

# **PLANNING ETC. (SCOTLAND) ACT 2006**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

3. The Act will provide a mechanism for the delivery of a modernised planning system, as set out in the Policy Memorandum to the Bill. It takes forward the commitment in *A Partnership for a Better Scotland* to improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investment decisions.
4. The package set out in the White Paper *Modernising the Planning System*, published in June 2005, brought together the Scottish Executive's final proposals for modernisation of the system in a single document. The Paper identifies elements of the modernisation package that require changes to primary legislation, secondary legislation, and elements that can be dealt with through guidance.
5. The purpose of the Act is to amend existing planning legislation to implement the proposals in the White Paper, *Modernising the Planning System*, which require changes to primary legislation. It also introduces provisions to implement Business Improvement Districts in Scotland, as set out in *A Partnership for a Better Scotland*.

### **COMMENTARY ON SECTIONS**

#### **The main provisions of the Act**

6. The Act is in 10 parts and 1 schedule.

These are:

- Part 1 – National Planning Framework – sets out arrangements for the preparation and publication of the National Planning Framework, a spatial plan for Scotland. It also describes the procedure for Parliamentary consideration of the Framework and its laying before Parliament.
- Part 2 – Development plans – replaces Part 2 of the Town & Country Planning (Scotland) Act 1997 (the 1997 Act). It sets out provisions for the preparation, examination and publication of strategic development plans and local development plans, which will replace the existing structure plans and local plans. It also defines a new duty on planning authorities to exercise their

development planning functions with the objective of contributing to sustainable development.

- Part 3 – Development management – selectively amends Part 3 of the 1997 Act to bring about a range of improvements to the handling of applications for planning permission. It also revises the provisions relating to appeals and planning agreements, now known as planning obligations.
- Part 4 – Enforcement – introduces provisions for temporary stop notices, fixed penalties and enforcement charters.
- Part 5 – Trees – updates and amends the provisions in the 1997 Act relating to Tree Preservation Orders.
- Part 6 – Correction of errors – introduces new provisions to allow the correction of errors in official decision letters.
- Part 7 – Assessment – introduces new powers for the Scottish Ministers to assess the performance of planning authorities in carrying out their development management functions, and to investigate their decision making.
- Part 8 – Financial provisions – amends existing provisions relating to fees and charges and to the making of grants for advice and assistance to those who use the planning system.
- Part 9 – Business improvement districts – introduces provisions to allow local businesses to invest collectively in improvements to the area they operate in.
- Part 10 – Miscellaneous and general provisions – contains provisions for National Scenic Areas, equal opportunities and minor amendments, repeals and commencements.
- The schedule – sets out a list of repeals to existing primary legislation.

## **THE ACT – SECTION BY SECTION**

### **PART 1 – NATIONAL PLANNING FRAMEWORK**

#### **Section 1 – National Planning Framework**

7. This section inserts new Part 1A into the 1997 Act. New section 3A introduces the requirement for a “National Planning Framework” - a spatial plan which sets out how the Scottish Ministers consider development and use of land in Scotland should occur.

8. **New subsection 3A(3)** requires the National Planning Framework to contain a statement of priorities and a strategy for the long term spatial development for Scotland. New subsection 3A(4) makes provision for the Framework to be used to designate national developments. Major strategic transport, water and drainage, waste management and energy-related infrastructure projects may fall within this category of development. New section 3A(5) requires the Scottish Ministers to include in the Framework in relation to any designated national development a statement of their reasons for considering that there is a need for such a development. New sections 3A(6) and (7) place a duty on the Scottish Ministers to prepare, publish, review and revise the National Planning Framework at least every 5 years. New subsection 3A(10) places a duty on the Scottish Ministers to prepare and publish a participation statement setting out when and

with whom consultation on the preparation or review of the National Planning Framework is likely to take place, and the steps to be taken to involve the public at large.

9. **New section 3B** prescribes a period of 60 days for Parliamentary consideration of the proposed National Planning Framework.

10. **New section 3C** requires the Scottish Ministers to lay a copy of the published version of the National Planning Framework before the Scottish Parliament

11. **New section 3D** places a duty on the Scottish Ministers to exercise their functions of preparing and revising the National Planning Framework with the objective of contributing to sustainable development.

## **PART 2 – DEVELOPMENT PLANS**

### **Section 2 – Development plans**

12. **Section 2** replaces Part 2 of the 1997 Act.

#### *Sustainable development*

13. **New section 3E** sets out the duty to contribute to sustainable development which applies to planning authorities when exercising their functions in relation to development planning. It also gives the Scottish Ministers powers to issue guidance to authorities on how such a duty should be undertaken.

#### *Strategic development planning*

14. **New section 4** gives the Scottish Ministers powers to designate the group of planning authorities which is to prepare each strategic development plan. Subsection (1) sets out when the group is to prepare the plan and requires it to keep the plan under review. Subsection (5) describes the group as the “strategic development plan authority” (SDPA), subsection (2) requires that no part of the area the plan covers is to be outside the districts of the planning authorities making up the SDPA, and subsection (6) requires that there is never more than one such plan for the area. Subsection (3) gives the Scottish Ministers power to direct that employees of the planning authorities comprising the SDPA will be assigned to the task of preparing the plan. Subsection (4) prevents Scottish Ministers from issuing such a direction within the 3 month period following the designation of the strategic development planning authority. Subsection (8) gives Ministers powers to request information from a planning authority on the assignment of staff for strategic development planning purposes, and requires the authority to provide the information within 14 days of the request. Subsection (9) provides further detail on the requirement in subsection (1)(b) to review a strategic development plan, both in terms of monitoring the changes in the area and monitoring the impact of the policies and proposals in the plan. Subsections (10) and (11) set out the requirements for publishing a statement on this monitoring.

15. **New section 5** sets out the process for determining the boundary of the area to be covered by the strategic development plan. Subsection (1) requires each SDPA to submit to the Scottish Ministers a plan showing the proposed boundary for the area. Subsection (2) gives individual planning authorities a right to submit alternative plans if they do not agree with the boundary being proposed by the other authorities in the SDPA. Subsection (3) gives Scottish Ministers powers to determine where the boundary should be and subsection (4) gives the Scottish Ministers powers to request further information from either the SPDA or an individual planning authority before reaching their decision (which,

under subsection (6), is final). Subsection (5) requires Ministers to give notice to the strategic development planning authority of their decision on the boundary, and to give reasons for their decision.

16. **New section 6** gives the strategic development plan authority powers to change the boundary of the area to be covered by the strategic development plan, where there has been a material change in circumstances.

17. **New section 7** gives details of the form and content of the strategic development plan. Subsection (1) describes the main items that it will contain. Subsections (2) and (3) relate to the maps and diagrams which are either to be contained in or to accompany the plan. Subsection (4) sets out the matters that must be considered in drawing up the vision statement referred to in subsection (1)(a).

18. **New section 8** sets out the main sources of information on which the planning authority are to draw in preparing the plan. Subsection (1) requires the authority to take into account the National Planning Framework, and to have regard to matters prescribed by the Scottish Ministers and to other matters they think to be relevant. Subsection (2) gives the Scottish Ministers power to direct that the plan is completed by a specified day.

19. **New section 9** describes how a main issues report is to be compiled in preparation for the strategic development plan. Subsection (1) requires the compilation of a main issues report, whose contents are defined in subsections (2) and (3). Subsection (4) sets out a duty to consult and subsection (5) places a duty on key agencies to co-operate with the authority in its production. Subsections (6) to (9) require the publication of the report, and that a copy is to be sent to the Scottish Ministers.

20. **New section 10** covers the production of the proposed strategic development plan. Subsection (1) covers the production of the proposed plan and notification of this to relevant persons. Subsection (2) requires the specification of a date by which any representations about the plan must be made to the authority. Subsection (3)(a) permits modifications of the proposed plan and subsection (3)(b) covers the procedure for submitting the proposed plan to the Scottish Ministers after the period for making representations has ended. Subsections (4) and (5) set out the procedure for preparing and publishing a new proposed plan where the authority considers that modifications would change the underlying aims or strategy of the proposed plan. Subsection (7) requires the authority to advertise that they have submitted the plan to Scottish Ministers. Subsection (8) requires the proposed plan to be submitted within 4 years of the date when the current plan was approved, and subsection (9) places a duty on key agencies to cooperate in its production.

21. **New section 11** sets out how individual planning authorities may submit alternative proposals where they are unable to agree on the content of the proposed plan.

22. **New section 12** sets out the procedure that Scottish Ministers are to follow in examining a proposed strategic development plan. Subsection (1) gives them a duty in certain circumstances to direct that a person appointed by them will examine the plan, and subsection (2) requires that person to examine the extent to which the authority's carrying out of consultation on the plan conforms with its participation statement. Subsections (3) to (5) give details of the financial and procedural arrangements for such examinations, and the duties of the strategic development planning authority and the Scottish Ministers to advertise and serve notice of any direction made under subsection

(1). Subsections (6) to (8) cover the preparation of the report, its publication and its submission to the Scottish Ministers.

23. **New section 12A** sets out how the person appointed under new section 12 is to proceed if not satisfied with the way the planning authority have carried out the consultation on the proposed plan. Subsection (1) requires a report to be prepared and sent to the Scottish Ministers and copied to the planning authority. Subsection (2) gives the authority 4 weeks to make representations to Ministers. Subsections (3) to (5) give powers of direction to Ministers in relation to further steps to be taken by the authority and the appointed person carrying out the examination required under new section 12(1). Subsections (6) and (7) set out the procedure for preparing and publishing a new proposed plan where the authority consider that modifications would change the underlying aims or strategy of the proposed plan. Subsection (8) requires the authority to advertise that they have submitted the plan to Ministers. Subsections (9) and (10) apply sections 11, 12, 12A and 13 to a proposed plan submitted following modification as a result of further consultation in the same way as they apply to the original proposed plan, but with necessary modifications.

24. **New section 13** sets out the procedure to be followed by the Scottish Ministers on receipt of the plan. Subsection (1) allows Ministers to approve, amend or reject the plan. If approved, it then becomes the strategic development plan. Subsection (4) covers modification of the proposed plan. Subsections (5) and (6) require Ministers to specify a date by which any representations with respect to the proposed modifications must be made to them, before the final decision on the plan. Subsection (7) clarifies the meaning of modifications at this stage, while subsection (8) requires Ministers to notify the planning authority of any such representations.

25. **New section 14** gives details of the publication and publicity arrangements for a strategic development plan, once it has been finally approved.

#### *Local development plans*

26. **New section 15** gives details of the form and content of local development plans. Subsection (1) describes the main items that each plan will contain. Subsection (2) requires the plan to contain a vision statement where the land is not within a strategic development plan area. Subsection (3) requires the plan to include a schedule setting out any land that is owned by the planning authority which is affected by policies and proposals in the plan. Subsection (4) relates to the maps and diagrams which are either to be contained in or to accompany the plan. Subsection (5) sets out the matters that must be considered in drawing up the vision statement referred to in subsection (2).

27. **New section 16** sets out how planning authorities are to proceed in preparing and monitoring local development plans. Subsection (1) sets out when authorities are required to prepare plans, and requires them to keep plans under review. Subsection (2) sets out the main sources of information on which the planning authority are to draw in preparing the plan. Subsections (3) to (5) explain that different plans can be prepared for different areas, and two or more authorities can if they wish prepare a joint plan covering parts of their districts. Subsection (6) requires authorities to ensure that local development plans are consistent with any strategic development plans covering the same area. Subsection (7) gives the Scottish Ministers powers to direct that a report is prepared where a planning authority have failed to produce a local development plan. Subsection (8) provides further detail on the requirement in subsection (1)(b) to review a local development plan, both in terms of monitoring the changes in the area and

monitoring the impact of the policies and proposals in the plan. Subsections (9) and (10) set out the requirements for publishing a statement on this monitoring.

28. **New section 17** describes how a main issues report is to be compiled in preparation for the local development plan. Its contents are defined in subsections (2) and (3). Subsection (4) sets out a duty to consult, and subsection (5) places a duty on key agencies to co-operate with the authority in its production. Subsections (6) to (10) require the publication of the report, and that a copy is to be sent to the Scottish Ministers.

29. **New section 18** covers the production of the proposed local development plan. Subsection (1) covers the production of the proposed plan and notification of this to relevant persons. Subsection (2) requires the specification of a date by which any representations about the plan must be made to the authority. Subsection (4) covers the procedure for submitting the proposed plan to the Scottish Ministers, after the period for making representations has ended, and subsection (5) requires further neighbour notification to be carried out by the planning authority if they make modifications of a kind described in regulations. Such modifications are likely to include situations where a site included in the proposed plan attracts a large amount of objection and an alternative site is proposed by a landowner or developer. The planning authority may consider this alternative site to be preferable but, in order to ensure that everyone affected by the alternative site has had an opportunity to comment on the plan, further neighbour notification should be carried out. Subsections (8) and (9) set out the procedure for preparing and publishing a new proposed plan where the authority consider that modifications would change the underlying aims or strategy of the proposed plan.

30. **New section 19** sets out the procedures to be followed in the examination of a proposed local development plan. Subsections (1) to (2) give planning authorities a duty to request the Scottish Ministers to appoint a person to examine the plan, where representations were neither taken account of nor withdrawn. Subsection (3) enables the Scottish Ministers to make such an appointment if they consider that those circumstances arise and no request has been made. Subsection (4) requires the appointed person to examine the extent to which the authority's carrying out of consultation on the plan conforms with its participation statement. Subsections (5) to (7) give details of the financial and procedural arrangements for such examinations, and subsections (8) and (9) cover the preparation and publishing of the report and its submission to the planning authority. Subsections (10) to (12) set out the procedures for the planning authority to follow on receipt of the report under subsection (8)(b).

31. **New section 19A** sets out how the person appointed under new section 19 is to proceed if not satisfied with the way the planning authority have carried out the consultation on the proposed plan. Subsection (1) requires the appointed person to prepare a report and send it to the Scottish Ministers, copied to the planning authority. Subsection (2) gives the authority 4 weeks to make representations to Ministers. Subsections (3) to (5) give powers of direction to Ministers in relation to further steps to be taken by the authority and the appointed person carrying out the examination required under new section 19(1). Subsections (6) and (7) set out the procedure for preparing and publishing a new proposed plan where the authority consider that modifications would change the underlying aims or strategy of the proposed plan. Subsection (8) requires the authority to advertise that they have submitted the plan to Ministers, while subsections (9) and (10) apply sections 19 and 19A to a plan submitted following modification as a result of further consultation in the same way as they apply to the original proposed plan,

but with necessary modifications to take into account any steps required on further consultation and neighbour notification, and any subsequent representations received.

32. **New section 20** sets out the procedure for adoption of the local development plan by the planning authority. Subsection (3) states that adoption may not take place within 28 days of notice of intention to adopt the plan. Subsection (4) enables the Scottish Ministers to extend the period. The Scottish Ministers have powers under subsections (5) and (6) to direct that a planning authority should consider modifying the proposed plan. Subsection (7) allows Ministers to approve the local development plan.

33. **New section 20A** gives details of the publication and publicity arrangements for local development plans once they have been finally adopted or approved.

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

34. **New section 20B** sets out how and when planning authorities are to prepare development plan schemes. Subsections (1) and (2) require a scheme to be prepared by each planning authority for each plan whenever required to do so by the Scottish Ministers or within a year of last preparing a plan. Subsections (3) and (4) explain what a scheme is, and that it should include a participation statement (stating when and with whom consultation is likely to take place and its likely form, and the steps taken to involve the public at large). Subsection (5) sets out the requirement for publishing the scheme. Under subsection (7), the form and content and procedures for the preparation of a plan may be set out in regulations.

35. **New section 21** covers the preparation of action programmes for strategic and local development plans. Subsection (1), (2) and (4) state that an action programme will be prepared for each strategic development plan and each local development plan and published at the same time as each proposed strategic and local development plan. Subsection (3) sets out a duty to consult. Subsection (3)(a) requires key agencies to be consulted, and subsection (5) requires them to co-operate with the planning authority in the preparation of any programme. Subsection (6) explains what an action programme is, and subsection (7) provides that the form and content and procedures for the preparation of an action programme may be set out in regulations. Subsection (8) gives the authority 3 months after approval or adoption of the SDP or LDP to finalise the action programme for each plan. Subsection (9) requires the authority to keep the action programme under review, and to publish it when required to do so by the Scottish Ministers, and otherwise at least every 2 years.

#### *Supplementary guidance*

36. **New section 22** covers supplementary guidance. Subsection (1) allows planning authorities to issue supplementary guidance. Under subsection (2), procedures for consultation and adoption of such guidance, and the matters which may be dealt with in it, may be set out in regulations. Subsections (3) to (5) cover the manner in which planning authorities are to publicise such guidance, and consider representations about it. Subsections (6) to (8) require the authority to submit proposed guidance to Scottish Ministers for approval, and give Ministers powers to require the authority to modify it before adopting it or direct that it is not issued. Subsection (9) allows strategic development planning authorities and planning authorities to adopt and issue non-statutory supplementary guidance in connection with a strategic development plan or local development plan, as long as it does not cover matters that are specified in regulations as being matters for statutory supplementary guidance under this section.

*Supplementary provisions*

37. **New section 23** allows the Scottish Ministers and planning authorities to disregard representations made in respect of developments authorised under sections 5, 7, 9 or 12 of the Roads (Scotland) Act 1984 or section 1 of the New Towns (Scotland) Act 1968.

38. **New section 23A** covers regulations under the new Part 2 of the 1997 Act. Subsection (1) explains that regulations and directions under Part 2 may apply to the whole of Scotland or to parts of Scotland. Subsection (2) gives the Scottish Ministers powers to direct planning authorities in relation to the procedure for carrying out their development planning functions and supplying information to Ministers.

39. **New section 23B** sets out the default powers of the Scottish Ministers in relation to the preparation of development plans. Subsection (1) sets out when the default powers apply. Where an authority have not done what is required within a reasonable period, or have not met a time limit, the Scottish Ministers can, under subsections (2) to (4), direct the authority to carry out their functions, or may prepare the plan themselves. In the case of a strategic development plan, Ministers may also direct one of the constituent authorities to prepare the plan. Subsection (5) requires the defaulting authority to repay to Ministers or to any other planning authority any expenses reasonably incurred.

40. **New section 23C** replaces section 23 in the 1997 Act, and requires planning authorities to review plans in the light of the designation or modification of enterprise zone schemes.

41. **New section 23D** defines “key agencies” in relation to Part 2 by reference to any regulations in which they are specified. Key agencies are likely to include Scottish Natural Heritage, the Scottish Environment Protection Agency and Local Enterprise Companies.

42. **New section 24** defines which documents comprise a development plan.

*General*

43. **New section 25** explains the status of the development plan where any determination is made under the planning Acts. Subsection (1) sets out that the determination is to be made in accordance with the development plan, and, where applicable, with certain statements in the National Planning Framework, unless material considerations indicate otherwise. Subsections (2) and (3) explain how statements in the National Planning Framework are to be treated, and how any incompatibility between the National Planning Framework and the development plan is to be resolved.

**PART 3 – DEVELOPMENT MANAGEMENT**

**Section 3 – Meaning of “development”**

44. **Subsection (1)(a)** introduces a new category of “development” into the 1997 Act, namely the operation of an existing marine fish farm in the circumstances specified in new section 26AA (introduced by section 4 of the Act).

45. **Subsection (1)(b)** inserts new provisions after the existing section 26(2) of the 1997 Act and gives the Scottish Ministers the power to specify in a development order the circumstances in which section 26(2)(a) of the 1997 Act will not apply to operations which have the effect of increasing the gross floor space of a building. Previously, under subsection (2)(a)(i) of section 26 of the 1997 Act, works which only affected the interior of a building were not considered to fall within the meaning of “development” and



therefore did not require a development order. An example of operations that may have the effect of increasing the gross floor space is the installation of a mezzanine floor in a building.

46. **Subsection (1)(c)** expands the definition of “development” in section 26(6) of the 1997 Act to include fish farming within 12 nautical miles from the baselines from which the territorial sea is measured. This subsection also includes a definition of a nautical mile. Fish farming in inland waters is already subject to planning control under the 1997 Act, and those provisions are retained. The effect of the provision is that fish farms coming within the definition of development will require planning permission under the 1997 Act.

47. **Subsection (1)(d)** makes any material change of use of equipment used for marine fish farms development within the meaning of section 26 of the 1997 Act.

48. **Subsection (1)(e)** introduces new subsections (6C) to (6J) into section 26 of the 1997 Act. Subsections (6C) to (6G) allow the Scottish Ministers to make orders regarding the placing or assembly of equipment for the purpose of fish farming, or any material change of use, in waters described in section 26(6)(b) or (c) of the 1997 Act. They also make provision for the Scottish Ministers to allocate responsibility in the order to a particular planning authority or National Park authority.

49. Subsection (6H) requires that the Scottish Ministers consult SEPA and every planning authority and enables consultation with such other persons as they think fit before making any order under subsection (6C). Subsection (6I) clarifies the scope of the power to make an order under subsection (6C).

50. Subsection (6J) clarifies that any reference to the National Park in section 9 of the National Parks (Scotland) Act 2000, where the planning functions are extended to National Park Authorities by sections 26(6C) and 26(6D) of the 1997 Act, includes those waters described in paragraphs (b) and (c) of section 26(6) of the 1997 Act.

51. **Subsection (2)** explains that a development order made under section 26(2AA), which specifies circumstances relative to operations which have the effect of increasing the gross floor space of a building, does not retrospectively affect any operations begun before that order is made.

52. Under **subsection (3)** an existing certificate shall be of no effect if a development order is made under subsection (2AA) which specifies that the operations now fall within the meaning of development as they affect the interior of the building and will increase the gross floor space. Providing that no operations have begun before the date the development order comes into force, the certificate will be of no effect.

53. **Subsection (4)** amends section 275 of the 1997 Act relating to the Scottish Ministers' powers to make regulations and orders.

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

54. **Subsection (1)** introduces a new section 26AA into the 1997 Act.

55. **Section 26AA(1)** provides for the circumstances to which section 26(1) refer. At subsection (1)(a) these are that the marine fish farm is being operated after the “appropriate date” or, if before that date, the date when planning permission is granted or refused under section 31A, and at subsection (1)(b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that action did not constitute development under the planning Acts.

56. **Section 26AA(2)** clarifies that the “appropriate date” for a fish farm with reference to section 26AA(1)(a) is whichever is the later of: a date prescribed by Scottish Ministers and a date on which any authorisation ceases to have effect. Such an authorisation relates to the operation of a fish farm and is in effect on the date of commencement of section 4 of this Act.

57. **Section 26AA(3)** provides definitions of “authorisation”, “equipment” and “marine fish farm” in sections 26AA and 31A of the 1997 Act.

58. **Subsection (2)** introduces a new section 31A into the 1997 Act.

59. **New section 31A(1)** applies only to planning permission for the operation of a fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b) of the 1997 Act. Subsection (2) provides that planning permission is to be granted by the Scottish Ministers, and subsection (3) provides that permission granted under subsection (2) may be granted as respects a class of development.

60. Subsection (4) requires that any grant of planning permission as respects a class of development is to be by order, and that when granting any permission by order, the class of development to be granted is to be specified in the order. Subsection (5) provides that any permission granted under this section may be unconditional or subject to conditions or limitations. Subsection (6) provides that the conditions or limitations which may be imposed on any permission include those specified in the development consent or works licence in force at the time of imposition.

61. Subsection (7) provides that in coming to a decision on whether to grant such a permission, the principal matters to be considered by Ministers are the likely impact of the development on any European site as defined and the environment generally. Subsection (8) provides Ministers with regulation making powers with regard to applications for planning permission under section 31A.

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

62. This section inserts new section 26A into the 1997 Act. Subsection (1) sets out the three categories to which all developments will be allocated. Subsections (2) and (4) give the Scottish Ministers powers to make regulations to describe the classes of major and local development. National developments are those designated as such in the National Planning Framework. Subsection (3) enables the Scottish Ministers to direct that a particular local development is assigned to the class of major developments. Subsection (5) requires that regulations under subsection (2) are to be subject to affirmative procedure.

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

63. **Subsection (1)** inserts new section 27A, “Notification of initiation of development”, into the 1997 Act. The provisions require the developer to inform the planning authority when development is to be commenced. The planning authority are to issue a notice to the applicant informing them of the requirement. Section 27A also allows for Ministers to prescribe further information to be contained in the notice.

64. **Subsection (1)** also inserts new section 27B “Notification of completion of development”, into the 1997 Act. This subsection contains provisions requiring the planning authority to be informed by the developer when development has been completed. Where the development is to be carried out in phases, the planning authority

are to impose a condition on the planning permission requiring the developer to inform the planning authority of the completion of each phase.

65. **Subsection (1)** also inserts new section 27C “Display of notice while development is carried out” into the 1997 Act. This section requires a developer carrying out certain types of development to display a notice containing certain information regarding the development. The types of development for which a notice is required and the information to be displayed will be prescribed in secondary legislation. Ministers may also set out in regulations the form of the notice and where it is to be displayed.

66. **Subsection (2)** makes commencement of development without informing the planning authority of initiation of development a breach of planning control. It also makes carrying out development without displaying a notice in accordance with section 27C a breach of planning control.

### **Section 7 – Applications for planning permission and certain consents**

67. **Subsection (1)** replaces the existing section 32 of the 1997 Act to enable the Scottish Ministers to prescribe in regulations or a development order both the form and the content in which a planning application must be made and submitted to planning authorities. Regulations or a development order made under this section may make different provision for different cases and levels of development or for different planning authority areas. These must require that certain descriptions of applications be accompanied by a statement about the design principles and concepts that have been applied to the development and how issues relating to access to the development have been dealt with. These may be separate statements or combined, and if combined could be contained in either one document or in two. The secondary legislation can also specify the form and content of such a statement. Where specified in secondary legislation an application must also be accompanied by a pre-application consultation report, as explained in relation to section 11 in these notes.

68. **Subsection (2)** extends section 182 of the 1997 Act by inserting a new subsection (2A) into the provisions relating to regulations controlling the display of advertisements to specify the form and manner in which an advertisement application must be made.

69. **Subsection (3)** amends section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the listed buildings Act”) which stipulates how applications shall be made to planning authorities. Section 9(3)(a) of the listed buildings Act is replaced so that the provision to allow the planning authority power to specify the form and manner in which an application for planning permission must be made is consistent with the provision in **subsection (1)**, affecting the 1997 Act.

70. **Subsection (3)** also inserts new subsections (4) and (5) into section 9 of the listed buildings Act to ensure consistency with the new section 32 of the 1997 Act as set out in subsection (1), so that certain applications for listed building consent are also required to be accompanied by a statement detailing how issues relating to access to the development for the disabled have been dealt with. The form and content of the statement will also be as prescribed in regulations.

### **Section 8 – Variation of planning applications**

71. **Section 8** inserts two new sections after section 32 of the 1997 Act. **New section 32A** sets out the circumstances under which a planning application may be varied with the agreement of the planning authority after it has been made. Subsection (2) provides

that a planning authority may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development. Subsection (3) enables the Scottish Ministers to make regulations or a development order setting out the circumstances in which an application may be varied. Subsection (3) also states that an application must not be varied if it is the subject of an appeal under section 47 of the 1997 Act.

72. Subsection (4) gives the planning authority powers to give notice of the variation to a planning application.

73. Subsection (5) allows the provisions in new section 32A to apply to planning applications made directly to the Scottish Ministers under the “urgent development” procedures introduced on the removal of Crown immunity from planning control.

74. **New section 32B** sets out the circumstances under which a planning application may be varied after it has been referred to Scottish Ministers, subject to their agreement. Subsection (2) provides that the Scottish Ministers may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development. Subsection (3) allows the regulations or development order to make provision for the timing and the procedures for applications to be varied.

75. Subsection (4) gives the Scottish Ministers powers to give notice of a variation to an application.

#### **Section 9 – Development already carried out**

76. This section inserts a **new section 33A** in the 1997 Act. This gives the planning authority the power to issue a notice requiring the owner of the land where planning permission has not been granted but development has already been carried out to make an application for planning permission. The existing section 33 of the 1997 Act only provides that planning permission for development already carried out may be granted. Issuing the notice constitutes enforcement action under section 123(2) of the 1997 Act.

#### **Section 10 – Publicity for applications**

77. **Subsection (1)** replaces existing section 34 of the 1997 Act. This section gives the Scottish Ministers the power to set out in regulations or development order to whom, how and for how long a planning authority should give notice of an application. It sets out the types of applications for which the planning authority must give notice. It also makes provision for criteria which must be satisfied before the application can be determined. The Scottish Ministers have the power to require the planning authority to provide information on how they have carried out their functions under section 34.

78. **Subsection (2)** sets out minor changes to section 38 of the 1997 Act, to reflect the changes under new section 34.

#### **Section 11 – Pre-application consultation**

79. This section introduces **new sections 35A, 35B and 35C** into the 1997 Act. The existing section 35 already gives the Scottish Ministers the power to make regulations or a development order on the procedures and the form and content of notices of application for planning permission.

80. **New section 35A** places a duty on a prospective applicant for planning permission for certain prescribed classes of development to comply with the pre-application procedures set out in new section 35B before submitting an application for planning

permission. The classes of development are to be prescribed by regulations or a development order, and different classes can be prescribed for different areas.

81. New section 35A(3) enables applicants by notice to require the planning authority to determine whether or not their proposed development falls within a prescribed class. The planning authority can request that the applicant provides additional information if they feel insufficient information has been submitted. If the planning authority respond stating that they consider the proposed development does not fall within the classes requiring a pre-application consultation then, providing the application for planning permission is submitted within 12 months of the notice and it does not differ materially from the information given in the notice, pre-application consultation would not be required.

82. New section 35A(7) places a duty on the planning authority to respond to an applicant's "proposal of application notice" within 21 days or as otherwise prescribed in regulations or a development order.

83. New section 35A(10) allows the provisions in new section 35A to apply to planning applications made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.

84. **New section 35B** sets out the details for the pre-application consultation process. This will be initiated by the prospective applicant submitting a "proposal of application notice" to the planning authority. New section 35B(3) requires there to be a 12 week period between submission of the notice and the application. New section 35B(4) sets out the minimum content of the "proposal of application notice". The contents, persons to be consulted and the form of the consultation are to be set out further in regulations or a development order made under section 35B(5). If the planning authority consider that additional consultation to that prescribed in such regulations or development order should be undertaken, they must inform the applicant within 21 days of receipt of the notice. If they fail to respond within the 21 days they can be assumed to have considered that no additional consultation is required. New section 35B(9) allows the provisions in new section 35B to apply to planning applications made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.

85. **New section 35C** requires the submission of a "pre-application consultation report" with the application for planning permission, the form of this report being prescribed in regulations or a development order.

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

86. Section 36(1) of the 1997 Act requires planning authorities to keep a register containing information on applications for planning permission, their approval of applications, the manner in which the applications have been dealt with and information on planning zone schemes within that authority's area. The Scottish Ministers have the power to set out in regulations or a development order the content and manner of the register.

87. The changes made by **section 12** are intended to ensure that planning authorities provide a full record of the relevant factors considered in determining each application, including all documents relating to the application and considered in the decision making process, the reasons for the decision, and the material considerations to which regard

was had when making the decision. They are also required to make available an explanation of the manner in which the application has been dealt with and provide a copy of the notice informing the applicant of the authority's decision. Section 12 also requires planning registers to include information on planning applications made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.

### **Section 13 – Keeping and publication of lists of applications**

88. This section inserts a **new section 36A** into the 1997 Act. Subsection (1) places a duty on every planning authority to keep a list of applications and proposal of application notices for pre-application consultations. It also requires them to include on the list planning applications made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.

89. The duty is extended in subsection (2) to require the planning authority to revise/update the list weekly. The Scottish Ministers may substitute a different period by means of regulations. The subsection also gives the Scottish Ministers the power to make regulations or a development order to set out how the list should be published.

90. Subsections (3) and (5) require the planning authority to advertise the availability of the list in a local newspaper and gives the Scottish Ministers power to prescribe the frequency with which the list is to be published. Provision is also made for publishing by electronic means.

91. Subsection (4) allows the planning authority, as set out in regulations or a development order, to recover any costs incurred as a result of preparing, publishing and advertising the availability of the list of applications.

92. Subsection (6) defines when a proposal for application notice ceases to be current and can therefore be removed from the list, as set out in the new subsection (2)(a)(ii).

### **Section 14 – Pre-determination hearings**

93. **Subsection (1)** inserts a **new section 38A** into the 1997 Act. **New section 38A(1)** provides that regulations or a development order may set out which developments are subject to pre-determination hearings. These hearings give the applicant and anyone else referred to in the regulations an opportunity to appear before and be heard by a committee of the planning authority.

94. **New section 38A(2) and (3)** allows the planning authority to determine the procedures for such a hearing, and who else may attend. **New section 38A(4)** allows the authority to hold hearings in circumstances other than those set out in new section 38A(1).

95. **Subsection (2)** amends the Local Government (Scotland) Act 1973 (c.65), specifically section 56 (arrangements for discharge of functions by local authorities). It requires that planning applications in a class specified under section 38A(1) are to be decided by the authority, i.e. the full council, and not by an official or committee of the authority. This is another requirement of the new enhanced scrutiny procedures along with pre-determination hearings, pre-application consultation and notification of applications to Ministers.

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

96. **Subsection (a)** amends section 39 of the 1997 Act by substituting new subsections (1) to (1D) for the existing subsection (1).

97. **The new subsection (1)** sets out the circumstances in which a planning authority may decline to determine an application for planning permission.

- Paragraph (a) applies where the Scottish Ministers have refused a similar application in the previous two years and there has been no significant change to the development plan or any other material considerations.
- Paragraph (b) applies where the planning authority has refused more than one similar application in the previous two years and there has been neither an appeal to Ministers nor any significant change to the development plan or other material considerations since the more recent of these refusals.
- Paragraph (c) applies where the planning authority has refused more than one similar application in the previous two years, there has been an appeal to Ministers but no such appeal has yet been determined, and there has been no significant change to the development plan or other material considerations since the more recent of these refusals.
- Paragraph (d) applies where there has been no refusal by the planning authority but an appeal following non-determination of an application has been made in the previous two years in respect of two or more similar applications, and those appeals remain undetermined and no significant change to the development plan or other material considerations have occurred since the more recent of the appeals was made.
- Paragraph (e) applies where two similar applications have been received in the previous two years. Where the planning authority has refused one application and an appeal that has been made on another similar application has still to be determined, the planning authority may decline to determine a further application if there has been no significant change to the development plan or other material considerations since the more recent of the refusal or the appeal.

98. **The new subsections (1A) to (1D)** place a duty on the planning authority or the Scottish Ministers to refuse an application for planning permission if the applicant has failed to comply with the pre-application consultation requirements introduced by new section 35B. The authority or the Scottish Ministers are required to inform the applicant of the reason for refusing it but may request additional information from the applicant before doing so. As the Act allows for pre-application requirements to apply to applications which are made directly to the Scottish Ministers under the new “urgent development” procedures introduced on the removal of Crown immunity from planning control, the duties in these new subsections can also apply to the Scottish Ministers.

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

99. **Section 16(a)(i)** inserts the new paragraph (aa) into section 43(1) of the 1997 Act. This gives the Scottish Ministers the power to direct that the planning authority are to consider attaching conditions when granting a planning application for a development or for a development of a particular class. The direction would also require the planning

authority to satisfy the Scottish Ministers that they have taken the necessary steps to comply with the direction before they grant planning permission. The new provisions enable the Scottish Ministers to set out in the direction conditions for specified development or classes of development, rather than having to call it in.

100. **Section 16(a)(ii)** inserts the new paragraph (bb) into section 43(1) of the 1997 Act. This will allow regulations or a development order to be made, enabling the planning authority to require supporting documents or evidence which will enable them to deal with an application.

101. **Section 16(b)** inserts a new subsection (1A) into the existing section 43 the 1997 Act. Section 43(1)(d) and (e) give the Scottish Ministers the power to make regulations or a development order which require the planning authority to give notice to the applicant following its consideration of an application for consent, agreement or approval of an application for planning permission. The new subsection (1A) sets out the contents of the notice issued to an applicant and places a requirement within primary legislation for a planning authority to give reasons on which it has made its decision.

102. **Section 16(c)** adds new subsections (3) and (4) to section 43 of the 1997 Act. These subsections apply the provisions of section 43(1) to applications for modification or discharge of planning obligations made under section 75A(2) with necessary modifications.

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

103. This section inserts **new sections 43A and 43B** into the 1997 Act. Section 43A(1) requires each planning authority to prepare a scheme of delegation, describing how applications relating to local developments are to be determined by appointed persons (such as officials) instead of elected members. Section 43A(3) indicates that the scheme of delegation required by section 43A(1) does not apply to cases specified under section 38A(1) as requiring pre-determination hearings. As part of the new enhanced scrutiny procedures, such cases are to be decided by the full council.

104. Section 43A(4) allows regulations to set out the procedures for preparing and adopting schemes of delegation, and their form and content. Section 43A(5) applies the relevant parts of sections 37 to 39, 41, 42 and Part1 of Schedule 3 to the 1997 Act to planning applications dealt with by the appointed person. Section 43A(6) allows the authority to determine any delegated application themselves, and section 43A(7) requires them to produce a statement of reasons for doing so, which must be copied to the applicant.

105. Section 43A(8) to (17) covers the procedure under which the applicant can require a review of a delegated decision where an application was refused or granted subject to conditions, or where the appointed person failed to determine an application within the prescribed time period. The form and procedure of such a review may be set out in regulations or a development order under section 43A(10). The regulations will also set out the time limits for requiring a review and the terms in which the case has been reviewed and the reasons for the decision. There is no right of appeal to the Scottish Ministers (other than in relation to a failure to determine the application). The applicant has a right to apply to the Court of Session under section 239 of the 1997 Act.

106. Section 43A(18) substitutes paragraph 1(6)(b) of Schedule 3 to the 1997 Act. This applies to planning applications dealt with by the appointed person as set out in section 43A(8).



107. **New section 43B** sets out the circumstances under which the applicant may be allowed to raise a matter which was not part of the application determined by the appointed person, when the planning authority conduct a review under section 43A(8).

### **Section 18 – Call-in of applications by the Scottish Ministers**

108. This section makes minor changes to section 46 of the 1997 Act which gives the Scottish Ministers the power to make directions to call in applications. The directions may apply to one or more planning authorities and may relate to an individual application or a class of applications as described in the directions. This section inserts a subsection (1A) giving the Scottish Ministers the power to either withdraw directions or modify existing directions by making further directions. Subsection (3) is amended consequentially to make explicit reference to subsection (1).

### **Section 19 – Appeals etc.**

109. **Subsection (1)** amends section 47 of the 1997 Act to clarify that an appeal under subsection (1) is to be against the decision of a planning authority to refuse an application or grant it subject to conditions. It also adds a new subsection (1A) to exclude from subsection (1) actions taken by an authority in a review of a delegated decision under section 43A(8). This change combined with the changes made by subsections (3) and (4) give a party aggrieved by the decision on a review of a delegated decision the right to appeal to the Court of Session rather than to the Scottish Ministers.

110. **Subsection (2)** inserts a new section 47A into the 1997 Act. This sets out the circumstances under which the applicant may be allowed to raise a matter which was not part of the application determined by the planning authority, when making an appeal under section 47(1).

111. **Subsection (3)** amends section 237 of the 1997 Act (validity of certain plans, schemes, orders and actions) in relation to the delegation of decisions by planning authorities under new section 43A.

112. **Subsection (4)** amends section 239 of the 1997 Act (proceedings for questioning the validity of certain orders, decisions and directions) in relation to the delegation of decisions by planning authorities under new section 43A.

113. **Subsection (5)** amends section 267 of the 1997 Act (procedure on certain appeals and applications) to extend the scope of regulations to cover appeals and applications under the 1997 Act irrespective of whether the Scottish Ministers are required to afford any person an opportunity of appearing before and being heard by a person appointed by Ministers. It inserts new subsections (1A), (1B) and (1C) which clarify further the content of the regulations. These provisions replace subsection (3) which is repealed.

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

114. **Subsections (1) and (2)** amend section 58 of the 1997 Act (which is re-entitled “Duration of planning permission”). In section 58, subsections (1) to (3) are substituted by new subsections (1) to (3A). Under the new subsections a planning permission lapses after three years unless the development is begun within that time. The planning authority may under new subsection (2) direct that a different time limit shall apply. In subsection (4) new paragraph (ca) makes it clear that the new version of section 58 does not apply to permissions granted prior to the coming into force of section 20.

115. **Subsection (3)** makes similar amendments to section 16 of the listed buildings Act.

## **Section 21 – Planning permission in principle**

116. **Section 21** replaces the existing section 59 of the 1997 Act with a **new section 59**, “Planning permission in principle”. New subsection (1) defines “planning permission in principle”, and new subsections (2) and (3) set out time limits within which an application must be made for the approval of any matters set out in conditions imposed under subsection (1)(b).

117. An application for approval must be made within 3 years of the date when the “planning permission in principle” was granted or within 6 months of when a previous application of approval has been refused or an appeal against a refusal has been dismissed, whichever is the latest date. Approval does not necessarily have to be given for the whole application at the same time. The planning authority may direct that a longer or shorter period than 3 years is to apply.

118. Subsections (4) provides that planning permission in principle lapses on the expiry of a period of two years after the date (or the last date) on which approval mentioned in subsection (1)(b) is given unless development has begun before that date. The planning authority may direct that a longer or shorter period should apply. Subsection (6) states that a direction under subsection (4) is to be treated as a condition for the purposes of section 47 of the 1997 Act. Subsection (7) allows a direction under subsection (5) to provide that different periods may apply to different parts of the development. Subsection (8) requires the planning authority to have regard to any provisions set out in its development plan or other material considerations if it chooses to adjust time limits set out under subsections (5) and (7).

119. Subsection (2) ensures that the provisions in the new section 59, introduced by section 21 of the Act, do not apply to outline planning permissions granted under the current section 59 of the 1997 Act prior to section 21 of the Act coming into force. The existing statutory arrangements will continue to apply to such outline planning permissions.

## **Section 22 – Further provisions as regards duration of planning permission etc.**

120. **Section 22** amends various sections of the 1997 Act to bring them into line with the revised wording of sections 58 and 59 of the 1997 Act resulting from sections 20 and 21 of this Act.

## **Section 23 – Planning obligations**

121. **Subsection (1)** replaces section 75 of the 1997 Act – planning agreements – with new sections 75, 75A, 75B and 75C.

122. In **new section 75 – Planning obligations** – subsection (1) provides that a person may enter into a planning obligation, either by agreement with a planning authority or unilaterally. The obligation in respect of land in the authority’s district restricts or regulates the development or use of the land, either permanently or during a specified period. Typical examples could relate to the provision of road improvements, community facilities or extensions to schools relating to the development, either directly by the developer or through funding to the local authority.

123. Subsection (2) confirms that obligations can require operations or activities to be carried out, or require the land to be used in the specified way.

124. Subsection (3) states that an obligation may be subject to conditions, require the payment of a specified amount or periodic sums, and contain such other provisions as the

planning authority or the person entering into the obligation believe to be necessary or expedient.

125. Subsection (4) states that an obligation can have effect on a specified date or a date determined by reference to an event.

126. Subsection (5) states that an obligation is enforceable by the planning authority against the owner of the land or (in the case of obligations other than those mentioned in subsection (2) or (3)(b)) any other person having use of the land, if it is recorded in the Register of Sasines or registered in the Land Register of Scotland. To be so recorded or registered the owner of the land must be a party to the obligation. In terms of subsection (12) it does not matter if the owner of the land at the time of recording or registration was owner at the time when the obligation was entered into. Subsection (6) prevents enforcement of a planning obligation under subsection (5) where a third party acquires right to the land prior to the obligation being recorded or registered.

127. Subsection (7) gives the planning authority powers to enter land, carry out operations and recover costs where there is a breach of a requirement in an obligation to carry out any operation. Subsection (8) requires the authority to give 21 days notice of their intention to do so.

128. Subsection (9) states that anyone wilfully obstructing someone who is acting in the exercise of the power of entry under subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 (at present £500).

129. Subsections (10) and (11) define owner in relation to planning obligations.

130. **New section 75A – Modification and discharge of planning obligations** – sets out the circumstances in which an obligation can be modified or discharged. Subsection (2) states that a person may apply to a planning authority for their agreement that an obligation should be modified or discharged. Subsection (1)(a) requires agreement to modification or discharge of a planning obligation to be pursuant upon an application made under subsection (2).

131. Subsection (4) gives the authority powers to continue, discharge or modify an obligation, and subsection (5) requires the authority to give notice of their determination to the applicant.

132. Subsections (6) to (8) set out that, where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland, the modification or discharge is effective from the date of recording or registration of the notice that the obligation is to be discharged or modified.

133. Subsection (9) allows regulations to provide for the form and content of an application under subsection 75A(2), the publication of notice of any such application, procedures for considering representations and the form and content of any notice given under subsection 75A(5).

134. **New section 75B – Appeals** – provides a right of appeal to the Scottish Ministers where a planning authority fail to comply with subsection 75A(5) (their duty to give notice of their determination of an application to modify or discharge an obligation) or determine that an obligation is to continue without modification.

135. Subsection (3) states that an appeal may be made within such period and by a notice served as prescribed in regulations. Subsection (4) allows the Scottish Ministers to

continue, discharge or modify an obligation, and subsection (5) requires Ministers to give notice of their determination to the applicant.

136. Subsections (6) to (8) set out that when this determination takes effect where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland this is the date of recording or registration as the case may be.

137. Subsection (9) allows regulations to provide for the form and content of a notice served under subsection 75B(3), or given under subsection 75B(5).

138. Subsection (10) provides that the determination of an appeal under this section by Scottish Ministers is final save to the extent that there is a right to apply to the Court of Session under section 239 of the 1997 Act.

139. **New section 75C – Planning obligations: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by a planning obligation when ceasing to be the owner of that land. Under subsection (4), unless the obligation states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but in terms of subsection (5) that person may recover any expenditure incurred from the former owner.

140. **Subsection (2)** provides that subsections (3) and (4) of the existing section 75 of the 1997 Act will continue to apply to agreements entered into before the coming into force of section 23(1) of this Act.

#### **Section 24 – Good neighbour agreements**

141. **Section 24** inserts new sections into the 1997 Act to govern the operation of good neighbour agreements.

142. **New section 75D – Good neighbour agreements** – allows a person to enter into a good neighbour agreement with a community body. Subsections (2) to (4) define which bodies may be community bodies for the purposes of a good neighbour agreement. Subsection (6) further describes the requirements that can be specified in an agreement and subsection (7) describes conditions that may be attached to the agreement. Subsection (9) makes provision for good neighbour agreements to be recorded in the Register of Sasines or registered in the Land Register for Scotland. Where an agreement has been recorded/registered then the obligation is enforceable against the owner, tenant or other person entering into the agreement. Subsection (10) provides that any new owner of the land will be bound by the agreement unless it has been acquired in advance of the agreement being registered/recorded.

143. **New section 75E – Good neighbour agreements: modification and discharge of obligations** – sets out the circumstances under which an obligation under a good neighbour agreement can be modified or discharged and the process by which either party may apply to the planning authority for its determination if they are unable to reach agreement on the modifications or discharge. Subsection (4) confirms that any application for modification should not impose an obligation on any non-applicant. Subsections (5) to (8) set out the effect of the planning authority's determination, the requirement to give notice of their determination and when any modification or discharge is to take effect. Subsection (9) give the Scottish Ministers the power to make regulations with respect to applications for determination.

144. **New section 75F – Good neighbour agreements: appeals** – sets out the circumstances under which either party may serve a notice on the Scottish Ministers,

appealing against the planning authority's determination or failure to make a determination within the period prescribed under section 75E(6). The Scottish Ministers have the power to make regulations on the form, content and notice periods for appeals. The determination of an appeal to the Scottish Ministers may be appealed to the Court of Session in accordance with the terms of section 239 of the 1997 Act.

**145. New section 75G – Good neighbour agreements: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by an obligation contained in a good neighbour agreement when ceasing to be the owner of that land. Under subsection (4), unless the good neighbour agreement states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but may recover any expenditure incurred from the former owner.

## **PART 4 – ENFORCEMENT**

### **Section 25 – Fixed penalty notices**

**146. Subsection (1)** inserts **new section 136A** into the 1997 Act. This establishes powers for planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of an enforcement notice. In the new section 136A, subsection (1) allows a planning authority to issue a fixed penalty notice provided certain conditions, as set out in subsection (7), are met. The conditions of subsection (7) are that the fixed penalty notice must be issued within 6 months of the failure to comply with the enforcement notice, and that a fixed penalty notice cannot be issued where a person has already been charged with an offence in respect of the breach of the enforcement notice.

**147.** Subsections (4), (5) and (6) of new section 136A set out that a person who receives a fixed penalty notice has 30 days to pay the penalty, and that the penalty is reduced by 25% if payment is made within 15 days.

**148.** Subsection (10) of new section 136A provides that any payment received by a planning authority in respect of a fixed penalty notice is retained by the authority.

**149.** Subsection (11) of new section 136A allows Scottish Ministers to prescribe in secondary legislation different levels of fine for different cases. This will allow Ministers to set out in regulations an incremental scale of fines related to previous fixed penalty notices or prosecutions.

**150. Subsection (2)** inserts **new section 145A** into the 1997 Act. This establishes a similar power to that of section 136A, allowing planning authorities to issue fixed penalty notices in respect of breaches of breach of condition notices. The various subsections of new section 145A make the same provision as those of 136A with regard to payment and the introduction of a scale of fines as set out by Ministers in regulations.

### **Section 26 – Temporary stop notices**

**151. Subsection (1)** inserts **new sections 144A, 144B, 144C and 144D** into the 1997 Act, which cover the operation of the new system of temporary stop notices. In **new section 144A**, subsection (1) sets out the circumstances in which planning authorities may issue temporary stop notices. The planning authority have to consider that there has been a breach of planning control which comprises an activity, and to consider that there is a valid reason for stopping it immediately.

152. Subsection (2) of new section 144A requires that the notice must be in writing and specify the activity which is to stop, prohibit its continuation and set out the authority's reasons for issuing the notice.

153. Subsection (3) of new section 144A states that notice may be served on a person who either appears to be engaged in the activity and/or a person who has an interest in the land.

154. Subsection (4) of new section 144A states that the authority must display a copy of the notice and a statement on the effect of section 144C (relating to offences) on the land in question.

155. Subsections (5) to (7) of new section 144A set out when the notice starts and ceases to have effect. It may only have effect for a maximum of 28 days. Subsection (8) of new section 144A provides that if the notice is withdrawn it ceases to have effect at that point.

156. In **new section 144B** (restrictions to temporary stop notices) subsection (1) sets out that such notices do not prohibit the use of a building as a dwelling house or the engagement in any activity which is prescribed in regulations. Subsection (2) states that such notices do not apply where the activity has been carried out for more than 4 years prior to the notice being displayed, and subsection (3) disapplies this where the activity relates to building, engineering, mining or the deposit of refuse or waste materials.

157. Subsections (5) and (6) of new section 144B prohibit the issue of a further temporary stop notice unless another enforcement action has been taken.

158. In **new section 144C** (offences) subsections (1) to (4) set out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice, and allow for convictions to be made for any number of offences with reference to different days or periods.

159. Subsection (5) of new section 144C sets out the statutory defences under this section, which are that the notice was not served on the accused and that he did not know, and could not reasonably have known of its existence.

160. Subsections (6) and (7) set out the penalties for offences under these new sections, including a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the activity which constituted the offence.

161. In **new section 144D** (compensation) subsections (1) and (2) set out who is entitled to compensation in respect of any loss or damage which can be directly attributed to the notice being served. Subsection (3) applies subsections (3) to (7) of section 143 of the 1997 Act to compensation under this section. These provisions cover how the claim for compensation is to be made, give further details of what the compensation may cover and provide that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

162. **Subsection (2)** gives persons duly authorised by the planning authority rights of entry in relation to the service of temporary stop notices.

## **Section 27 – Enforcement charters**

163. This section inserts **new section 158A** into the 1997 Act. It places a duty on the planning authority to prepare an enforcement charter, setting out the contents for such a document. The planning authority are obliged to have regard to any guidance issued by

the Scottish Ministers concerning this section. The section also places a duty on the planning authority to update and re-publish their enforcement charter, to issue copies to the Scottish Ministers and make it publicly available.

## **PART 5 – TREES**

### **Section 28 – Tree preservation orders**

164. This section amends Part VII, Chapter I of the 1997 Act. **Subsection (1)** amends section 159 of the 1997 Act by extending to Scottish Ministers the duty, currently only on planning authorities, to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.

165. **Subsection (1)** also amends section 159 of the 1997 Act to place a duty on the planning authority to review existing tree preservation orders (TPOs).

166. **Subsection (2)** amends section 160 of the 1997 Act to expand the powers to include trees, groups of trees, or woodlands of cultural or historical significance, when a planning authority is making a TPO.

167. **Subsection (2)** also amends section 160(6) of the 1997 Act. Currently, under schedule 2 paragraph 4 of the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975, statutory undertakers are not required to notify the planning authority of operations on operational land as described in section 215 of the 1997 Act. Removing the reference to paragraphs (a) and (b) has the effect that anyone carrying out operations, either in accordance with the statutory obligations under section 160(6)(c) of the 1997 Act or as a statutory undertaker, must now notify planning authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO.

168. **Subsection (2)** also inserts a new section 160(8) into the 1997 Act. The Scottish Ministers already have the power to make regulations on the form and manner of tree preservation orders in section 161(3) of the 1997 Act. The new subsection (8) extends the powers to make regulations setting out the form and manner of applications for consent (under tree preservation orders).

169. **Subsection (3)** replaces the existing section 161(1) of the 1997 Act to provide that all tree preservation orders will take effect on the date specified in the order, rather than the date it is confirmed. The provision removes the distinction between tree preservation orders made under previous section 161 and provisional orders under section 163 (which is repealed in the Schedule to the 2006 Act). Under new subsection (1)(b), a tree preservation order will expire unless confirmed by the planning authority within 6 months.

170. **Subsection (4)** inserts a new section 161A into the 1997 Act to provide a new power for a person authorised by the planning authority to enter land for the purposes of affixing a copy of a tree preservation order, where such an order has been made and where a tree or trees may be at risk of imminent damage or destruction. This does not affect any requirements for giving notice that an order has been made or confirmed which may be made in regulations by virtue of section 161(3)(b) and (4) of the principal Act.

171. **Subsection (6)** inserts a new subsection (3A) into section 168 of the 1997 Act. Section 168 gives the planning authority the power to serve a notice on a land owner

who has failed to plant replacement trees, as required by a condition of a consent under a tree preservation order. The new subsection (3A) extends the order applied to the original trees to also cover all replacement trees required as a condition of consent for tree operations as mentioned in section 168(1)(b).

## **PART 6 – CORRECTION OF ERRORS**

### **Section 29 – Correction of errors**

172. This section inserts a new Part 11A into the 1997 Act. The new Part gives the Scottish Ministers or a person appointed by them power, subject to various conditions, to correct specified types of errors contained in decision letters.

#### *Section 241A: Correction of errors in decisions*

173. This section applies if the Scottish Ministers or an appointed person issues a decision document which contains a correctable error. It sets out the circumstances in which an error can be corrected. The Scottish Ministers or an appointed person may correct the error when requested to do so in writing, or where they have written to the applicant explaining that they are considering making a correction and received written consent, if necessary.

#### *Section 241B: Correction notice*

174. Section 241B provides that the exercise of the power of correction will be by written notice (a "correction notice") which will either specify the correction which has been made or give notice that the power to correct the decision has not been used. The section also specifies on whom the correction notice or decision not to correct must be served.

#### *Section 241C: Effect of correction*

175. Section 241C sets out the status of decisions which have been corrected and of decisions where it has been decided not to make a correction. Where a correction to the original decision is made, the original decision will be treated as though it had never been made. The corrected decision will be treated as having been made on the date the relevant correction is made and the statutory period for challenging the corrected decision will start to run from that date. Any person wishing to challenge the decision is therefore not prejudiced by the time taken to correct the decision. Where a decision not to correct has been made, the original decision will stand and the statutory period for challenge will be unaffected.

#### *Section 241D: Provisions supplementary to section 241A to 241C*

176. This section makes supplementary provisions to the sections of the new Part 11A of the 1997 Act, including definitions of a decision document, a correctable error and the applicant.

## **PART 7 – ASSESSMENT**

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

177. This section inserts a **new part 12A** into the 1997 Act.

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

178. This section gives the Scottish Ministers powers to conduct an assessment of a planning authority's performance, or to appoint a person to do so. The assessment may



cover the authority's performance of their planning functions in general or of a particular function.

*Section 251B – Assessment of planning authority's decision making*

179. Subsections (1) and (2) give the Scottish Ministers or an appointed person the power to conduct an assessment of how a planning authority deals with applications for planning permission. This power is limited to exclude decisions made within the year preceding the date that the planning authority are notified of the assessment. The assessment may cover the basis for determinations, the processes by which they have been made and whether they were in accordance with the development plan or conformed with advice given by the Scottish Ministers.

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

180. Subsection (1) requires the Scottish Ministers to notify the planning authority of their intention to carry out an assessment, and to indicate its intended scope, and where they appoint a person to carry out the assessment they are to advise the authority who the appointed person is.

181. Subsection (2) gives Ministers powers to determine that the scope of an assessment under section 251B shall relate to a type of application, a period of time or a geographical area. Subsection (3) provides that Ministers or the appointed person may require access to any premises of the authority and any documents which appear to be necessary for the purposes of the assessment. Subsection (4) allows Ministers or the appointed person to require a person to give them such information as necessary and to give them in person information or documents.

182. Subsection (5) requires the authority to provide Ministers or the appointed person with every facility and all information which they may reasonably require. Subsection (6) requires Ministers or the appointed person to give 3 clear days notice of any requirement under this section and to produce a document of identification if required to do so. Subsection (7) makes it an offence for a person without reasonable excuse to fail to comply with a requirement under subsection (3), (4) or (5), which can result on summary conviction to a fine not exceeding level 3 (at present £500).

*Section 251D – Report of assessment*

183. Subsections (1) to (3) require the Scottish Ministers or the appointed person to prepare a report, referred to as an assessment report, and issue it to the planning authority. The report may recommend improvements which the planning authority should make.

184. Subsection (4) requires the planning authority to prepare and submit a response report to Scottish Ministers within 3 months of receipt of the assessment report. This report will set out the extent, the manner and the period within which they propose to implement the recommendations. If the planning authority do not intend to implement the recommendations, they must set out their reasons for declining to implement any or all of the recommendations. Subsection (5) requires the person preparing a report to publish it. Subsection (6) allows Ministers to issue a direction specifying actions where the authority decline to implement recommendations or appear not to be timeously carrying out what they propose in their response report. Subsection (8) requires Ministers to publish any such direction or variation of a direction, and subsection (9)

specifies that publication of the reports, directions and variations under this section may include the use of electronic means.

## **PART 8 – FINANCIAL PROVISIONS**

### **Section 31 – Fees and charges**

185. **Section 31(a)** substitutes new provisions in place of subsection (1) of section 252 of the 1997 Act. New subsection (1) gives the Scottish Ministers powers to make regulations which provide for fees and charges in relation to the performance of a planning authority's functions, and anything done by the authority in relation to the performance of those functions. New subsection (1A) gives regulation making powers to set out the procedural details. New subsection (1B) confirms that different provisions may be made for different classes of case under subsection (1A)(d), including different provisions for applications made after development has been carried out.

186. **Section 31(b)** substitutes new provisions in place of subsections (3) to (5) of section 252 in the 1997 Act. New subsection (3) gives regulation making powers that cover the remission or refunding of charges or fees, and new subsection (4) explains that the circumstances in which Scottish Ministers can prescribe using these powers include those where they or an appointed person consider that the planning authority have behaved unreasonably, or there has been unreasonable delay. New subsections (5) and (6) provide that the regulations made under subsection (1) are subject to affirmative resolution of the Scottish Parliament unless they relate to cost of living based increases, or specify who is to make the calculation of fees or charges. New subsections (7) and (8) require the planning authority to secure that the income from fees and charges does not exceed the cost of performing the related functions, taking one financial year with another.

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

187. This section inserts **new section 253A** in the 1997 Act, which enables the Scottish Ministers to make grants to those providing advice and assistance in relation to functions under planning legislation. This would include, for example, training for planners and funding to organisations involved in giving planning advice. The Scottish Ministers would be able to set the terms and conditions that would apply to these grants.

## **PART 9 – BUSINESS IMPROVEMENT DISTRICTS**

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

188. **Section 33** enables a local authority to make arrangements for a Business Improvement District (BID) in a defined area within the local authority's boundary for the benefit of those identified in the BID proposals. In practice, a local authority will be required to supply the information that the persons drawing up the "BID proposals" need to identify the relevant non-domestic properties in the area, and the level of service provision currently provided in that area. Section 33 also makes explicit that a BID project in a local authority area need not involve businesses that are within a discrete geographic area, but can consist of businesses that are linked thematically, or that are near to one another without being wholly adjacent to each other.

### **Section 34 – Joint arrangements**

189. **Section 34** allows the Scottish Ministers to make regulations outlining the procedure for when a BID proposal covers an area lying within the boundaries of 2 or more local authorities.

### **Section 35 – Additional contributions and action**

190. **Section 35** allows local authorities, and any other person identified in the “BID arrangements”, to make voluntary financial contributions towards funding a BID project. It also allows such persons and the local authority to undertake any necessary work required for BID projects to be carried out.

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

191. **Section 36** places a duty on a local authority to comply with the BID arrangements, once these are in force.

### **Section 37 – BID Revenue Account**

192. **Section 37** requires a local authority to open an account which is exclusively used to hold all revenues pertaining to a particular BID arrangement. It also gives the Scottish Ministers powers to make further provision relating to the BID account by regulations.

### **Section 38 – BID proposals**

193. **Subsection (1)** ensures that a BID project will only go ahead if the “BID proposals” have been approved by a ballot of those ratepayers identified in the “BID proposals”, (where only ratepayers are involved), or approved by both ratepayers and other persons defined as “eligible persons”.

194. **Subsection (2)** allows the Scottish Ministers to set out in regulations the persons who can draw up BID proposals, who can be consulted on the proposals, the procedures which a person taking forward a BID arrangement should follow when drawing up BID proposals, what should be outlined in the BID proposals, and when the BID arrangements would commence.

195. **Subsection (3)** ensures that a ballot to approve a BID proposal cannot take place unless the persons who drew up the proposals can demonstrate in an appropriate way to the local authority that the proposals are supported by at least 5% of those ratepayers who are entitled to vote, and that those procedures are conducted in a timely fashion.

### **Section 39 - Entitlement to vote in ballot**

196. **Section 39** sets out how entitlement to vote on a BID is determined.

197. **Subsection (2)** requires the BID proposer to provide a statement to the local authority that lists all those who will be eligible to participate in the BID ballot.

198. **Subsections (4) and (5)** provide that those eligible to vote are either the eligible ratepayers of the properties in the BID area, or where the proposer for the BID so states, both the eligible ratepayers and other eligible persons, as defined. The BID proposer has the option not to seek the involvement of these other eligible persons, so only ratepayers would be involved. There is also the option to state that only persons in respect of particular property descriptions are involved, for example, all retail shops.

199. **Subsection (8)** allows Ministers to alter, by regulations, who apart from eligible ratepayers are eligible to vote.

200. Where other persons apart from ratepayers are involved, section 39 requires that they are initially a tenant with a lease which has at least 5 years left to run. The "eligible tenant" will be the first tenant up the chain, but not being the ratepayer, because these are mutually exclusive categories. If there are no such tenants, then the real owner, being simply the person with right to the property, will be included. The owner for these purposes will include a heritable creditor (secured lender) in possession of a property.

#### **Section 40 – Approval in ballot**

201. This section sets out the conditions that must be met before a BID ballot can be regarded as approved. It also states that the rateable value of the lands and heritages identified in the BID proposals is as shown on the valuation roll on the day of the ballot. The conditions are:

- (a) A majority of the votes cast are in favour of the BID proposal;
- (b) At least 25% of those entitled to vote have done so;
- (c) Those who vote in favour represent a greater aggregate rateable value than those who vote against;
- (d) At least 25% of the eligible rateable value in the defined BID area is represented by those who have voted.

202. In respect of condition (c), this applies where only eligible ratepayers are involved in a BID. Where eligible ratepayers and other eligible persons are involved, this condition shall be altered by regulations.

203. Subsections (9) and (10) operate in the circumstance when a BID proposal states that both ratepayers and other eligible tenants or owners in the BID area will be entitled to vote and be involved in the arrangements. They do not apply where only ratepayers are involved. One condition of a vote to approve BID arrangements is that the aggregate of the rateable values of the properties in respect of which a person voting has voted in favour must exceed the corresponding aggregate voting against. Where both ratepayers and other persons are involved in voting, this rateable value element for a property will be distributed between the ratepayer and the other person entitled to vote. In subsection (9) Scottish Ministers may by regulations define how the rateable value element of voting will be distributed between ratepayers and the other person entitled to vote. Alternatively, subsection (10) enables regulations to provide that the BID proposers are to declare within the BID proposals the appropriate percentage allocation of Rateable Value between ratepayers and other persons voting. This enables an appropriate percentage to be specified in respect of each different BID.

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

204. This section allows those who have drawn up BID proposals to set a higher margin of either rateable values, or numbers of votes cast, or both, before a BID ballot can be taken as approved. In addition, the BID Board's proposals submitted to the local authority are required to state whether the alternative voting conditions will apply, so that a greater majority will be required, either of the number of votes cast by persons voting, or of the rateable value element of the vote.

#### **Section 42– Power of veto**

205. This section requires the local authority to notify the BID proposers whether or not they will use their veto, and to provide reasons for that decision, including where the

veto has not been applied. Subsection (4) describes those circumstances in which a veto may be exercised by the local authority, such as conflict with a strategic development plan of a local authority, and subsection (5) explains that Ministers may add to or remove those circumstances by regulations. Where the veto is applied, the ballot will not take place. Local authorities are also required to inform the person drawing up the BID proposals that they have a right of appeal against the veto to the Scottish Ministers. They must also notify them of the details of that right of appeal. A copy of this notification must be sent to the Scottish Ministers.

#### **Section 43 – Appeal against veto**

206. This section allows any person who would have been entitled to vote in the BID ballot to appeal to the Scottish Ministers against a local authority's decision to veto BID proposals. Ministers will be able to make further provision via regulations as to the process behind an appeal.

#### **Section 44 – Commencement of BID arrangements**

207. This section provides for the BID arrangements to come into force on the day detailed in the BID proposals. It also places a duty on the local authority to ensure the BID arrangements commence on the relevant day.

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

208. This section sets a maximum time limit for BID projects of 5 years. It also provides for BID arrangements to be renewed but only where a further ballot is approved under the same conditions as outlined in section 40.

209. This section also allows the Scottish Ministers to make regulations setting out the procedure for the alteration and termination of BID arrangements.

#### **Section 46 – Regulations about ballots**

210. This section allows the Scottish Ministers to make regulations governing the ballot process, particularly, but not exclusively, in relation to:

- (a) the timing of ballots,
- (b) the allocation of votes cast by persons entitled to vote,
- (c) the question to be asked in a ballot,
- (d) the form that ballots may take,
- (e) the persons who are to hold ballots,
- (f) the conduct of ballots,
- (g) allowing Ministers to declare ballots void in cases of material irregularity,
- (h) enabling a local authority to recover the costs of a ballot

211. Subsection (2)(b) allows for regulations to make particular provision for the persons entitled to vote in a ballot to alter or renew BID arrangements (Regulations under the Act may not require to provide further for the types of persons entitled to vote in an original ballot to approve BID arrangements, because a BID proposal may state that only eligible persons in respect of properties of a particular description will be involved in a BID (section 39(3)).)

212. Subsection (4) defines a “ballot” for the purposes of the section. A ballot renewing or altering BIDs arrangements is particularly dealt with in section 46(2)(b) (persons entitled to vote in a ballot).

#### **Section 47 – Further provisions as to regulations under Part 9**

213. This section provides that any regulations made under Part 9 are subject to negative resolution procedure in the Parliament, other than regulations under sections 39(8), 40(9) and 42(5). Affirmative procedure is required (i) for regulations under section 39(8) to amend participation in the BIDs ballot and (ii) for regulations under section 42(5) to amend the circumstances in which the local authority veto may be exercised. Affirmative procedure is also required when provisions are first specified under section 40(9) in respect of the allocation of votes cast between owners / tenants and ratepayers.

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

214. This section states that Part 9 binds the Crown.

#### **Section 49 – Interpretation of Part 9**

215. This section defines certain terms included in the Part 9 provisions relating to BIDs.

### **PART 10 – MISCELLANEOUS AND GENERAL PROVISIONS**

#### **Section 50 – National Scenic Areas**

216. This section allows the Scottish Ministers to designate an area as a National Scenic Area by direction, and to vary or revoke the designation. It also enables Ministers to issue guidance for the purpose of this section to which planning authorities must have regard. In deciding whether to designate an area as a National Scenic Area, Ministers will take account of whether the area is of outstanding natural beauty, and of the amenity of the area. It also allows Ministers to make regulations as to:

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

#### **Section 51 – Equal Opportunities**

217. This section inserts **new section 270B** in the 1997 Act, which places a duty on Ministers and planning authorities to perform any functions that they are required or empowered to carry out under the Act in such a way as to promote equal opportunities and compliance with equal opportunity requirements.

#### **Section 52 – Regulations in connection with inquiries etc.**

218. This section inserts **new section 275A** in the 1997 Act, which provides powers for the Scottish Ministers to make regulations as regards the procedure to be followed in connection with inquiries, hearings, referrals or reviews conducted under or by virtue of the 1997 Act. It also amends the Tribunals and Inquiries Act 1992 to alter the definition of “statutory inquiry” in relation to the application of section 9 of that Act.

### **Section 53 – Old development plans**

219. This section amends Schedule 1 to the 1997 Act to set out how existing development plans will be superseded by strategic development plans and local development plans

### **Section 54 – Further amendment of the principal Act**

220. **Subsection (2)** adds an additional subsection to section 1 of the 1997 Act to confirm that section 1 is subject to the provisions of the 1997 Act and any other Act.

221. **Subsection (3)** amends section 30(2) of the 1997 Act to allow the use of development orders to cover the allocation of developments to the different levels in the hierarchy set out in section 4 of this Act.

222. **Subsection (4)** adds an additional subsection to section 33 of the 1997 Act to cover the situation where an enforcement notice has been issued before an application for retrospective planning permission has been made.

223. **Subsection (5)** makes a minor amendments to section 37 of the 1997 Act.

224. **Subsection (6)** amends section 130(1)(b) of the 1997 Act to clarify that the matters it refers to are those referred to an enforcement notice issued under section 128(1) of the 1997 Act.

225. **Subsection (7)** amends section 135(11) of the 1997 Act to clarify that references to ‘compliance period’ in new section 136A have the same meaning as references to ‘compliance period’ in sections 136,140 and 141.

226. **Subsection (8)** amends section 156(1)(b) of the 1997 Act (right to enter without warrant) to extend the enforcement measures included in this section to include new section 144A (temporary stop notices).

227. **Subsections (9) and (10)** include references to Acts of the Scottish Parliament in sections 160(6)(c) and 216(6)(b) of the 1997 Act.

228. **Subsection (11)** substitutes new wording for subsection 237(1)(a) of the 1997 Act to insert references to strategic development plans and local development plans planning obligations and good neighbour agreements into the provisions on validity. It also updates subsection 237(3) to include decisions made by the Scottish Ministers on planning obligations and good neighbour agreements, and appeals against an enforcement notice relating to tree preservation provisions.

229. **Subsection (12)** updates section 238 of the 1997 Act by inserting references to strategic development plans and local development plans.

230. **Subsection (13)** amends section 242A (urgent Crown development applications) of the 1997 Act to take account of the repeal of sub-sections (5) and (6) of section 46 of the 1997 Act, which provide for planning authorities or applicants to require a public local inquiry to be held.

231. **Subsection (14)** updates the references to development plans in section 255 of the 1997 Act.

232. **Subsection (15)** updates the references to development plans in section 269 of the 1997 Act.

233. **Subsection (16)** includes references to Acts of the Scottish Parliament in section 275 of the 1997 Act, and provides that on the first occasion that regulations are made under paragraph (d) of new section 7(1) and paragraph (a)(i) of new section 19(10) of the 1997 Act, they shall be subject to affirmative procedure. It also provides that regulations made under section 136A(4) or 145A(4) shall be subject to affirmative procedure.. Subsection (16) also confirms that any regulation making powers conferred by the Act includes those necessary for any incidental, supplemental, consequential, transitory transitional or saving provision that Ministers consider necessary or expedient.

234. **Subsection (17)** inserts new definitions in section 277 (interpretation) of the 1997 Act, and also inserts new subsection (11), which states that any reference to registering an instrument of other document in the Land Register of Scotland is to be construed as a reference to registering the information contained therein in the Register.

235. **Subsection (18)** amends various references in Schedule 4 to the 1997 Act.

236. **Subsection (19)** makes consequential amendments to Schedule 14 to the 1997 Act.

### **Section 55 – Further amendment of the listed buildings Act**

237. **Subsection (2)** amends section 13 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 (“the listed buildings Act”) to specify that the Scottish Ministers may give directions to a single planning authority or to a described class of authorities as to any requirement to notify applications for listed building consent .

238. **Subsection (3)** amends section 69(1) of the listed buildings Act by removing the specific reference to conservation areas of “outstanding architectural or historic interest”. This broadens the Scottish Ministers’ discretion to make grants or loans applicable to any conservation area.

239. **Subsection (4)** inserts a definition into section 81 of the listed buildings Act (interpretation) to extend the meaning of “demolition” to include “partial demolition”.

240. This amendment is in response to the House of Lords case of *Shimizu (UK) v Westminster City Council (1997 1A11 ER 481)* where the court decided that “demolition” meant demolition of a building or structure *as a whole*. This meant partial demolition of a building could no longer be regarded as “demolition” but as an “alteration”, and therefore consent under section 66(1) of the listed buildings Act was no longer required for partial demolition of buildings and structures (including gates, walls or fences) in conservation area. By amending the scope of the definition of demolition, the effect of the provision will be that listed building and conservation area controls, where applicable, will encompass both partial and total demolition works.

241. **Subsection (5)** amends section 82(1) of the listed buildings Act to enable the Scottish Ministers to make regulations on the provision of information or evidence, for the purposes of that Act.

### **Section 56 – Repeals**

242. **Section 56** indicates that the schedule to the Act contains a list of the enactments which are repealed by the Act.



### **Section 57 – Interpretation**

243. **Section 57** defines the “principal Act” to be the Town and Country Planning (Scotland) Act 1997, and the “listed buildings Act” to be the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **Section 58 – Supplementary and consequential provisions**

244. **Subsections (1) to (3)** give the Scottish Ministers powers to make orders to implement supplementary, incidental, consequential, transitory, transitional and saving provisions, including the amendment or repeal of any enactment or instrument.

245. **Subsections (4) and (5)** provide that any order which adds to, replaces or omits any part of an Act shall be subject to an affirmative resolution procedure in Parliament. Other than this, orders will be subject to negative resolution procedure.

### **Section 59 – Commencement**

246. **Section 59** sets out the arrangements for commencement of the provisions of the Act. Sections 59 and 60 come into force on Royal Assent, and all other provisions are to be commenced by order.

### **Section 60 – Short title**

247. **Section 60** gives the short title of the Act as the Planning etc. (Scotland) Act 2006.

## **PARLIAMENTARY HISTORY**

248. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings, the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<b>Proceedings and Reports</b>	<b>Reference</b>
<b>Introduction</b>	
19 December 2005	<a href="#">Bill as introduced (SP Bill 51)</a>
<b>Stage 1</b>	
<i>(a) Communities Committee</i>	
1st Meeting, 11 January 2006	<a href="#">cols 2751-2814</a>
2nd Meeting, 18 January 2006	<a href="#">cols 2838-2878</a>
3rd Meeting, 25 January 2006	<a href="#">cols 2887-2952</a>
4th Meeting, 1 February 2006	<a href="#">cols 2956-3019</a>
5th Meeting, 8 February 2006	<a href="#">cols 3022-3077</a>
6th Meeting, 22 February 2006	<a href="#">cols 3081-3140</a>

*These Notes relate to the Planning etc. (Scotland) Act (asp 17)  
which received Royal Assent on 20 December 2006*

7th Meeting, 1 March 2006	<a href="#">cols 3141-3216</a>
8th Meeting, 8 March 2006	<a href="#">cols 3217-3273</a>
9th Meeting, 22 March 2006	<a href="#">cols 3281-3338</a>
10th Meeting, 28 March 2006	<a href="#">cols 3341-3416</a>
11th Meeting 29 March 2006	<a href="#">cols 3417-3464</a>
5th Report, 2006 (Session 2), 10 May 2006	<a href="#">Stage 1 Report on Planning etc. (Scotland) Bill (SP Paper 552)</a>
<i>(b) Finance Committee</i>	
6th Meeting, 28 February 2006	<a href="#">cols 3457-3473</a>
Report to Communities Committee, 24 March 2006	<a href="#">Report on Planning etc. (Scotland) Bill</a>
<i>(c) Subordinate Legislation Committee</i>	
9th Meeting, 14 March 2006	<a href="#">cols 1629-1650</a>
11th Meeting, 28 March 2006	<a href="#">cols 1695-1705</a>
<i>(d) Consideration by the Parliament</i>	
Stage 1 Debate, 17 May 2006	<a href="#">cols 25645-25719</a>
<b>Stage 2</b>	
<i>(a) Communities Committee</i>	
19th Meeting, 7 June 2006	<a href="#">cols 3639-3696</a>
20th Meeting, 14 June 2006	<a href="#">cols 3700-3760</a>
21st Meeting, 21 June 2006	<a href="#">cols 3761-3818</a>
22nd Meeting, 6 September 2006	<a href="#">cols 3819-3858</a>
23rd Meeting, 13 September 2006	<a href="#">cols 3865-3932</a>
24th Meeting, 20 September 2006	<a href="#">cols 3934-3996</a>
25th Meeting, 27 September 2006	<a href="#">cols 3997-4072</a>
26th Meeting, 4 October 2006	<a href="#">cols 4074-4105</a>
Bill as amended at Stage 2	<a href="#">Bill as amended (SP Bill 51A)</a>
<i>(b) Subordinate Legislation Committee</i>	

*These Notes relate to the Planning etc. (Scotland) Act (asp 17)  
which received Royal Assent on 20 December 2006*

30th Meeting, 7 November 2006	<a href="#">cols 2080-2097</a>
31st Meeting, 14 November 2006	<a href="#">cols 2102-2108</a>
41 <sup>st</sup> Report, 2006 (15 November 2006): Planning etc. (Scotland) Bill as amended at Stage 2	<a href="#">SP Paper 671</a>
<b>Stage 3</b>	
<i>Consideration by the Parliament</i>	
Stage 3 Debate, 15 November 2006	<a href="#">cols 29187-29281</a>
Stage 3 Debate, 16 November 2006	<a href="#">cols 29299-29380</a>
	<a href="#">cols 29416-29476</a>
Bill passed, 16 November 2006	<a href="#">Bill as passed (SP Bill 51B)</a>
<b>Royal Assent – 20 December 2006</b>	<a href="#">SP Business Bulletin No 189/2006</a>

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