

PLANNING (SCOTLAND) ACT 2019

EXPLANATORY NOTES

OVERVIEW OF THE ACT

PART 4 – OTHER MATTERS

Charges and fees

Section 41: Fees for planning applications etc.

207. Section 41 of the Act amends section 252 of the 1997 Act, which gives the Scottish Ministers powers to make regulations providing for the payment of fees and charges to planning authorities.
208. Section 41(2) inserts a new paragraph into section 252(1) of the 1997 Act, which sets out the activities in respect of which fees or charges may be payable to a planning authority. New paragraph (c) makes it clear that the regulations can make provision for a fee or charge to be payable in respect of the performance of functions by a person appointed by virtue of a scheme of delegation.
209. Section 41(3) of the Act introduces section 252(1ZA) into the 1997 Act, which enables the Scottish Ministers to provide by regulations for the payment of a charge or fee to the Scottish Ministers for their activities in relation to planning. Fees or charges may be specified in respect of the performance by the Scottish Ministers, or a person appointed by them under schedule 4 of the 1997 Act, of functions under the planning Acts and any associated subordinate legislation, including anything which facilitates, is conducive or incidental to the performance of those planning functions. This could include where the Scottish Ministers, in performance of their planning functions, deliver a service for the benefit of local authorities or where the Scottish Ministers have a role in dealing with planning casework. Subsection (4) makes a consequential modification so that section 252(1A) of the 1997 Act, which clarifies what provision regulations may make, applies to regulations about fees payable to the Scottish Ministers too, instead of only applying to fees payable to planning authorities.
210. Section 41(5) of the Act adjusts section 252(1A)(b) of the 1997 Act so as to provide that this regulation-making power includes the ability to make provision allowing a planning authority to determine how the fee or charge is to be calculated.
211. Section 41(7) substitutes paragraph (e) of section 252(1A) of the 1997 Act and adds a further paragraph (ea). These paragraphs allow the Scottish Ministers to make provision within the regulations permitting a planning authority or the Scottish Ministers to decide whether to charge an applicant the full fee, a reduced fee or waive the fee entirely. They also allow the Scottish Ministers to set limits on that discretion. Further provision is made in subsections inserted by section 41(10). New section 252(1C) allows the regulations to set out steps the authority would be required to take before or after reducing or waiving a fee; for example, they might be required to publish a statement of the circumstances in which they would do so. New subsections (1E) and (1F) of section 252 provide that regulations may allow for fees and charges to be waived for

developments that contribute to a social enterprise or not for profit enterprise, or are likely to contribute to improving the health of residents in the area.

212. Section 41(6) of the Act repeals subsection (1A)(da) of section 252 of the 1997 Act, and subsection (8) repeals subsections (1AA) and (1AB) of section 252 of the 1997 Act. These currently allow regulations to make provision for different levels of fees or charges to be payable to different planning authorities, and subsection (1AA) makes clear this may be done where the Scottish Ministers are satisfied that a particular authority is not, or has not been, performing its planning functions satisfactorily. Subsection (9) inserts a new section 252(1AC) which prevents similar provision being made in future on the basis of performance.
213. Section 41(10) introduces new subsections (1C), (1D), (1E) and (1F) into section 252 of the 1997 Act. Subsections (1C), (1E) and (1F) are described in paragraph 211 above. New section 252(1D) allows regulations to make provision for a surcharge to be imposed for retrospective planning applications. The surcharge may not be more than the fee that would be payable for the same application if it was not retrospective, that is, the total retrospective fee may not be more than twice the standard fee.
214. Section 41(11) repeals section 252(2) of the 1997 Act, which made provision for the Secretary of State (now the Scottish Ministers) to make regulations providing for a fee to be paid to him for any planning application deemed to be made to him. This power is replaced by new section 252(1ZA).
215. Section 41(12) of the Act amends section 252(3) of the 1997 Act, which allows regulations to provide for the remission or refunding of fees. The amendments are consequential on the inclusion of fees to be paid to the Scottish Ministers and the repeal of section 252(3).
216. Section 41(13) amends section 252(7) of the 1997 Act. That section currently provides that where a fee is calculated in pursuance of the regulations, planning authorities may only recover the cost of actually providing the function for which the fee is charged. In light of the insertion of section 252(1ZA) (which allows regulations to make provision for the payment of a fee to the Scottish Ministers), section 21(10) of the Act amends this rule so that it applies equally to the Scottish Ministers.
217. As discussed at paragraph 213 above, new section 252(1D) (as inserted by section 21(7) of the Act) enables the regulations to impose a surcharge in the case of applications for retrospective planning permission. Subsection (14) of section 21 of the Act inserts new section 252(9) to make it clear that the restriction in section 252(7) of the 1997 Act would not apply in this situation.