

# PLANNING (SCOTLAND) ACT 2019

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

#### Part 6 – Final Provisions

##### *Section 61: Regulation-making powers*

280. Subsection (1) of section 61 of the Act provides that the powers of the Scottish Ministers to make regulations under this Act include the power to make different provision for different purposes and areas. Subsection (2) provides that ancillary regulations made under section 59 are subject to the affirmative parliamentary procedure if they amend any part of any Act, but otherwise are subject to the negative parliamentary procedure. Subsection (3) specifies the procedure to be applied to regulations made under the free-standing provisions in the Act, in sections 54 and 57. Subsection (4) provides that before making regulations on the infrastructure levy, the Scottish Ministers must consult any local authority that may be affected by them, and any other persons the Ministers consider appropriate.
281. Where the Act inserts a regulation-making power into the 1997 Act, the procedure that applies is automatically governed by section 275 of the 1997 Act (as read with section 118(2) of the Scotland Act 1998). Accordingly, unless otherwise specified, the regulation-making powers that the Act inserts into the 1997 Act are subject to the negative parliamentary procedure. Paragraph 9 of schedule 2 of the Act amends section 275 of the 1997 Act and provides that the following new regulation-making powers are subject to the affirmative procedure:
- New section 3CC, inserted by section 12 of the Act – Amendment of National Planning Framework
  - New section 3G, inserted by section 3 of the Act – Open space strategy
  - New section 26B, inserted by section 17 of the Act – Material change of use, short-term lets
  - New section 40A, inserted by section 19 of the Act – Assessment of health effects
  - New section 41B, inserted by section 26 of the Act – Conditional grant of planning permission: provision of toilet facilities within certain large developments
  - New section 77A, inserted by section 39 of the Act – Compensation for withdrawal of planning permission granted by development order
  - New section 251B, inserted by section 47 of the Act – National planning improvement co-ordinator
  - Paragraph 3 of new schedule 5A, inserted by section 15 of the Act – places that cannot be included in a scheme for a masterplan consent area