

PLANNING (SCOTLAND) ACT 2019

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 6 – Final Provisions

Section 59: Ancillary provision

278. Section 59 of the Act gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, or in connection with, giving full effect to the Act.

Section 60: Power to replace descriptions with actual dates

279. Section 60 provides for a power to make regulations to amend provisions which refer to a date when a provision comes into force so that instead it includes the actual date on which the provision in question came into force. This avoids the reader having to separately ascertain the date on which the provision came into force. Subsection (1) relates to the date of liability for expenses in relation to enforcement notices (section 158B of the 1997 Act inserted by section 43(3) of the Act). Subsection (2) relates to the date from which all directions are required to be published in accordance with the new section 275B of the 1997 Act inserted by section 49 of the Act, and subsection (3) refers to the infrastructure levy “sunset clause” in section 58 of the Act.

Section 61: Regulation-making powers

280. Subsection (1) of section 61 of the Act provides that the powers of the Scottish Ministers to make regulations under this Act include the power to make different provision for different purposes and areas. Subsection (2) provides that ancillary regulations made under section 59 are subject to the affirmative parliamentary procedure if they amend any part of any Act, but otherwise are subject to the negative parliamentary procedure. Subsection (3) specifies the procedure to be applied to regulations made under the free-standing provisions in the Act, in sections 54 and 57. Subsection (4) provides that before making regulations on the infrastructure levy, the Scottish Ministers must consult any local authority that may be affected by them, and any other persons the Ministers consider appropriate.
281. Where the Act inserts a regulation-making power into the 1997 Act, the procedure that applies is automatically governed by section 275 of the 1997 Act (as read with section 118(2) of the Scotland Act 1998). Accordingly, unless otherwise specified, the regulation-making powers that the Act inserts into the 1997 Act are subject to the negative parliamentary procedure. Paragraph 9 of schedule 2 of the Act amends section 275 of the 1997 Act and provides that the following new regulation-making powers are subject to the affirmative procedure:
- New section 3CC, inserted by section 12 of the Act – Amendment of National Planning Framework

*These notes relate to the Planning (Scotland) Act 2019
(asp 13) which received Royal Assent on 25 July 2019*

- New section 3G, inserted by section 3 of the Act – Open space strategy
- New section 26B, inserted by section 17 of the Act – Material change of use, short-term lets
- New section 40A, inserted by section 19 of the Act – Assessment of health effects
- New section 41B, inserted by section 26 of the Act – Conditional grant of planning permission: provision of toilet facilities within certain large developments
- New section 77A, inserted by section 39 of the Act – Compensation for withdrawal of planning permission granted by development order
- New section 251B, inserted by section 47 of the Act – National planning improvement co-ordinator
- Paragraph 3 of new schedule 5A, inserted by section 15 of the Act – places that cannot be included in a scheme for a masterplan consent area

Section 62: Minor and consequential amendments and repeals

282. Section 62 of the Act introduces schedule 2, which makes provision for amendments and repeals which follow from the main provisions of the Act. These are largely consequential changes to references and terminology throughout the 1997 Act. However, paragraph 4 of schedule 2 of the Act amends schedule 1 of the 1997 Act. This provides for a transitional regime which, in broad terms, allows existing development plans to remain in force until the relevant element of it falls away on the National Planning Framework or an authority's local development plan first being revised following the Act's enactment.

Section 63: Commencement

283. Section 63 of the Act provides in subsection (1) that this section and sections 58, 59, 60, 61 and 64 come into force on the day after Royal Assent. The remainder of the Act, once enacted, comes into force on the day or days appointed by the Scottish Ministers in regulations made under subsection (2). Subsection (3) allows different days to be appointed for different purposes, and for the commencement regulations to contain transitional, transitory or saving provision.

Section 64: Short title

284. Section 64 of the Act provides that the Act will be known as the Planning (Scotland) Act 2019.