered then the obligation is (unless the agreement provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the community body—
  - (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (6), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,in so far as the obligation comprises any other requirement.
- (10) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the agreement being so recorded or registered.
- (11) In this section, “owner” has the same meaning as in section 75.
- (12) For the purposes of subsection (9) it is immaterial whether the person who is owner of the land when the agreement is recorded or registered was owner when the obligation was entered into.

#### **75E Good neighbour agreements: modification and discharge of obligations**

- (1) An obligation entered into under section 75D(1) may not be modified or discharged except—
  - (a) by agreement between the community body and the person against whom the obligation is enforceable, or
  - (b) in accordance with this section and section 75F.

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- (2) Where the community body and the person against whom the obligation is enforceable are unable to reach agreement regarding the modification or discharge of the obligation, either may apply to the planning authority for the area in which is situated the land to which the agreement relates.
- (3) An application under subsection (2) is one seeking the determination of the planning authority as to whether the obligation is—
  - (a) to have effect subject to such modifications as may be specified in the application, or
  - (b) to be discharged.
- (4) An application under subsection (2) is not to specify a modification imposing an obligation on any non-applicant.
- (5) On an application under subsection (2), the authority may determine that the obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (6) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (7) This subsection applies where—
  - (a) there is agreement such as is mentioned in subsection (1)(a), or
  - (b) a determination is made under subsection (5)(b) or (c),
 concerning an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (8) Where subsection (7) applies, the modification or discharge does not take effect until the date on which—
  - (a) the agreement under subsection (1)(a), or
  - (b) the notice given under subsection (6),
 is so recorded or as the case may be so registered.
- (9) Regulations may make provision with respect to—
  - (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (6).

#### **75F Good neighbour agreements: appeals**

- (1) Where the planning authority—
  - (a) fail to comply with subsection (6) of section 75E, or
  - (b) make a determination under subsection (5) of that section,
 either of the parties referred to in subsection (1)(a) of that section may appeal to the Scottish Ministers.



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- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
  - (a) within such period, and
  - (b) in such manner,as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be is so registered.
- (8) Where the determination is under subsection (4)(c), the obligation is enforceable as modified—
  - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to the form and content of any notice—
  - (a) served under subsection (3), or
  - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

**75G Good neighbour agreements: continuing liability of former owner etc.**

- (1) In so far as the obligation comprises an appropriate requirement, an owner of land does not, by virtue of ceasing to be such an owner, cease

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to be bound by that obligation (unless the good neighbour agreement provides that he does cease to be so bound).

- (2) The agreement may provide that, in so far as the obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by the obligation.
- (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in section 75D(6) which is due for performance.
- (4) A person who becomes an owner of land the development or use of which is subject to an obligation enforceable as is mentioned in section 75D(9) is, unless the agreement otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.
- (5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.
- (6) In this section, “owner” has the same meaning as in section 75.”.

VALID FROM 01/04/2007

## PART 4

### ENFORCEMENT

VALID FROM 12/12/2008

#### *Fixed penalty notices*

### 25 Fixed penalty notices

- (1) After section 136 of the principal Act (offence where enforcement notice not complied with) insert—

**“136A Fixed penalty notice where enforcement notice not complied with**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
  - (b) the activity so specified which has not ceased.

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- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
  - (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
  - (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
  - (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
  - (7) The conditions are that the fixed penalty notice—
    - (a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
    - (b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.
  - (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
  - (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
  - (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
  - (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.”.
- (2) After section 145 of the principal Act (enforcement of conditions) insert—

**“145A Fixed penalty notice where breach of condition notice not complied with**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (5) of section 145, in the breach of condition notice which has not been taken, or
  - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.

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*Changes to legislation:* There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)

- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition notice.
- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the period allowed by section 145(7) for compliance with the breach of condition notice, and
  - (b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.”.

VALID FROM 12/12/2008

### *Stop notices*

#### **26 Temporary stop notices**

- (1) After section 144 of the principal Act (penalties for contravention of stop notice) insert—

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### *“Temporary stop notices*

#### **144A Temporary stop notices**

- (1) If a planning authority consider that—
  - (a) there has been a breach of planning control in relation to any land,
  - (b) the breach consists in engagement in an activity, and
  - (c) it is expedient that the activity (or any part of the activity) is stopped immediately,they may issue a temporary stop notice.
- (2) The notice must be in writing and must—
  - (a) specify the activity in question,
  - (b) prohibit engagement in the activity (or in so much of the activity as is specified in the notice), and
  - (c) set out the authority's reasons for issuing the notice.
- (3) A temporary stop notice may be served on any of the following—
  - (a) a person who appears to the authority to be engaged in the activity,
  - (b) a person who appears to the authority to have an interest in the land (whether as owner or occupier or otherwise).
- (4) The authority must display on the land—
  - (a) a copy of the notice, and
  - (b) a statement as to the effect of section 144C.
- (5) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (4).
- (6) A temporary stop notice ceases to have effect at the end of the period of 28 days starting on the day the copy notice is so displayed.
- (7) Except that if a shorter period starting on that day is specified in the notice, the notice instead ceases to have effect at the end of that shorter period.
- (8) And if the notice is withdrawn by the authority before that period of 28 days, or as the case may be that shorter period, expires the notice ceases to have effect on being so withdrawn.

#### **144B Temporary stop notices: restrictions**

- (1) A temporary stop notice does not prohibit—
  - (a) the use of a building as a dwellinghouse, or
  - (b) engagement in an activity (either or both)—
    - (i) of such description,
    - (ii) in such circumstances,as may be prescribed.
- (2) A temporary stop notice does not prohibit engagement in any activity which has been engaged in (whether continuously or not) for a period of

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more than 4 years ending with the day on which a copy of the notice is first displayed in pursuance of section 144A(4).

- (3) But subsection (2) does not prevent a temporary stop notice prohibiting—
- (a) activity consisting in, or incidental to, building, engineering, mining or other operations, or
  - (b) the deposit of refuse or waste materials.
- (4) For the purposes of subsection (2), any period during which the activity in question is authorised by planning permission is to be ignored.
- (5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the planning authority have in the meantime taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.
- (6) In subsection (5), “enforcement action” includes obtaining the grant of an interdict under section 146(2).

#### **144C Temporary stop notices: offences**

- (1) A person is guilty of an offence if he contravenes a temporary stop notice—
- (a) which has been served on him, or
  - (b) a copy of which has been displayed in pursuance of section 144A(4).
- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of it.
- (3) An offence under this section may be charged by reference to a day or to a period longer than a day.
- (4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
- (a) the temporary stop notice was not served on the accused, and
  - (b) he did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person convicted of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding £20,000,
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.

#### **144D Temporary stop notices: compensation**

- (1) A person who, as at the date on which a temporary stop notice is first displayed in pursuance of section 144A(4), has an interest (whether as

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owner or occupier or otherwise) in the land to which the notice relates is entitled to be compensated by the planning authority in respect of any loss or damage directly attributable to the prohibition effected by that notice.

(2) But subsection (1) applies only if the circumstances are as set out in at least one of the following paragraphs—

- (a) the activity which is specified in the notice is authorised by planning permission granted on or before the date mentioned in that subsection,
- (b) a certificate in respect of the activity is issued under section 150 or granted under that section by virtue of section 154,
- (c) the authority withdraws the notice other than following such grant of planning permission as is mentioned in paragraph (a).

(3) Subsections (3) to (7) of section 143 apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of that application references in those subsections to a stop notice are to be taken to be references to a temporary stop notice.”.

(2) In section 269 of that Act (rights of entry)—

(a) after subsection (1) insert—

“(1A) Any person duly authorised in writing by the planning authority may, at any reasonable time, enter upon land for the purposes of section 144A(4).”, and

(b) in subsection (2), after the words “stop notice” insert “ , temporary stop notice ”.

### *Enforcement charters*

## **27 Enforcement charters**

After section 158 of the principal Act insert—

### *“Enforcement charters*

#### **158A Enforcement charters**

(1) A planning authority are to prepare an enforcement charter; that is to say, a document in which are set out—

- (a) a statement of the authority's policies as regards their taking enforcement action for the purposes of this Act,
- (b) an account of how members of the public are to bring any ostensible breach of planning control to the attention of the authority, and
- (c) an account—
  - (i) of how any complaint to the authority as regards the taking by them of enforcement action is to be made, and
  - (ii) of their procedures for dealing with any such complaint.

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- (2) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and an authority must have regard to any guidance so issued.
- (3) A planning authority must keep their enforcement charter under review and must update and re-publish it—
  - (a) whenever required to do so by the Scottish Ministers, and
  - (b) (subject to paragraph (a)) whenever they think it appropriate to do so but in any event within 2 years after last publishing (or re-publishing) it.
- (4) When they publish, or re-publish, their enforcement charter, the authority are to—
  - (a) send two copies of it to the Scottish Ministers, and
  - (b) place a copy of it in each public library in their district, and such publication, or re-publication, is to include by electronic means (as for example by means of the internet).”

VALID FROM 01/04/2007

## PART 5

### TREES

#### 28 Tree preservation orders

- (1) In section 159 of the principal Act (general duties of planning authority as respects trees)—
  - (a) the words “ of the planning authority ” are repealed,
  - (b) at the beginning of paragraph (a), insert “ of the Scottish Ministers and the planning authority ”,
  - (c) at the beginning of paragraph (b), insert “ of the planning authority ”, and
  - (d) at the end add “, and
    - (c) of the planning authority from time to time to review any order made in exercise of their powers under that section and to consider whether it is requisite to vary or revoke the order in question.”.
- (2) In section 160 of that Act (power to make tree preservation orders)—
  - (a) for subsection (1) substitute—
    - “(1) A planning authority may, if it appears to them that the requirements of subsection (1A) are met, make an order specifying any trees, groups of trees or woodlands in their district and providing for their preservation.
    - (1A) Those requirements are (either or both)—
      - (a) that it is expedient in the interests of amenity to make that provision,



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- (b) that the trees, groups of trees or woodlands are of cultural or historical significance.”
- (b) in subsection (6), the words “ , where paragraph (a) or (b) applies, ” are repealed, and
- (c) after subsection (7) insert—
- “(8) In relation to an application for consent under a tree preservation order the Scottish Ministers may by regulations make provision as to—
- (a) the form and manner in which the application must be made,
- (b) particulars of such matters as are to be included in the application,
- (c) any documents or other materials which are to accompany the application.”.
- (3) In section 161 of that Act (form of, and procedure applicable to, tree preservation orders), for subsection (1) substitute—
- “(1) Subject to section 249, a tree preservation order—
- (a) takes effect on such date as may be specified in the order, but
- (b) expires 6 months after it is made unless it has, within that period, been confirmed by the planning authority.
- (1A) An order may be confirmed under subsection (1)(b) without modification or subject to such modifications as the planning authority consider expedient.”.
- (4) After section 161 insert—
- “161A Imminent danger to trees: entry to affix copy of tree preservation order**
- (1) If it appears to a planning authority that a tree, group of trees or woodlands—
- (a) on land in their district, and
- (b) in respect of which they have made a tree preservation order,
- may be in imminent danger of being cut down, topped, lopped, uprooted, wilfully damaged or wilfully destroyed and accordingly that it is expedient that a copy of the order should be affixed conspicuously to the tree, group of trees or woodlands in question, a person duly authorised in writing by them may enter the land and so affix such a copy.
- (2) Subsection (1) is without prejudice to any provision made by virtue of section 161(3)(b) and (4) as respects notice of the making of the order.”.
- (5) In section 164(2) of that Act (effect of tree preservation order made by Scottish Ministers), after the word “and” insert “ timeously ”.
- (6) In section 168 of that Act (enforcement of duties as to replacement of trees), after subsection (3) insert—
- “(3A) In relation to any tree planted by virtue of a requirement such as is mentioned in subsection (1)(b), the relevant tree preservation order shall apply as it applied to the original trees.”.

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PROSPECTIVE

## PART 6

### CORRECTION OF ERRORS

#### 29 Correction of errors

After Part 11 of the principal Act insert—

#### “PART 11A

##### CORRECTION OF ERRORS

#### 241A Correction of errors in decisions

- (1) This section applies if the Scottish Ministers issue, or a person appointed by them under any of the planning Acts to determine appeals in their stead, issues, a decision document which contains a correctable error.
- (2) The issuer may correct the error—
  - (a) if requested to do so in writing by any person, or
  - (b) if the issuer sends a statement in writing to the applicant which explains the error and states that consideration is being given to making the correction.
- (3) But the issuer must not correct the error unless the issuer—
  - (a) not later than the end of the relevant period receives a request mentioned in subsection (2)(a) or sends a statement mentioned in subsection (2)(b),
  - (b) informs the planning authority of that fact, and
  - (c) obtains the appropriate consent.
- (4) The relevant period is the period within which an application or appeal may be made to the Court of Session in respect of the decision recorded in the decision document.
- (5) It is immaterial whether any such application or appeal is made.
- (6) The appropriate consent is the consent in writing of the applicant except where the applicant is not the owner of the land in respect of which the decision is made, in which case it is the consent in writing of both the applicant and the owner.
- (7) But consent is not appropriate consent if it is subject to a condition.

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#### 241B Correction notice

- (1) If paragraph (a) or (b) of section 241A(2) applies the issuer must as soon as practicable after making any correction or deciding not to make any correction give notice in writing (a “correction notice”) which—
  - (a) specifies the correction of the error, or
  - (b) intimates the issuer's decision not to make such a correction.
- (2) The issuer must give the correction notice—
  - (a) to the applicant,
  - (b) if the applicant is not the owner of the land in respect of which the original decision was made, to that owner,
  - (c) to the planning authority, and
  - (d) if the correction was requested by any other person, to that person.
- (3) The Scottish Ministers may by order specify any other person or description of person to whom the correction notice must be given.

#### 241C Effect of correction

- (1) If a correction is made in pursuance of section 241A—
  - (a) the original decision is taken not to have been made, and
  - (b) the decision as corrected is taken for all purposes to have been made on the date the correction notice is given to the applicant.
- (2) If the correction is not made—
  - (a) the original decision continues to have full force and effect, and
  - (b) nothing in this Part affects anything done in pursuance of, or in respect of, the decision.
- (3) Section 239 (proceedings for questioning the validity of certain decisions) applies to the correction notice as if it were an action on the part of the Scottish Ministers to which that section applies, if the decision document in respect of which the correction notice is given records a decision mentioned in paragraph (a) of section 241D(3).
- (4) Section 58 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) (proceedings for questioning the validity of certain decisions) applies to the correction notice as if it were a decision of the Scottish Ministers to which that section applies, if the decision document in respect of which the correction notice is given records a decision mentioned in either of paragraphs (c) and (d) of section 241D(3).
- (5) Section 20 of the Planning (Hazardous Substances) (Scotland) Act 1997 (c. 10) (proceedings for questioning the validity of certain decisions) applies to the correction notice as if it were a decision of the Scottish Ministers under section 18 or 19 of that Act, if the decision document in respect of which the correction notice is given records a decision mentioned in paragraph (e) of section 241D(3).
- (6) If the decision document in respect of which the correction notice is given records a decision mentioned in paragraph (f) of section 241D(3), the Scottish

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Ministers must by order make provision for questioning the validity of the notice which corresponds to the provisions of section 239, section 58 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) and section 20 of the Planning (Hazardous Substances) (Scotland) Act 1997.

- (7) Except to the extent provided for by virtue of this section, a correction notice shall not be questioned in any legal proceedings whatsoever.

#### 241D Provisions supplementary to sections 241A to 241C

- (1) This section applies for the purposes of this Part.
- (2) In the case of a decision document issued by a person appointed as mentioned in section 241A(1), any other person so appointed may act under this Part.
- (3) A decision document is a document which records any of the following decisions—
  - (a) a decision of any description which constitutes action on the part of the Scottish Ministers under section 237(3) (decisions which are not to be questioned in legal proceedings),
  - (b) a decision in proceedings on an appeal under section 169 (appeals against enforcement notices relating to trees),
  - (c) a decision mentioned in section 57(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) (decisions which are not to be questioned in legal proceedings),
  - (d) a decision relating to conservation area consent within the meaning of section 66(1) of that Act (consent required for demolition of certain buildings),
  - (e) a decision under section 18 or 19 of the Planning (Hazardous Substances) (Scotland) Act 1997 (certain applications referred to and appeals determined by the Scottish Ministers),
  - (f) a decision under any of the planning Acts which is of a description specified by the Scottish Ministers by order.
- (4) A correctable error is an error which—
  - (a) is contained in any part of the decision document which records the decision,
  - (b) is not part of any reasons given for the decision.
- (5) The applicant is, in the case of a decision made on—
  - (a) an application under any of the planning Acts, the person who made the application, or
  - (b) an appeal under any of those Acts, the appellant.
- (6) Error includes omission.”.

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PROSPECTIVE

## PART 7

### ASSESSMENT

#### **30 Assessment of planning authority's performance or decision making**

After Part 12 of the principal Act insert—

#### **“PART 12A**

##### ASSESSMENT OF PLANNING AUTHORITY'S PERFORMANCE OR DECISION MAKING

#### **251A Assessment of planning authority's performance**

The Scottish Ministers may conduct, or appoint a person (in this section and in section 251C referred to as the “appointed person”) to conduct on their behalf, an assessment of a planning authority's performance—

- (a) of functions generally under the planning Acts, or
- (b) of particular functions under those Acts,

(not being an assessment which may be conducted under section 251B).

#### **251B Assessment of planning authority's decision making**

- (1) The Scottish Ministers may conduct, or appoint a person (in this section and in section 251C referred to as the “appointed person”) to conduct on their behalf, an assessment of how a planning authority deal with applications for planning permission, and in particular as to the basis on which determinations have been made, the processes by which they have been made and as to whether they have been made in accordance with the development plan or in conformity with advice given to the authority by the Scottish Ministers.
- (2) No such assessment is to have regard to a decision made by a planning authority within the period of one year which immediately precedes the assessment being notified under section 251C(1).

#### **251C Further provision as respects assessment of performance or decision making**

- (1) Before conducting, or appointing a person to conduct, an assessment under section 251A or 251B, the Scottish Ministers are to notify the planning authority of their intention in that regard and as to the intended scope of the assessment; and on making any such appointment they are to advise the planning authority as to the identity of the appointed person.
- (2) Without prejudice to the generality of subsection (1), in determining for the purposes of that subsection the intended scope of an assessment

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under section 251B the Scottish Ministers may in particular relate their determination to (any or all)—

- (a) a type of application for planning permission,
- (b) a period of time within which such an application was made, or
- (c) a geographical area.

(3) For the purposes of any assessment conducted under section 251A or 251B, the Scottish Ministers or the appointed person may require access at all reasonable times—

- (a) to any premises of the planning authority, and
- (b) to any document relating to the authority which appears to the Scottish Ministers, or as the case may be to the appointed person, to be necessary for the purposes of the assessment.

(4) As the case may be—

- (a) the Scottish Ministers may require a person holding or accountable for any such document—
  - (i) to give them such information and explanation as they think necessary for those purposes, and
  - (ii) to attend in person before them to give the information or explanation or to produce the document, or
- (b) the appointed person may require a person so holding or accountable—
  - (i) to give the appointed person such information and explanation as the appointed person thinks necessary for those purposes, and
  - (ii) to attend in person before the appointed person to give the information or explanation or to produce the document.

(5) The planning authority must provide the Scottish Ministers, or as the case may be the appointed person, with—

- (a) every facility, and
- (b) all information,

which the Scottish Ministers or the appointed person may reasonably require to be provided for the purposes of the assessment.

(6) The Scottish Ministers are, or as the case may be the appointed person is—

- (a) to give 3 clear days' notice of any requirement under this section, and
- (b) must, if reasonably required to do so by the planning authority, produce a document of identification.

(7) A person who without reasonable excuse fails to comply with a requirement made of the person under subsection (3), (4) or (5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **251D Report of assessment**

(1) On completion of an assessment conducted under section 251A or 251B—

- (a) by the Scottish Ministers, they are—
  - (i) to prepare a report, and

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- (ii) to issue it to the planning authority, or
- (b) by an appointed person, that person is—
  - (i) to prepare a report,
  - (ii) to submit it to the Scottish Ministers, and
  - (iii) to issue it to the planning authority.
- (2) A report prepared under subsection (1)(a)(i) or (1)(b)(i) is in this section referred to as an “assessment report”.
- (3) The assessment report may in the case of an assessment carried out under—
  - (a) section 251A, recommend improvements which the planning authority should make as to how they carry out their functions under the planning Acts, and
  - (b) section 251B, recommend improvements which the planning authority should make as to how they deal with applications for planning permission.
- (4) A planning authority receiving an assessment report are, within the 3 months which immediately follow such receipt or within such longer period as may be agreed between them and the Scottish Ministers, to prepare and to submit to the Scottish Ministers a report (in this section referred to as a “response report”) as to—
  - (a) the extent to which, the manner in which and the period within which they propose to implement the recommendations of the assessment report, or
  - (b) in so far as they decline to implement those recommendations, their reasons for so declining.
- (5) Any person who—
  - (a) issues an assessment report to a planning authority, or
  - (b) submits a response report to the Scottish Ministers,is to publish it.
- (6) If—
  - (a) the planning authority decline to implement recommendations of the assessment report, or
  - (b) it appears to the Scottish Ministers that the planning authority are not timeously carrying out such implementation as the authority proposed in the response report,the Scottish Ministers may issue a direction to the planning authority requiring them to take such action as is specified in the direction.
- (7) The Scottish Ministers may vary or revoke a direction issued under subsection (6).
- (8) The Scottish Ministers are to publish—
  - (a) any direction issued under subsection (6), and
  - (b) any variation or revocation of such a direction.
- (9) In this section, “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).”.

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VALID FROM 01/04/2007

## PART 8

### FINANCIAL PROVISIONS

VALID FROM 14/05/2009

#### 31 Fees and charges

In section 252 of the principal Act (fees for planning applications etc.)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may by regulations make provision for the payment of a charge or fee to a planning authority in respect of—

- (a) the performance by the planning authority of any of the authority's functions,
- (b) anything done by the authority which is calculated to facilitate, or is conducive or incidental to, the performance of any such function.

(1A) The regulations may (any or all)—

- (a) specify the person by whom the charge or fee is to be paid,
- (b) make provision as to how the charge or fee is to be calculated,
- (c) specify the person by whom the calculation is to be made,
- (d) make different provision for different classes of case,
- (e) specify circumstances in which no charge or fee is to be paid,
- (f) specify circumstances in which the charge or fee is to be transferred from one planning authority to another.

(1B) Without prejudice to the generality of paragraph (d) of subsection (1A), in relation to applications for planning permission, different provision may be made under that paragraph according to whether an application is made before or after the carrying out of the development to which it relates.”, and

(b) for subsections (3) to (5) substitute—

“(3) Regulations under—

- (a) subsection (1), may provide for the remission or refunding of a prescribed charge or fee,
- (b) subsection (2), may provide for the remission or refunding of a prescribed fee,

(in whole or in part) in prescribed circumstances.



*Status: Point in time view as at 20/12/2006. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)*

- (4) Without prejudice to the generality of subsection (3), circumstances prescribed under that subsection may include those where the Scottish Ministers consider (or a person appointed by them under or by virtue of this Act considers) that in the performance or actings in respect of which the charge or fee is payable—
  - (a) the planning authority have behaved unreasonably, or
  - (b) there has been unreasonable delay.
- (5) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament in so far as they are made by virtue of—
  - (a) subsection (1A)(b) and consist in amendments consequential upon changes in the cost of living, in the retail prices index or in an inflation index, or
  - (b) subsection (1A)(c).
- (6) Subject to subsection (5), regulations under subsection (1) or (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.
- (7) Where a charge or fee is calculated in pursuance of the regulations, the planning authority must secure that, taking one financial year with another, the income from the fee or charge does not exceed the cost of the performance of the function or, as the case may be, of the doing of the thing.
- (8) A financial year is a period of 12 months beginning with 1 April.”.

## **32 Grants for advice and assistance**

After section 253 of the principal Act insert—

### **“253A Grants for advice and assistance**

- (1) The Scottish Ministers may make grants for the purpose of assisting any person to provide advice and assistance in connection with any matter which is related to the planning Acts or the Planning etc. (Scotland) Act 2006 (asp 17).
- (2) The Scottish Ministers may, as respects any such grant, provide that it is to be subject to such terms and conditions as they think appropriate.”.

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VALID FROM 06/02/2007

## PART 9

### BUSINESS IMPROVEMENT DISTRICTS

#### *BID arrangements*

#### **33 Arrangements with respect to business improvement districts**

- (1) A local authority may in accordance with this Part make arrangements (“*BID arrangements*”) with respect to an area (a “*business improvement district*”) comprising all or part of the area of the authority.
- (2) A business improvement district may comprise areas which are not adjacent to each other.
- (3) The purpose of *BID arrangements* is to enable the projects specified in the arrangements to be carried out for the benefit of the business improvement district or those who live, work or carry on any activity in the district.

#### **34 Joint arrangements**

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision for or in connection with enabling two or more local authorities to make *BID arrangements* with respect to a business improvement district comprising all or part of the area of each of the authorities.
- (2) The provision which may be made by regulations under this section includes provision which modifies any provision made by or under this Part in its application to such arrangements.

#### **35 Additional contributions and action**

- (1) The persons specified in subsection (2) may make financial contributions or take action for the purpose of enabling the projects specified in *BID arrangements* to be carried out.
- (2) Those persons are—
  - (a) the local authority which has made the arrangements, and
  - (b) any other person authorised or required to do so in accordance with the arrangements.

#### **36 Duty to comply with arrangements**

Where *BID arrangements* are in force, the local authority which made the arrangements must comply with them.

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*Changes to legislation:* There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)

*Administration etc.*

**37 BID Revenue Account**

- (1) A local authority which has made BID arrangements must, in accordance with proper practices, keep an account, to be called the BID Revenue Account.
- (2) Amounts paid to the authority for the purpose of enabling the projects specified in the BID arrangements to be carried out must be credited to the BID Revenue Account.
- (3) Amounts are to be debited to the BID Revenue Account only in accordance with BID arrangements.
- (4) The Scottish Ministers may by regulations made by statutory instrument make further provision in relation to the BID Revenue Account.

*Procedure*

**38 BID proposals**

- (1) BID arrangements are not to come into force unless proposals for the arrangements (“BID proposals”) are approved by a ballot.
- (2) The Scottish Ministers may by regulations made by statutory instrument make provision—
  - (a) as to the persons who may draw up BID proposals,
  - (b) as to consultation on BID proposals,
  - (c) as to other procedures to be followed in connection with the drawing up of BID proposals,
  - (d) as to the matters to be included in BID proposals, and
  - (e) as to the date which may be provided under BID proposals for the coming into force of BID arrangements which give effect to the proposals.
- (3) No ballot may be held for the purposes of subsection (1) unless the persons drawing up the BID proposals satisfy the local authority that the proposals are supported by at least 5% of those entitled to vote in the ballot; and regulations under subsection (2) may make provision—
  - (a) as to the procedures to be followed for the purposes of this subsection; and
  - (b) as to the time by which the local authority must be so satisfied.

**39 Entitlement to vote in ballot**

- (1) Entitlement to vote in a ballot held for the purposes of section 38(1) is to be determined in accordance with this section.
- (2) When submitting BID proposals to the local authority, those who have drawn up the proposals are also to submit a statement as to which eligible persons are to be entitled to vote in the ballot.
- (3) The statement—
  - (a) is to specify that the persons entitled to vote are—
    - (i) those who are eligible persons under subsection (4), or

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- (ii) those who are eligible persons under subsections (4) and (5), and
- (b) may specify that only those who are eligible persons in respect of property of a description set out in the statement are entitled to vote.
- (4) A person is an eligible person under this subsection if on the relevant date that person is subject to the non-domestic rate in respect of relevant property.
- (5) Subject to subsections (6) to (8), a person is an eligible person under this subsection if on the relevant date that person—
- (a) is an eligible tenant or the owner of relevant property, and
- (b) is not subject to the non-domestic rate in respect of that property.
- (6) An owner of property is an eligible person under subsection (5) only if on the relevant date there is no eligible tenant of that property.
- (7) Where there is more than one eligible tenant of property on the relevant date, the eligible person under subsection (5) is whichever of those tenants has no eligible tenant as a sub-tenant.
- (8) The Scottish Ministers may by regulations made by statutory instrument make provision altering who is to be an eligible person under subsection (5).
- (9) Subject to subsections (10) and (11), in this section the “owner” of property means the person who has right to the property whether or not that person has completed title.
- (10) If, in relation to property (or, if the property is held *pro indiviso*, in relation to any *pro indiviso* share in the property) more than one person comes within the description of owner in subsection (9), then “owner” means such person as has most recently acquired the right to the property.
- (11) Where a heritable creditor is in lawful possession of security subjects which comprise the property, then “owner” means that heritable creditor.
- (12) In this section—
- “eligible tenant”, in relation to property, means a tenant or sub-tenant of property under a lease or sub-lease which has at least 5 years to run who is not subject to the non-domestic rate in respect of the property;
- “non-domestic rate” is to be construed in accordance with section 7B of the Local Government (Scotland) Act 1975 (c. 30);
- “relevant date” means such date as is specified in the statement referred to in subsection (2); and
- “relevant property” means lands and heritages—
- (a) which are within the business improvement district; and
- (b) in respect of which there is an entry on the valuation roll made up under section 1 of the Local Government (Scotland) Act 1975.

#### **40 Approval in ballot**

- (1) BID proposals are not to be regarded as approved by a ballot held for the purposes of section 38(1) unless four conditions are satisfied.
- (2) Except where section 41 applies, the four conditions are those set out in subsections (3), (4), (5) and (6).

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- (3) The first condition is that the number of votes cast in favour of the BID proposals exceeds the number of votes cast against those proposals.
- (4) The second condition is that A exceeds B.
- (5) The third condition is that at least 25% of the persons entitled to vote in the ballot have done so.
- (6) The fourth condition is that the total of A plus B is equal to at least 25% of the aggregate of the rateable values of all lands and heritages in respect of which a person is entitled to vote in the ballot.
- (7) Except in the case referred to in subsection (9), “A” is the aggregate of the rateable values of the lands and heritages in respect of which a person voting in the ballot has voted in favour of the BID proposals.
- (8) Except in the case referred to in subsection (9), “B” is the aggregate of the rateable values of the lands and heritages in respect of which a person voting in the ballot has voted against the BID proposals.
- (9) The Scottish Ministers may by regulations made by statutory instrument make provision as to the meaning of “A” and “B” in the case of a ballot following on the submission of a statement which specifies entitlement to vote in accordance with sub-paragraph (ii) of section 39(3)(a).
- (10) Regulations under subsection (9) may delegate functions in connection with the calculation of “A” and “B” to the persons who have drawn up the BID proposals which are the subject of the ballot.
- (11) For the purposes of subsections (6), (7) and (8), the rateable value of lands and heritages is that shown on the valuation roll on the day of the ballot.

#### **41 Approval in ballot – alternative conditions**

- (1) This section applies where the persons who have drawn up the BID proposals so specify when submitting those proposals to the local authority in advance of a ballot being held for the purposes of section 38(1).
- (2) Section 40(1) shall have effect in respect of that ballot subject to either or both of the following—
  - (a) the substitution of the condition set out in subsection (3) below for that set out in subsection (3) of section 40,
  - (b) the substitution of the condition set out in subsection (4) below for that set out in subsection (4) of section 40.
- (3) The condition is that the number of votes cast in favour of the BID proposals must exceed the number of votes cast against those proposals by such number or percentage as may be specified by the persons who have drawn up the BID proposals.
- (4) The condition is that A must exceed B by such amount or percentage as may be specified by the persons who have drawn up the BID proposals.
- (5) In subsection (4), “A” and “B” have the same meanings as in subsections (7) and (8) of section 40 or, in the case referred to in subsection (9) of that section, as in regulations under subsection (9).

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## **42 Power of veto**

- (1) This section applies where a ballot is to be held for the purposes of section 38(1).
- (2) By such date prior to the date of the ballot as may be prescribed, the local authority to which the BID proposals relate are to give to—
  - (a) the persons who have drawn up the proposals, and
  - (b) the Scottish Ministers,
 notice that the authority are or are not vetoing the proposals.
- (3) The authority may veto proposals only in the circumstances specified in subsection (4) and are not entitled to do so after the date prescribed for the purposes of subsection (2).
- (4) Those circumstances are that the local authority consider that the BID proposals are likely—
  - (a) to conflict with any structure plan, local plan, strategic development plan or local development plan which has been approved or adopted under the principal Act and which applies to the proposed business improvement district or any part of it,
  - (b) to conflict to a material extent with any policy formally adopted by and contained in a document published by the authority (whether or not the authority are under a statutory duty to prepare such a document), or
  - (c) to lead to a significantly disproportionate financial burden being imposed on—
    - (i) any person entitled to vote in the ballot on the proposals, or
    - (ii) any class of such persons,
 as compared to other such persons or classes.
- (5) The Scottish Ministers may by regulations made by statutory instrument amend subsection (4) so as to change or add to the circumstances in which a local authority may veto proposals.
- (6) Where the local authority have vetoed the BID proposals, no ballot shall be held.
- (7) In deciding whether to exercise the veto, the local authority are to have regard to such matters as may be prescribed.
- (8) A notice under subsection (2) vetoing the BID proposals must—
  - (a) set out the reasons for the exercise of the veto, and
  - (b) give details of the right of appeal under section 43.
- (9) Any other notice under subsection (2) must set out the reasons for not exercising the veto.

## **43 Appeal against veto**

- (1) Where a local authority veto BID proposals, any person who would have been entitled to vote in the ballot may appeal to the Scottish Ministers.
- (2) The Scottish Ministers may by regulations made by statutory instrument make provision in relation to appeals under this section, including provision—
  - (a) as to the time by which an appeal is to be made,
  - (b) as to the manner in which an appeal is to be made,

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- (c) as to the procedure to be followed in connection with an appeal, and
- (d) as to the matters to be taken into account in deciding whether to allow an appeal.

#### **44 Commencement of BID arrangements**

- (1) This section applies where BID proposals are approved by a ballot held for the purposes of section 38(1).
- (2) The local authority concerned must ensure that BID arrangements which give effect to the proposals are made by the time the arrangements are to come into force in accordance with this section.
- (3) The BID arrangements are to come into force on such day as may be provided under the BID proposals.

#### *Miscellaneous*

#### **45 Duration of BID arrangements etc.**

- (1) BID arrangements are to have effect for such period (not exceeding 5 years) as may be specified in the arrangements.
- (2) BID arrangements may be renewed for one or more periods each of which must not exceed 5 years, but only if the renewal of the arrangements on that or each occasion is approved by a ballot.
- (3) The renewal of BID arrangements is not to be regarded as approved by a ballot held for the purposes of subsection (2) unless the conditions which applied to the approval of the BID proposals (by virtue of section 40 and, where relevant, section 41) are satisfied in relation to the renewal of the arrangements.
- (4) The Scottish Ministers may by regulations made by statutory instrument make provision—
  - (a) as to the alteration of BID arrangements, and
  - (b) as to the termination of BID arrangements.
- (5) The provision which may be made by virtue of subsection (4)(a) or (b) includes provision preventing or restricting the alteration or early termination of BID arrangements.
- (6) Nothing in subsection (5) is to be taken as limiting the power conferred by subsection (4).

#### **46 Regulations about ballots**

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision in relation to ballots.
- (2) The provision which may be made by regulations under this section includes provision—
  - (a) as to the timing of ballots,

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- (b) as to the persons entitled to vote in a ballot held for the purposes of section 45(2),
  - (c) as to the question to be asked in a ballot,
  - (d) as to the allocation of votes to those persons entitled to vote in a ballot,
  - (e) as to the form that ballots may take,
  - (f) as to the persons who are to hold ballots,
  - (g) as to the conduct of ballots,
  - (h) conferring power on the Scottish Ministers to declare ballots void in cases of material irregularity,
  - (i) for or in connection with enabling a local authority to recover the costs of a ballot from such persons and in such circumstances as may be prescribed.
- (3) Nothing in subsection (2) is to be taken as limiting the power conferred by subsection (1).
- (4) In this section (except in subsection (2)(b)) “ballot” means a ballot held for the purposes of section 38(1) or 45(2).

#### **47 Further provision as to regulations under Part 9**

- (1) Subject to subsections (2) and (3), a statutory instrument containing regulations made under this Part is subject to annulment in pursuance of a resolution of the Parliament.
- (2) A statutory instrument containing regulations made under section 39(8) or 42(5) is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.
- (3) On the first occasion on which regulations are made under section 40(9), the statutory instrument containing the regulations is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

#### **48 Crown application of Part 9**

This Part binds the Crown.

#### **49 Interpretation of Part 9**

In this Part—

“BID arrangements” has the meaning given by section 33;

“BID proposals” has the meaning given by section 38;

“business improvement district” has the meaning given by section 33;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and

“prescribed” means prescribed by regulations made by statutory instrument by the Scottish Ministers.



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## PART 10

### MISCELLANEOUS AND GENERAL PROVISIONS

VALID FROM 06/02/2007

#### *Miscellaneous*

VALID FROM 01/04/2007

#### **50 National Scenic Areas**

After section 263 of the principal Act insert—

#### *“National Scenic Areas*

##### **263A National Scenic Areas**

- (1) Where it appears to the Scottish Ministers that an area is of outstanding scenic value in a national context and that the special protection measures specified in subsection (2) are appropriate for it, they may by direction designate the area as a National Scenic Area.
- (2) Where any area is for the time being designated as a National Scenic Area, special attention is to be paid to the desirability of safeguarding or enhancing its character or appearance in the exercise, with respect to any land in that area, of any powers under this Act.
- (3) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and that authority must have regard to any guidance so issued.
- (4) In deciding whether to designate an area as a National Scenic Area, the Scottish Ministers are to take account of—
  - (a) whether the area is of outstanding natural beauty,
  - (b) the amenity of the area, including—
    - (i) whether it is of historical, cultural or environmental importance; and
    - (ii) the nature of any buildings or other structures within it, and
  - (c) any flora, fauna or geographical features of the area, whether or not to any extent the product of human intervention in the landscape.
- (5) Any designation under subsection (1) may be varied or cancelled by a subsequent direction.
- (6) Before issuing a direction under subsection (1) or (5), the Scottish Ministers are to consult with—
  - (a) Scottish Natural Heritage, and

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(b) such other persons as are prescribed.

(7) The Scottish Ministers are to compile and make available for inspection free of charge a list containing particulars of any area which has been designated as a National Scenic Area.

(8) For the purposes of subsection (7), a list may be made available by electronic means.

(9) The Scottish Ministers may by regulations make provision as to—

- (a) the form of any direction under subsection (1) or (5),
- (b) the manner in which a National Scenic Area is to be described in such a direction,
- (c) the publicity to be given to any such direction, and
- (d) other procedural matters in connection with the making of such a direction.

(10) Regulations under this section may make different provision for different purposes.”.

VALID FROM 01/04/2007

## 51 Equal opportunities

Before section 271 of the principal Act insert—

### “270B Equal opportunities

- (1) The Scottish Ministers and planning authorities must perform their functions under this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) “Equal opportunities” and “equal opportunity requirements” have the same meanings in this section as they have in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).”.

VALID FROM 12/12/2008

## 52 Regulations in connection with inquiries etc.

(1) After section 275 of the principal Act insert—

### “275A Further provision as regards regulations: inquiries etc.

- (1) Subject to any other provision made by this Act as regards the procedure to be followed in connection with inquiries, hearings, referrals or reviews conducted under or by virtue of the Act, the Scottish Ministers may under this subsection make regulations as regards such procedure.

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**Changes to legislation:** There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)

(2) Without prejudice to the generality of subsection (1), such regulations may relate to procedure in connection with matters preparatory to such inquiries, hearings, referrals or reviews and in connection with matters subsequent to them.”.

(2) In section 9 of the Tribunals and Inquiries Act 1992 (c. 53) (procedure in connection with statutory inquiries) at the end there is added—

“(5) For the purposes of the application of this section to Scotland, the expression “statutory inquiry” in subsections (1) to (3) is not to be construed as including an inquiry held under section 265 of, or paragraph 6 of Schedule 4 to, the Town and Country Planning (Scotland) Act 1997 (c. 8).”.

VALID FROM 28/02/2009

### 53 Old development plans

(1) Schedule 1 to the principal Act (old development plans) is amended as follows.

(2) In paragraph 1, the words from “a development plan” to the end become paragraph (a); and after that paragraph there is added “, and

(b) except in paragraph 5, a development plan within the meaning of section 24 as that section applied immediately before the coming into force of section 2 of the Planning etc. (Scotland) Act 2006 (asp 17)”.

(3) In paragraph 2, for the words “commencement of this Act” substitute “ coming into force of that section ”.

(4) In paragraph 3, after the words—

(a) “old development plan” insert “, not being the structure plan or local plan, ”

(b) “those of” insert “ the strategic development plan or ”, and

(c) “provisions of” insert “ the strategic development plan or as the case may be ”.

(5) Paragraph 4 is repealed.

(6) In paragraph 6, for the words from “adoption” to the end substitute “—

(a) approval of a strategic development plan under section 13, so much of any structure plan as relates to the area to which the plan so approved relates,

(b) adoption of a local development plan under section 20, so much of any old development plan as relates to the area to which the plan so adopted relates,

shall cease to have effect. ”.

(7) In paragraph 7, for the words “local plan” substitute “ plan so approved, or as the case may be adopted, ”.

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- (8) In paragraph 9, after the word “district” insert “, and the strategic development planning authority for any strategic development plan area,”.
- (9) The heading to paragraphs 6 to 9 becomes “*Discontinuance of old development plan on approval of strategic development plan or adoption of local development plan*”.
- (10) After paragraph 9 there is added—

**10      “Further provision as to interpretation**

In this Schedule, “structure plan” is to be construed in accordance with section 6 and “local plan” in accordance with section 11 as those sections applied immediately before the coming into force of section 2 of the Planning etc. (Scotland) Act 2006 (asp 17).”.

**54      Further amendment of the principal Act**

- (1) The principal Act is amended as follows.
- (2) In section 1 (planning authorities), at the end add—
- “(3) This section is subject to the provisions of this Act and of any other enactment.”.
- (3) In section 30(2) (development orders: general)—
- (a) in paragraph (a), at the end (but before the word “or” which immediately follows the paragraph) add “ and according to whether a development is a national development, a major development or a local development ”, and
- (b) in paragraph (b), after the words “of land” insert “, or to such categories of development,”.
- (4) In section 33 (planning permission for development already carried out), at the end add—
- “(4) But subsection (3) does not apply if, before the date of the application, an enforcement notice was issued in respect of the development.”.
- (5) In section 37 (determination of applications: general considerations)—
- (a) in subsection (1)(a), for the words “58 and 59” substitute “ 27B(2) and 59(1)(b) ”, and
- (b) in subsection (4), after the words “which the” insert “ notice of the ”.
- (6) In section 130(1)(b) (appeal against enforcement notice), for the words “those matters” substitute “ the matters which, by virtue of section 128(1)(a) have been stated in the notice,”.
- (7) In section 135(11) (construing the expression “compliance period” in relation to an enforcement notice), after the words “136,” insert “ 136A,”.
- (8) In section 156(1)(b) (right to enter without warrant), after the words “144,” insert “ 144A,”.
- (9) In section 160(6)(c) (saving in respect of certain obligations), at the end add “ or an Act of the Scottish Parliament ”.

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- (10) In section 216(6)(b) (references to development which has received specific parliamentary approval)—
- (a) in sub-paragraph (i), at the end add “ or by a private Act of the Scottish Parliament ”, and
  - (b) in sub-paragraph (ii), at the end add “ or by the Scottish Parliament ”.
- (11) In section 237 (validity of development plans and certain orders, decisions and directions)—
- (a) in subsection (1), for paragraph (a) substitute—
    - “(a) a strategic development plan or local development plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted,”, and
  - (b) in subsection (3)—
    - (i) before paragraph (a) insert—
      - “(za) any decision on an application under section 31A;”,
    - (ii) after paragraph (c) insert—
      - “(ca) any determination on an appeal under section 75B or 75F;”, and
    - (iii) after paragraph (f) insert—
      - “(fa) any decision on an appeal under section 169;”.
- (12) In section 238 (proceedings for questioning validity of development plans and certain schemes and orders)—
- (a) in subsection (1)—
    - (i) for the words from “structure” to “the alteration, repeal or replacement” substitute “ strategic development plan or local development plan desires to question the validity of the plan ”, and
    - (ii) in paragraph (b), for the words from “requirement” to the end substitute “ relevant requirement of that Part or of any regulations made under that Part has not been complied with, ”,
  - (b) in subsection (2)—
    - (i) in paragraph (a), the words “or, as the case may be, the alteration, repeal or replacement”, and
    - (ii) in paragraph (b), the words “or, as the case may be, the alteration, repeal or replacement” in both places they occur,are repealed,
  - (c) in subsection (3), the words “ or an alteration, repeal or replacement ” are repealed, and
  - (d) in subsection (5)—
    - (i) in paragraph (a), for the words from “such” to the end substitute “ a strategic development plan, the date of its publication under section 14(1)(b); ”, and
    - (ii) after that paragraph insert—
      - “(aa) in the case of an application in respect of a local development plan, the date of its publication under section 20A(1)(b);”.

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**Changes to legislation:** There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)

- (13) In section 242A(11) (urgent Crown development: application), for the word “to”, where it first occurs, substitute “ and ”.
- (14) In section 255(2)(a) (contributions by local authorities and statutory undertakers), for the words “carrying out of a survey or the preparation of a structure plan or a local” substitute “ preparation of a strategic development plan or a local development ”.
- (15) In section 269(1)(a) (rights of entry)—
- (a) for the words “structure plan or local” substitute “ strategic development plan or local development ”, and
  - (b) the words “ including the carrying out of any survey under that Part ” are repealed.
- (16) In section 275 (regulations and orders)—
- (a) after subsection (2) insert—
 

“(2A) Any power conferred by this Act to make regulations or orders includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.”,
  - (b) in subsection (4)—
    - (i) for the word “5” substitute “ 4(1) ”, and
    - (ii) for the words “and 100(3)(a)” substitute “ , 100(3)(a), 241B(3), 241C(6) and 241D(3)(f) ”,
  - (c) in subsection (5), for the words “5, 54 or 100(3)(a)” substitute “ 4(1), 54, 100(3)(a), 241B(3), 241C(6) or 241D(3)(f) ”,
  - (d) in subsection (6), after the words “subsection (7))” insert “ or in an Act of the Scottish Parliament (other than a private Act or an enactment specified in subsection (7)) ”,
  - (e) in subsection (7)(b), after the words—
    - (i) “of Parliament” insert “ or of the Scottish Parliament ”, and
    - (ii) “by Parliament” insert “ or by the Scottish Parliament ”, and
  - (f) after subsection (7) insert—
 

“(7A) On the first occasion on which regulations are made under each of paragraph (d) of section 7(1) and paragraph (a)(i) of section 19(10), the statutory instrument containing the regulations is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

(7B) A statutory instrument containing regulations made under section 136A(4) or 145A(4) is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.”.
- (17) In section 277 (interpretation)—
- (a) in subsection (1)—
    - (i) at the appropriate places insert—
 

““local development plan” shall be construed in accordance with section 15;”,

““local developments” has the meaning given by section 26A;”,

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**Changes to legislation:** There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)

- ““major developments” has the meaning given by section 26A;”,
- ““national developments” has the meaning given by section 3A(4)(b);”,
- ““National Planning Framework” has the meaning given by section 3A(1);”,
- ““strategic development plan” shall be construed in accordance with section 7;”,
- ““strategic development plan area” shall be construed in accordance with section 5;”,
- ““strategic development planning authority” has the meaning given by section 4(5);”, and
- ““temporary stop notice” shall be construed in accordance with section 144A;”,
- (ii) in the definition of “compulsory acquisition”, after the word “Parliament” insert “ or of the Scottish Parliament ”,
- (iii) for the definition of “enactment” substitute—
- ““enactment” includes an Act of the Scottish Parliament, an enactment in any local or private Act of Parliament or in any private Act of the Scottish Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament or of the Scottish Parliament, including an order or scheme confirmed by Parliament or by the Scottish Parliament;”, and
- (iv) in the definition of “owner”, for the words “section 35” substitute “ sections 35, 75, 75C, 75D and 75G ”, and
- (b) at the end add—
- “(11) Any reference in this Act to registering an instrument (or any other document, however described) in the Land Register of Scotland is to be construed as a reference to registering the information contained in the instrument (or other document) in that Register.”.
- (18) In Schedule 4 (determination of certain appeals by appointed person)—
- (a) in paragraph 1(1), after the words “47,” insert “ 75B, 75F, ”, and
- (b) in paragraph 2—
- (i) after head (a) of sub-paragraph (1) insert—
- “(aa) in relation to an appeal under section 75B, as the Scottish Ministers have under subsections (4) and (5) of that section;
- (ab) in relation to an appeal under section 75F, as the Scottish Ministers have under subsections (4) and (5) of that section;”, and
- (ii) in sub-paragraph (2), after the words “48(2),” insert “ 75B(10), 75F(10), ”.
- (19) In Schedule 14 (blighted land)—
- (a) in paragraph 1—

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**Changes to legislation:** There are currently no known outstanding effects for the Planning etc. (Scotland) Act 2006. (See end of Document for details)

- (i) in sub-paragraph (1), for the word “structure” substitute “ strategic development ”,
- (ii) in sub-paragraph (2), after the word “local” insert “ development ”,
- (iii) for sub-paragraphs (4) and (5) substitute—
  - “(4) In sub-paragraph (1), the reference to a strategic development plan in force includes a reference to—
    - (a) a proposed strategic development plan which has been submitted to the Scottish Ministers under section 10(3)(b), and
    - (b) intended modifications published under section 13(4)(b)(i).
  - (5) Sub-paragraph (4) ceases to apply—
    - (a) when the proposed strategic development plan (whether or not in whole or in part and whether or not modified) is constituted under subsection (2) of section 13 as the strategic development plan,
    - (b) when as regards the proposed strategic development plan the strategic development planning authority arrive at the consideration mentioned in section 12A(6), or
    - (c) when, under subsection (1) of section 13, the Scottish Ministers reject the proposed strategic development plan.”, and
  - (iv) in sub-paragraph (6), for the words “22” substitute “ 23B ”, and
- (b) in paragraph 2—
  - (i) in sub-paragraph (1)(a), after the word “local” insert “ development ”,
  - (ii) for sub-paragraphs (2) and (3) substitute—
    - “(2) In sub-paragraph (1), the reference to a local development plan in force includes a reference to a proposed local development plan which has been submitted to the Scottish Ministers under section 18(3)(b) or 19A(5)(b)(ii).
    - (3) Sub-paragraph (2) ceases to apply—
      - (a) when the proposed local development plan (whether or not modified) is constituted under section 20(1) as the local development plan, or
      - (b) when as regards the proposed local development plan the planning authority arrive at the consideration mentioned in section 19A(6).”, and
  - (iii) in sub-paragraph (4), for the words “22” substitute “ 23B ”.

VALID FROM 01/04/2007

## 55 Further amendment of the listed buildings Act

- (1) The listed buildings Act is amended as follows.



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(2) In section 13 (directions concerning notification of applications etc.), at the end add—

“(4) Directions under subsection (1) or (3) may be given to—

- (a) planning authorities generally;
- (b) a particular planning authority; or
- (c) a description of planning authority.”.

(3) In section 69(1) (grants and loans for preservation or enhancement of conservation areas)—

- (a) for the words “If in the opinion of the Secretary of State any conservation area is an area of outstanding architectural or historic interest, he” substitute “ The Scottish Ministers ”, and
- (b) for the words “the area or any part of it” substitute “ a conservation area or any part of a conservation area ”.

(4) In section 81(1) (interpretation), after the definition of “conservation area consent” insert—

““demolition” includes partial demolition (and any analogous expression is to be construed accordingly).”.

(5) In section 82(1) (power to make regulations), after paragraph (a) insert—

- “(aa) as to the provision of information, or the production of evidence to verify information, for the purposes of this Act;
- (ab) as to the manner of lodging any application under this Act and as to documents to be furnished with such an application;
- (ac) as to the manner of giving notice of appeal under this Act and as to documents to be furnished with such notice of appeal;
- (ad) as to the manner of intimating decisions under this Act and as to documents to be sent with notice of such a decision;”.

### General

VALID FROM 01/04/2007

#### 56 Repeals

The enactments mentioned in the schedule to this Act are repealed to the extent mentioned in the second column of that schedule.

VALID FROM 06/02/2007

#### 57 Interpretation

(1) The “principal Act” is the Town and Country Planning (Scotland) Act 1997 (c. 8).

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*Changes to legislation: There are currently no known outstanding effects  
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- (2) The “listed buildings Act” is the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9).

VALID FROM 06/02/2007

### **58 Supplementary and consequential provision**

- (1) The Scottish Ministers may by order made by statutory instrument make—
- (a) any supplementary, incidental or consequential provision,
  - (b) any transitory, transitional or saving provision,
- which they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which can be made under subsection (1) includes provision amending or repealing any enactment (including any enactment comprised in this Act) or any other instrument.
- (3) An order under this section may make different provision for different purposes.
- (4) Subject to subsection (5), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Parliament.
- (5) A statutory instrument containing an order under this section which adds to, replaces or omits any part of the text of an Act is not made unless a draft of the instrument has been laid before and approved by a resolution of the Parliament.

### **59 Commencement**

- (1) This section and section 60 come into force on Royal Assent.
- (2) The remaining provisions of this Act come into force in accordance with provision made by the Scottish Ministers by order made by statutory instrument.

### **60 Short title**

This Act may be cited as the Planning etc. (Scotland) Act 2006.

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VALID FROM 01/04/2007

SCHEDULE

*(introduced by section 56)*

REPEALS

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**Changes to legislation:**

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