

# **PLANNING (SCOTLAND) ACT 2019**

---

## **EXPLANATORY NOTES**

### **OVERVIEW OF THE ACT**

#### **PART 5 – INFRASTRUCTURE LEVY**

255. Sections 54 to 58 and schedule 1 of the Act set out powers to introduce an infrastructure levy, and to issue associated regulations and guidance.

#### ***Section 54: Power to provide for a levy***

256. Section 54(1) of the Act makes provision allowing the Scottish Ministers to establish and make provisions about an infrastructure levy by making regulations. Any regulations made under this section will be subject to affirmative parliamentary procedure (see section 61(3)). Section 61(4) also provides that before making regulations under section 54(1), the Scottish Ministers must consult any local authority that may be affected by the regulations and any other persons they consider appropriate.
257. Section 54(2) defines an infrastructure levy. It is a levy payable to a local authority, in respect of development wholly or partly within the authority's area, the income from which must be used to fund, or contribute to the funding of, infrastructure projects.
258. Subsection (3) introduces schedule 1 of the Act, which gives more detail on the regulation-making powers provided for in subsection (1).

#### ***Schedule 1: Infrastructure-levy regulations***

259. Schedule 1 of the Act makes more detailed provision about what may be included in regulations on the infrastructure levy made under section 54.
260. Paragraph 2 notes that the schedule (apart from specified exceptions) does not limit what may be included in regulations made under section 54, although it makes specific provision to allow various matters to be covered. The specified exceptions are paragraph 15(2), which sets limits on when the Scottish Ministers may restrict powers relating to planning or development, and paragraph 16, which relates to maximum penalties on the creation of an offence. Paragraphs 3 and 4 state that the regulations may include incidental, supplementary, consequential, transitional, transitory or saving provisions, and may modify other legislation.

#### ***Who is liable for what***

261. Paragraph 5 specifies that infrastructure-levy regulations may set out the kinds of development for which the infrastructure levy is payable, who is liable to pay, and when liability arises. The regulations may also set out the amount to be paid in respect of a development either by stating the amount or by setting out how it is to be calculated.

#### ***Relief where relevant planning obligations***

262. Paragraph 6 enables the infrastructure-levy regulations to include provisions to allow planning authorities to grant relief from payment of the infrastructure levy in

circumstances where a planning obligation has been entered into for a development and where the authority considers that also requiring payment of the infrastructure levy would result in a duplication of payments by the liable person(s).

### ***Local exemptions and discounts***

263. Paragraph 7(a) allows the regulations to give local authorities the power to waive or reduce the infrastructure levy for development in their areas and paragraph 7(b) allows for this power to be made subject to conditions set by the regulations.

### ***Collection and enforcement***

264. Paragraph 8 deals with collection and enforcement of the levy. Paragraph 8(a) makes provision for infrastructure-levy regulations to set out how the levy and any penalties for late payment can be collected. Paragraph 8(b) allows the regulations to enable local authorities to give powers to officers of the authority or others to enter premises (other than dwelling houses) and to seize items as part of investigating liability for the levy. Paragraph 8(c) allows the regulations to make it an offence to evade the infrastructure levy or reduce the liability to pay (or attempt to do so) by withholding information, providing false or misleading information, obstructing the investigation of liability to pay the levy or causing another person to do these things. The maximum penalties that would apply to an offence established in accordance with paragraph 8 are set out in paragraph 16.

### ***Financial penalty for late payment***

265. Paragraph 9 states that infrastructure-levy regulations may allow or require local authorities to charge a financial penalty if the payable amount for the infrastructure levy is not paid within the period specified in the regulations. The penalty may be in the form of a specified amount, a proportion of the payable amount calculated periodically (which would also allow for the charging of interest), or both.

### ***Stopping development***

266. Paragraph 10 makes provision in sub-paragraph (1)(a) allowing the regulations to empower a local authority to direct that the carrying out of development must stop until there has been payment in full of (i) the payable amount and (ii) any financial penalty for late payment under paragraph 9. In the event of regulations requiring payment to be made prior to commencement of development then, in the event that this requirement is not adhered to, stopping development would be a lever to encourage payment. This would avoid the situation of the development being completed and sold on and the authority then having to pursue payment. Under paragraph 10(1)(b), regulations can prescribe the consequences of not stopping development when directed to do so. Paragraph 10(2) sets out in particular that regulations may make it an offence not to stop development when directed to do so. The maximum penalties that would apply to such an offence are set out in paragraph 16.

### ***Remission and repayment***

267. Paragraph 11 makes provision allowing the regulations to provide for the remission or repayment (with or without interest) of the whole or part of the payable amount of the infrastructure levy or any associated financial penalty for late payment under paragraph 9. An example where this power could be used may be to ensure amounts that have been overpaid are returned, or to facilitate the remission of a payment in the case of a successful appeal.

### ***Appeals***

268. Paragraph 12 makes provision for the regulations to establish a process for appealing against a decision that the levy is payable, or about what the payable amount is. The

regulations may provide for appeals to be made to the Scottish Ministers or to a person appointed by them, and the regulations may also allow the person to whom an appeal is made to set the rules about the conduct of the appeal. Regulations could also prescribe fees for such appeals and make provision allowing expenses to be awarded.

### ***Accounting requirements***

269. Paragraph 13 allows the regulations to make provision about the accounts that must be kept by local authorities in connection with the carrying out of their functions under the regulations and expenditure of the income generated by the infrastructure levy (and any associated financial penalties).

### ***Expenditure of levy income***

270. Paragraph 14 makes provision for the regulations to specify the purposes for which income from the infrastructure levy (including financial penalties) can be applied.

### ***Use of planning and development powers***

271. Paragraph 15 makes provision allowing the regulations to define how additional, related powers, may or may not be exercised. This includes section 75 of the Town and Country Planning (Scotland) Act 1997 (which relates to planning obligations), section 53 of the Roads (Scotland) Act 1984 (agreements as to the use of land near roads), or any other power relating to planning or development. Sub-paragraph (2) makes it clear that any such provision can only be made if the Scottish Ministers consider it is necessary or expedient in order to make the infrastructure levy more effective in raising revenue to fund or support the funding of infrastructure projects, or to prevent or limit the use of other powers in circumstances where the Scottish Ministers consider that the power to charge the infrastructure levy would be more appropriate.

### ***Maximum penalties***

272. Paragraph 16 makes provision in sub-paragraph (1) for the maximum penalty which may be specified for any offence created in the regulations. For a summary-only offence, the maximum penalties are (i) a fine not exceeding level 5 on the standard scale (currently £5,000), (ii) imprisonment for a period not exceeding 12 months or (iii) both the fine and the term of imprisonment. For an offence that can be prosecuted either on summary complaint or on indictment, the maximum penalties are (i) a fine, which on summary conviction may not exceed the statutory maximum (currently £10,000), (ii) imprisonment for a period not exceeding 12 months on summary conviction or 2 years on conviction on indictment or (iii) both the fine and the term of imprisonment.

### ***Section 55: Guidance***

273. Section 55(1) of the Act makes provision allowing the Scottish Ministers to issue guidance to local authorities that deals with how the infrastructure-levy functions conferred on them by regulations are to be discharged, and how the income from the infrastructure levy should be spent. Subsection (2) sets out that local authorities must have regard to any such guidance and subsection (3) allows the guidance to be addressed to: an individual local authority; more than one local authority identified in the guidance; or to all local authorities. Subsection (4) requires the Scottish Ministers to make any such guidance publicly available. Subsection (5) makes provision allowing the Scottish Ministers to vary the guidance or revoke it.
274. Subsection (6) clarifies that income from an infrastructure levy, for the purposes of the guidance, includes income from financial penalties charged for late payment.

***Section 56: Interpretation of Part and schedule***

275. Section 56 of the Act provides definitions of “development”, “infrastructure”, “green and blue infrastructure” and an “infrastructure project” for the purposes of this Part and schedule 1.

***Section 57: Power to change meaning of “infrastructure”***

276. [Section 57](#) of the Act gives the Scottish Ministers the power to make regulations to vary the meaning of “infrastructure” for the purposes of this Part and schedule 1. Any regulations made under this section will be subject to affirmative parliamentary procedure (see section 61(3)).

***Section 58: Lapsing of power to provide for levy***

277. Section 58 of the Act provides that the power to make regulations to establish an infrastructure levy ceases to be exercisable if no regulations have been made within 7 years after the Bill for the Act received Royal Assent (that is, by 25 July 2026) – this is known as a “sunset clause”. If that happens, the Scottish Ministers may repeal Part 5 of the Act and schedule 1 by regulations.