Planning (Scotland) Act 2019

2019 asp 13

PART 2

MASTERPLAN CONSENT AREAS

15 Masterplan consent area schemes

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After section 54 insert—

"Masterplan consent areas

54A Making and alteration of schemes

Schedule 5A—

(a) makes provision about the making and alteration of masterplan consent area schemes (including the right to request that a scheme be made or altered), and

(b) confers powers on the Scottish Ministers in connection with such schemes.

54B Scheme grants planning permission, etc.

(1) A masterplan consent area scheme acts as a grant of authorisation for carrying out, within the area to which the scheme relates, development that—

(a) is either—

(i) specified in the scheme, or

(ii) of a description specified in the scheme, and

(b) is begun before the end of the day on which the scheme ceases to have effect.

(2) Authorisation granted by a scheme is subject to—

(a) any conditions, limitations and exceptions specified in the scheme, and

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(b) any regulations made under paragraph 19 of schedule 5A (read with paragraph 20 of that schedule).

(3) In this section, "authorisation" means—

(a) planning permission, and

(b) if the scheme so provides—

(i) consent to the construction of a new road or an extension of an existing road for the purposes of section 21(1) of the Roads (Scotland) Act 1984

(ii) authorisation for works in relation to a listed building for the purposes of section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and

(iii) authorisation for works in relation to a building in a conservation area for the purposes of section 66(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and section 6 of that Act as applied by any regulations under section 66(3) of that Act.

54C Content of schemes: self-build housing

(1) A masterplan consent area scheme may, under section 54B(1)(a), specify—

(a) development in the form of self-build housing, or

(b) a description of development which includes self-build housing.

(2) For the purpose of subsection (1), self-build housing is where an individual commissions or (whether acting alone or with other individuals) is personally involved in the design and construction of a dwelling that is intended to be the individual's main residence once it is built.

(3) Nothing in this section is to be construed as limiting the development or a description of development that may be specified under section 54B(1)(a).

54D Effect of altering scheme

(1) Alterations to a scheme have effect from the day they are made.

(2) Subsection (3) applies where—

(a) development for which authorisation is granted by a scheme has begun, and

(b) the scheme is subsequently altered.

(3) The authorisation that the scheme grants for the development is unaffected by the alteration, unless the scheme (as altered) provides otherwise.

(4) But the scheme may not provide that the alteration affects the authorisation for the development if the effect would be to remove authorisation for anything that was authorised by the scheme when the development began.

54E Further provision about effect of scheme

(1) The right to carry out development in accordance with authorisation granted by a scheme is unaffected by any limitations or restrictions imposed in relation to any other grant of permission, consent or authorisation.

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(2) Nothing in a scheme affects the right of any person to—
- (a) do anything that is not development, or
- (b) carry out development for which—
  - (i) no permission, consent or authorisation which may be granted by a scheme is required, or
  - (ii) any such permission, consent or authorisation that is required is granted otherwise than under the scheme.

54F Interpretation of provisions about schemes

(1) This section makes provision about the interpretation of sections 54B to 54E.

(2) References to a scheme are to a masterplan consent area scheme.

(3) References to the authorisation granted by a scheme are to be construed in accordance with section 54B(3).

(4) References to development include any activity mentioned in section 54B(3)(b) (whether or not it otherwise falls to be regarded as development for the purposes of this Act).”.

(3) After schedule 5 insert—

“SCHEDULE 5A

(introduced by section 54A)

MASTERPLAN CONSENT AREAS

PART 1

CONTENT OF SCHEMES

General

1 (1) A scheme is to consist of—
- (a) a map,
- (b) a written statement, and
- (c) such diagrams, illustrations and other descriptive matter as the relevant planning authority think appropriate for explaining or illustrating the scheme's provisions.

(2) A scheme must specify—
- (a) the area to which the scheme relates,
- (b) the development, or descriptions of development, for which the scheme grants authorisation,
- (c) the date on which the scheme comes into effect,
- (d) the date on which the scheme ceases to have effect.

(3) The Scottish Ministers may by regulations prescribe further information that must be included in a scheme.

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(4) A scheme may not specify as the date on which it ceases to have effect a date that falls more than 10 years after it comes into effect.

(5) In sub-paragraph (1)(c), "the relevant planning authority" means the authority in whose district the area to which the scheme relates lies.

Further provision about conditions, limitations and exceptions

2 (1) A scheme may specify different conditions, limitations or exceptions to the authorisation it confers for different cases.

(2) Obtaining a planning authority's consent for development to begin may be specified as a condition of authorisation being conferred by a scheme.

Places that cannot be included in a scheme

3 (1) A scheme may not include any place which sub-paragraph (4) applies to at the time the scheme is made.

(2) A scheme may not be altered so as to include a place that is, at the time the alteration is made, a place to which sub-paragraph (4) applies.

(3) For the avoidance of doubt, if—

(a) a place is included in an area to which a scheme relates, and

(b) that place subsequently becomes a place to which sub-paragraph (4) applies,

the place is not, as a result, excluded from the area to which the scheme relates.

(4) This sub-paragraph applies to—

(a) any place that is or forms part of—

(i) a European site as defined in regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716),

(ii) a marine protected area,

(iii) a National Scenic Area (see section 263A),

(iv) a Ramsar site as defined in section 37A of the Wildlife and Countryside Act 1981,

(v) a site of special scientific interest as defined in section 58 of the Nature Conservation (Scotland) Act 2004,

(vi) a site included in the World Heritage List ("a world heritage site") or an area identified in the World Heritage List as a buffer zone for a world heritage site, or

(b) any place in respect of which either of the following has effect—

(i) a nature conservation order made under Part 2 of the Nature Conservation (Scotland) Act 2004,

(ii) a land management order made under that Part of that Act.

(5) In sub-paragraph (4)—

"marine protected area" means an area designated by an order under section 67 of the Marine (Scotland) Act 2010 as—

(a) a nature conservation area,

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(b) a demonstration and research marine protected area, or

(c) a historic marine protected area,

"World Heritage List" means the list kept in accordance with article 11(2) of the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at Paris on 16 November 1972.

(6) The Scottish Ministers may by regulations modify sub-paragraphs (4) and (5).

PART 2

MAKING AND ALTERING OF SCHEMES BY PLANNING AUTHORITIES

Power to make or alter scheme

4 At any time, a planning authority may (in accordance with Part 3)—

(a) make a scheme for a part of their district, or

(b) alter a scheme that relates to an area in their district.

Duty to periodically consider making scheme

5 (1) Each planning authority must, at least once in each 5-year period, consider whether it would be desirable to—

(a) make a scheme for a part or parts of their district,

(b) alter a scheme that relates to an area in their district.

(2) In sub-paragraph (1), the "5-year period" means—

(a) the period of 5 years beginning with the day on which the Bill for the Planning (Scotland) Act 2019 received Royal Assent, and

(b) each subsequent period of 5 years beginning with the day on which the authority last published a statement under sub-paragraph (3).

(3) After each occasion on which an authority consider the matters mentioned in sub-paragraph (1), they must publish a statement setting out—

(a) what they decided, and

(b) the reasons for their decision.

(4) The Scottish Ministers may by regulations prescribe requirements in respect of the statement mentioned in sub-paragraph (3).

(5) The requirements that may be specified under sub-paragraph (4) include, in particular, requirements as to—

(a) what information a statement must contain,

(b) how it is to be published, and

(c) to whom copies of it are to be sent.

Duty to seek to make or alter scheme when directed to do so

6 (1) The Scottish Ministers may at any time direct a planning authority to—

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(a) make a scheme in such terms as the Scottish Ministers consider appropriate, or

(b) alter a scheme in such manner as the Scottish Ministers consider appropriate.

(2) It is the duty of a planning authority given a direction under this paragraph to seek to make or (as the case may be) alter a scheme in accordance with the direction.

(3) Sub-paragraph (2) does not relieve a planning authority from having to comply with the requirements for making or altering a scheme set out in Part 3.

PART 3

PROCESS FOR PLANNING AUTHORITY MAKING OR ALTERING SCHEME

CHAPTER 1

PROCESS FOR ALL CASES

Outline of process

7 (1) Before making or altering a scheme, a planning authority must—

(a) formulate their proposals for the scheme or alteration to be made, having first consulted in accordance with paragraph 8, and

(b) consult on their proposals in accordance with paragraphs 9 and 10.

(2) Having considered any responses received to the consultation on their proposals (as paragraph 10 requires), the planning authority may (subject to any direction under paragraph 12 or Chapter 1 of Part 4)—

(a) make the proposed scheme or alteration,

(b) make a scheme or alteration which, in light of the consideration given to responses received to the consultation and any other matters which appear to the authority to be material, differs from what they proposed, or

(c) decide not to make any scheme or alteration.

(3) If the planning authority wish to make an alteration that would have an effect described in sub-paragraph (1)(b) of paragraph 13, they must wait as required by that paragraph before making the alteration.

Consultation on possible proposals

8 (1) Before publicising, in accordance with paragraph 9, proposals for making or altering a scheme, a planning authority must—

(a) comply with any requirements as to consultation prescribed in regulations under this paragraph, and

(b) have regard to any valid representations received from anyone consulted in compliance with those requirements.

(2) The Scottish Ministers are to prescribe by regulations requirements about—

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(a) who a planning authority must consult before determining the content of any proposals which may be publicised in accordance with paragraph 9,

(b) how that consultation is to be undertaken, and

(c) how representations to the planning authority must be made by anyone consulted if they are to be treated as valid representations for the purpose of sub-paragraph (1)(b).

(3) Without prejudice to the generality of sub-paragraph (2), regulations made under this paragraph may—

(a) require a planning authority to consult the public (or a portion of the public), or

(b) empower the Scottish Ministers to direct an authority to do so in particular cases.

Publicity for proposals

9 (1) Before making or altering a scheme, a planning authority must—

(a) comply with the requirements for publicising, and inviting representations in relation to, their proposals for making or altering the scheme, and

(b) wait until the period for representations has expired.

(2) The Scottish Ministers are to prescribe by regulations—

(a) the requirements for publicising and inviting representations in relation to proposals for making or altering a scheme, and

(b) the period for representations.

Consideration of representations

10 (1) Where a planning authority have received validly submitted representations in relation to their proposals for making or altering a scheme, they may not make the proposed scheme or alteration (whether in the terms proposed or otherwise) until they have considered the representations.

(2) For the purpose of this paragraph, representations are validly submitted if—

(a) they are submitted within the period for representations prescribed under paragraph 9(2), and

(b) they comply with any requirements prescribed by the Scottish Ministers in regulations under this sub-paragraph about how representations must be submitted.

CHAPTER 2

FURTHER PROCESS FOR SOME CASES

Requirement to hold hearings

11 (1) The Scottish Ministers may by regulations prescribe circumstances in which, to fulfil the requirement under paragraph 10(1), a planning authority must

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give a person of a description prescribed in the regulations an opportunity to appear before and be heard by a committee of the authority.

(2) The requirement under paragraph 10(1) for a planning authority to consider representations includes any representations made at a hearing required by regulations under sub-paragraph (1).

(3) Each planning authority is to make such rules as they consider appropriate in relation to—

(a) the procedures in accordance with which any hearing required by regulations under sub-paragraph (1) is arranged and conducted (including, without prejudice to the generality of this sub-paragraph, procedures for ensuring relevance and avoiding repetition),

(b) any other procedures consequent upon such a hearing,

(c) any right of attendance at such a hearing (other than for the purpose of appearing before, and being heard by, a committee).

(4) Any requirement to hold hearings created by regulations under sub-paragraph (1) is subject to paragraph 14(3)(b).

Requirement to notify the Scottish Ministers of certain proposals

12 (1) The Scottish Ministers may direct a planning authority to notify them, as soon as reasonably practicable, of any proposals for making or altering a scheme that the authority have publicised in accordance with paragraph 9.

(2) Where a planning authority are required by a direction under this paragraph to notify the Scottish Ministers of their proposals, the authority may not make the proposed scheme or alteration (whether in the terms proposed or otherwise) until the period provided for in the direction has ended.

(3) A direction under this paragraph may—

(a) be addressed to a particular authority or all authorities,

(b) require that the Scottish Ministers be notified of proposals if—

(i) the proposals are of a description specified in the direction, or

(ii) an event specified in the direction occurs in connection with the proposals,

(c) provide for the period in the direction to be either—

(i) a specified period of time, or

(ii) an indefinite period that ends only when the Scottish Ministers tell the authority it has ended.

Pause before making certain alterations

13 (1) Sub-paragraph (2) applies where, having completed the consultation process in relation to their proposals for altering a scheme—

(a) a planning authority intend to alter the scheme (whether in the terms proposed or otherwise), and

(b) the intended alteration would have the effect of—

(i) excluding a place from the area to which the scheme relates,

(ii) withdrawing authorisation granted by the scheme, or

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(iii) making the authorisation granted by the scheme subject to new or more stringent conditions, limitations or exceptions.

(2) The intended alteration may not be made before the end of the day that falls 12 months after the consultation process was completed.

(3) For the purpose of this paragraph, the consultation process in relation to proposals to alter a scheme is completed—

(a) on the last day of hearings in relation to the proposals required by regulations under paragraph 11(1), or

(b) if no such hearings are required in relation to the proposals, on the last day that representations in relation to the proposals could be validly submitted for the purpose of paragraph 10.

PART 4

SCOTTISH MINISTERS' POWERS TO MAKE AND ALTER SCHEMES AND STOP PROPOSALS

CHAPTER 1

CALLING IN PLANNING AUTHORITIES' PROPOSALS

Power to call in proposals

14 (1) For the purposes of this Chapter, a call-in direction is a direction given to a planning authority by the Scottish Ministers in relation to the authority's proposals for making or altering a scheme.

(2) A call-in direction may be given in relation to an authority's proposals at any time prior to the authority making the proposed scheme or alteration (whether in the terms proposed or otherwise).

(3) Once a planning authority have been given a call-in direction, the authority—

(a) may not make the proposed scheme or alteration (whether in the terms proposed or otherwise), and

(b) must not begin, or as the case may be proceed with, any hearings in relation to the proposals that would (but for this paragraph) be required by regulations under paragraph 11(1).

Powers after calling in

15 (1) Where a call-in direction has been given in relation to a planning authority's proposals for making or altering a scheme, the Scottish Ministers may—

(a) make the scheme or alteration proposed,

(b) make a scheme or alteration that is different from what the authority proposed, or

(c) decline to make any scheme or alteration.

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(2) In considering what to do under sub-paragraph (1), the Scottish Ministers may take matters into account despite their not having been taken into account by the planning authority in formulating their proposals.

(3) The Scottish Ministers may, for the purpose of deciding what to do under sub-paragraph (1), cause a local inquiry or other hearing to be held by a person appointed by them.

(4) If—

(a) the Scottish Ministers decide to alter a scheme under sub-paragraph (1), and

(b) the alteration they intend to make would have one of the effects described in paragraph 13(1)(b),

they may not make the alteration until the end of the day that falls 12 months after the day on which they decided to make the alteration.

CHAPTER 2

MAKING OR ALTERING SCHEME FOLLOWING PARAGRAPH 6 DIRECTION

Power to make or alter scheme

16 (1) The Scottish Ministers may (in accordance with paragraph 17) make, or alter, a scheme if—

(a) they have given a planning authority a direction under paragraph 6, and

(b) they are satisfied that the planning authority are not fulfilling the duty arising from that direction within a reasonable period.

(2) In order to satisfy themselves of the matter mentioned in sub-paragraph (1)(b), the Scottish Ministers must cause a local inquiry or other hearing to be held by a person appointed by them.

Process for making or altering schemes

17 (1) Unless stated otherwise, the enactments mentioned in sub-paragraph (2) apply to the making, or alteration, of a scheme by the Scottish Ministers under paragraph 16—

(a) as they apply to the making or (as the case may be) alteration of a scheme by a planning authority, but

(b) subject to the modifications set out in sub-paragraphs (3) to (6).

(2) The enactments referred to in sub-paragraph (1) are—

(a) Part 3, and

(b) any regulations made under—

(i) Part 3, or

(ii) paragraph 22.

(3) References to a planning authority are to be read as references to the Scottish Ministers.

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(4) References to a planning authority's district are to the district in which the area to which the scheme relates lies (or would lie were the scheme or alteration in question made).

(5) References to a committee of a planning authority are to—
  (a) the Scottish Ministers, or
  (b) a person appointed by the Scottish Ministers to discharge the function in question on their behalf.

(6) Requirements to—
  (a) consult, and
  (b) send things to,
  the Scottish Ministers do not apply.

Recovery of costs

18 (1) Having incurred costs in complying with an enactment mentioned in paragraph 17(2) in connection with making or altering a scheme under paragraph 16, the Scottish Ministers may require the relevant planning authority to pay them—
  (a) an amount equal to the costs they incurred, or
  (b) such lesser amount as they consider appropriate.

(2) In sub-paragraph (1) "the relevant planning authority" is the authority in whose district the area to which the scheme relates lies (or would have lain had it been made).

PART 5

FURTHER POWERS OF SCOTTISH MINISTERS

CHAPTER 1

EXCLUDING KINDS OF DEVELOPMENT FROM SCHEMES

Power to exclude kinds of development

19 (1) The Scottish Ministers may by regulations provide that no scheme grants authorisation in relation to development of a kind described in the regulations.

(2) Regulations under this paragraph may describe a kind of development by reference to its being development of land that is specified, or of a description specified, in the regulations.

(3) Sub-paragraph (2) is not exhaustive of the ways in which kinds of development can be described in regulations under this paragraph.

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Effect of exclusion on existing schemes

20 If a scheme has conferred authorisation in relation to development of a kind that regulations under paragraph 19 state cannot be granted authorisation by a scheme—

(a) the scheme ceases to have the effect of granting authorisation for any new development of that kind from the date the regulations prescribe, but

(b) the authorisation granted by the scheme is unaffected by the regulations in relation to development begun before that date.

CHAPTER 2

POWERS IN RELATION TO PROCEDURE, ETC.

Directions about procedure and provision of information

21 (1) The Scottish Ministers may give a planning authority a direction—

(a) about how the authority are to formulate their procedures for carrying out their functions under this schedule,

(b) requiring that the authority provide the Scottish Ministers with information specified in the direction.

(2) A planning authority must comply with any direction given under sub-paragraph (1).

(3) Information may not be specified under sub-paragraph (1)(b) unless it is information that the Scottish Ministers require for carrying out their functions under this schedule.

Regulations about form, content and procedure

22 (1) The Scottish Ministers may make regulations about—

(a) the form and content of schemes, and

(b) the procedure to be followed in connection with making and altering schemes.

(2) Regulations under this paragraph may in particular—

(a) provide for the publicity to be given to—

(i) matters included, or proposed for inclusion in, a scheme,

(ii) the making or alteration of a scheme,

(iii) any procedural step in relation to the making or alteration of a scheme,

(b) make provision with respect to the making and consideration of representations concerning—

(i) whether a scheme should be made,

(ii) what should be included in a scheme,

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(c) require, or authorise, consultation with persons identified in the regulations (by name or description) prior to the taking of steps in the process of making or altering a scheme,

(d) require a planning authority, in circumstances prescribed in the regulations, to give anyone who requests them copies of documents which have been made public,

(e) allow a planning authority to impose a reasonable charge on anyone given a copy of a document in accordance with provision made by virtue of paragraph (d),

(f) provide for the publication and inspection of—

(i) any scheme which has been made, or

(ii) a document setting out alterations that have been, or are to be, made to a scheme,

(g) provide for the sale of copies of—

(i) schemes, and

(ii) any document that sets out alterations that have been, or are to be, made to a scheme.

PART 6

INTERPRETATION

Application of section 54F

23 Section 54F applies to the interpretation of this schedule as it does to sections 54B to 54E.

Calculation of periods

24 (1) Where a period is described in this schedule (in whatever terms) as ending after a specified number of months or years—

(a) if the final month has a day corresponding to the day of the month on which the period began, the period ends at the end of that day of the final month,

(b) if the final month is shorter than the month in which the period began and so does not have a corresponding day, the period ends on the last day of the final month.

(2) In sub-paragraph (1), "the final month" means the month arrived at by counting forwards the specified number of calendar months or years from the month in which the period began.

(3) For example, if a period described as ending after 6 months begins on 31 August it ends on 28 February (or 29 February in a leap year).".

Commencement Information

I1 S. 15 in force at 1.4.2024 for specified purposes by S.S.I. 2024/79, **reg. 2(1)**(2)(b)(4)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.S.I. 2019/377, reg. 9 by S.S.I. 2019/411 reg. 2
- specified provision(s) amendment to earlier commencing S.S.I. 2021/101, regs. 3, 4 by S.S.I. 2021/291 reg. 2