

PLANNING (SCOTLAND) ACT 2019

EXPLANATORY NOTES

OVERVIEW OF THE ACT

PART 2 – MASTERPLAN CONSENT AREAS

Section 15: Masterplan consent area schemes

92. Section 15 of the Act amends the 1997 Act to insert new sections 54A-F and schedule 5A, which relate to masterplan consent areas (MCAs). Consequential changes in respect of other references within the Act which now also need to refer to masterplan consent areas are made in paragraph 5 of schedule 2 of the Act.

Making and alteration of schemes

93. New section 54A introduces new schedule 5A which provides detail on the process for making and altering MCA schemes, and gives the Scottish Ministers powers in connection with such schemes, including regulation-making powers to allow the Scottish Ministers to provide further detailed requirements and direction-making powers for various purposes.

Scheme grants planning permission, etc.

94. Under subsection (1) of new section 54B, an MCA scheme can grant authorisation for the type of development set out in the scheme, within the geographic location (area) to which the scheme relates. In setting out the type of development that the scheme authorises, this can be either expressly specified or described as type of development that is specified in the scheme. To be authorised by the scheme, the development must be started before the scheme ceases to have effect.
95. Subsection (2) states that the authorisation given by an MCA scheme is subject to any conditions, limitations or other exceptions that are specified in the scheme itself, or any regulations made by the Scottish Ministers restricting the type of development that may be authorised by a scheme.
96. Subsection (3) covers the types of consent that an MCA scheme can provide. Paragraph (a) provides that schemes act as a grant of planning permission and paragraph (b) allows schemes also to serve as roads construction consent, listed building consent and conservation area consent if these are specified in the scheme.

Content of schemes: self-build housing

97. New section 54C confirms that self-build housing may be specified as a development or description of development authorised by an MCA scheme.

Effect of altering scheme

98. The Act provides the potential for a planning authority to make alterations to an MCA scheme. New section 54D(1) means that a scheme's alterations take effect from

the day they are made. New sections 54D(2) and (3) make savings provision and provide that where development has already begun under the terms of the MCA scheme, it is not to be affected by a subsequent alteration to the scheme unless the scheme as altered so provides. However, section 54D(4) prevents an altered scheme from removing an authorisation for development which has already begun.

Further provision about effect of scheme

99. New section 54E provides in subsection (1) that the MCA scheme operates on a stand-alone basis. This means that any restrictions on development authorised by the scheme must be included within the scheme itself. The authorisations in a scheme are not to be impeded by any restrictions in any other grant of permission, consent or authorisation. For example, this means that if a particular development has been granted planning permission on a more restricted basis but an MCA scheme is then granted which authorises the development without restriction, the developer who is about to carry out the development is entitled to do so in accordance with the terms of the MCA.
100. New section 54E confirms in subsection (2) that nothing in a scheme can restrict anyone's rights to do anything that is not development (and therefore does not require planning permission) or to carry out development for which planning permission is not required or has been otherwise granted (e.g. existing permitted development rights).

Interpretation of provisions about schemes

101. Section 54F explains how "scheme", "authorisation" and "development" are to be interpreted in relation to MCAs.

Schedule 5A of the 1997 Act: Masterplan consent areas

Part 1: Content of schemes

General

102. Paragraph 1 of new schedule 5A sets out that a scheme must include a map, a written statement, and any other graphic material, diagrams etc. that the planning authority consider appropriate for illustrating the scheme's provisions. It must specify the area to which it relates, the development or descriptions of development for which it grants authorisation, and the time frame for which the scheme will have effect (which must not be longer than a 10-year period). The Scottish Ministers may make regulations requiring further information to be included in a scheme.

Further provision about conditions, limitations and exceptions

103. Paragraph 2 of schedule 5A allows schemes to specify different conditions for different cases, which could cover different parts of the scheme's area or in relation to different types of development. It also allows the planning authority to include conditions that require the planning authority's agreement to certain matters as a condition of authorisation.

Land that cannot be included in a scheme

104. Paragraph 3 of schedule 5A imposes restrictions on places that can be included in a scheme. The list provided in subsection (4) covers places subject to various national or international environmental or heritage designations, and it may be modified by regulations. Schemes cannot include such places or be altered to include such places. However, paragraph 3(3) provides that if a place is already included within a scheme and benefits from the authorisations the scheme gives, it will not be removed from the scheme by the Scottish Ministers subsequently making regulations which provide that the land is of a type that may no longer be included in such schemes.

Part 2: Making and altering of schemes by planning authorities

Power to make or alter scheme

105. Paragraph 4 of schedule 5A allows planning authorities to make or alter a scheme for part of their area at any time.

Duty to periodically consider making scheme

106. Paragraph 5 of schedule 5A places a duty on planning authorities to consider, at least once every five years, which part(s) of their area it would be desirable to make a scheme for and to publish a statement setting out details of their decision and reasons. The Scottish Ministers may use regulations to set out requirements about the statement including its content, publication and circulation.

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

107. Paragraph 6 of schedule 5A means that the Scottish Ministers can at any time direct that, and set out the terms by which, a planning authority must make or alter a scheme. The direction must be in writing and be published. Under sub-paragraphs (2) and (3), a planning authority given such a direction is under a duty to seek to make or alter a scheme in accordance with the direction, but must comply with the process for making or altering a scheme set out in Part 3 of the schedule.

Part 3: Process for planning authority making or altering scheme

Chapter 1: Process for all cases

108. Paragraph 7 of new schedule 5A sets out the outline of the process for making or altering a scheme, as follows:
- The planning authority must consult as required by any regulations made under paragraph 8(2), and have regard to any valid representations made through that consultation. Following that consultation, they must come up with proposals.
 - Then the planning authority must publicise the proposals in accordance with paragraph 9, and consider any representations received in accordance with paragraph 10 (including holding any hearings required under paragraph 11).
 - The planning authority may then decide to make the proposed scheme or alteration, make an alternative scheme or alteration in light of the results of the consultation or any other material considerations, or decide not to make any scheme or alteration.
 - If the planning authority propose to make an alteration that would exclude land from a scheme, withdraw authorisation granted by a scheme, or impose more stringent conditions or restrictions on any such authorisation, they must wait 12 months before making the alteration, as required by paragraph 13.

Consultation on possible proposals

109. Paragraph 8 requires the Scottish Ministers (sub-paragraph (2)) to prescribe in regulations who a planning authority must consult before determining the content of any proposals, how such consultation is to be undertaken, and how representations must be made by those consulted in order for those representations to be treated as valid representations. These regulations may require a planning authority to consult the public (or a portion of the public), or allow the Scottish Ministers to direct the planning authority to do so in particular cases. The planning authority must comply with the consultation requirements set out in the regulations and have regard to any valid representations received.

Publicity for proposals

110. Paragraph 9 provides that the Scottish Ministers are to set out by regulations the requirements for publicising and inviting representations on the proposals for making or altering any scheme; and the period in which representations may be made. Before making or altering a scheme, a planning authority must comply with the prescribed requirements and wait until the period for representations has expired.

Consideration of representations

111. Under paragraph 10, a planning authority may not make a proposed scheme or alteration until they have considered any representations which are validly submitted (that is, if they are submitted within the period prescribed in regulations under paragraph 9(2) and comply with any requirements that may be prescribed in regulations about how representations must be submitted).

Chapter 2: Further process for some cases

112. Paragraph 11 makes provision for holding hearings on the proposals in certain cases. The Scottish Ministers may make regulations setting out circumstances in which the planning authority must give certain persons (as specified in the regulations) an opportunity to appear before and be heard by a committee of the authority. Any representations made at such a hearing must be considered under paragraph 10 before any scheme or alteration is made.
113. Each planning authority is to make rules for the procedures for such hearings, including procedures to ensure the relevance of proceedings and avoid repetition, and rules about the right of anyone other than a person being heard to attend the hearing.
114. However, if the proposal is called-in by the Scottish Ministers under paragraph 14, the planning authority are not to hold or continue with such hearings.
115. Paragraph 12 allows the Scottish Ministers to direct a planning authority to notify them of any proposals for making or altering a masterplan consent area scheme that the authority has publicised in accordance with paragraph 12. The direction may be addressed to one, various or all authorities and may require the Scottish Ministers to be notified of particular types of proposals, or if a particular event occurs in connection with the proposals (for example if a key agency submits an objection). The planning authority may not make the proposed scheme or alteration (or any variant of it) until the period provided for in the direction has ended. This period may be a specified period of time, or may last indefinitely until the Scottish Ministers tell the authority it has ended.
116. Paragraph 13 imposes a requirement on the planning authority not to make certain alterations to schemes until 12 months after the completion of the consultation process. This applies where the alteration they intend to make would exclude a place from the scheme, withdraw authorisation granted by the scheme or make the authorisation granted by the scheme subject to new or more stringent conditions, limitations or exceptions.
117. Sub-paragraph (3) sets out that the consultation process is completed on the last day of hearings required under paragraph 11(1) or, where no such hearing was required, the last day that a representation could be validly submitted.

Part 4: Scottish Ministers' powers to make and alter schemes and stop proposals

Chapter 1: Calling in planning authorities' proposals

118. Under paragraph 14(2), the Scottish Ministers may give a call-in direction to a planning authority at any time before a proposed scheme or alteration is made. Having received a call-in direction, the planning authority may not make their proposed scheme or

alteration and must not begin or proceed with any hearings in relation to the proposals. This overrides the requirement for hearings under paragraph 13(1).

119. Paragraph 15 sets out details of Ministers' powers after calling in. It provides that, having given a call-in direction, the Scottish Ministers may themselves make the proposed scheme or alteration, may make a scheme or alteration that is different from what the planning authority proposed, or may decline to make any scheme or alteration. In deciding which of these options to take, the Scottish Ministers may take matters into account that were not taken into account by the planning authority in drawing up their proposals, and may arrange for a local inquiry or other hearing to be held. If the Scottish Ministers decide to alter a scheme in a way that has any of the effects described in paragraph 13(1)(b), they are bound by the same rule as planning authorities and must not make the alteration until 12 months after making that decision.

Chapter 2: Making or altering scheme following paragraph 6 direction

120. Under paragraph 16, in cases where the Scottish Ministers have given the planning authority a direction under paragraph 6 to make or alter a scheme, and they are satisfied the planning authority are not fulfilling their duty to do so within a reasonable time period, Ministers may directly make or alter the scheme. The Scottish Ministers are required to have a local inquiry or other hearing held by a person appointed by them in order to satisfy themselves as to whether or not the planning authority are fulfilling their duty within a reasonable period.
121. Unless otherwise stated, the provisions about making or altering schemes apply to the Scottish Ministers when making or altering a scheme as they would normally apply to a planning authority. Paragraph 17 sets out how references to the planning authority, the planning authority's district, and a committee of the planning authority are to be read in cases where the Scottish Ministers are directly making or altering schemes. It also confirms that in such cases there is no requirement to consult or send things to the Scottish Ministers.
122. In cases where the Scottish Ministers have themselves had to make or alter a scheme directly (as per paragraph 16) because the planning authority were not fulfilling their duty to prepare a scheme following a direction received under paragraph 6, paragraph 18 provides that the Scottish Ministers may require the relevant planning authority to pay the Scottish Ministers the costs they incurred or such lesser amount as they consider appropriate.

Part 5: Further powers of Scottish Ministers

Chapter 1: Excluding kinds of development from schemes

123. Paragraph 19 gives the Scottish Ministers the power to make regulations setting out types of development for which schemes may not grant authorisation. These restrictions can be imposed by virtue of the development being development of land or a type of land that is specified, or by describing the type of development but, as set out in subparagraph 19(3), these two types are not to be seen as the only ways in which types of development to be restricted can be made subject to the regulations.
124. Paragraph 20 covers circumstances where there is an existing scheme in place which has authorised a kind of development that is subsequently excluded from being able to be included in schemes as a result of regulations made under paragraph 19. The regulations will include a prescribed date. Development that is started before that prescribed date will not be affected by the restriction in the new regulations, and will remain authorised by the scheme. However, the scheme will cease to grant authorisation for such development from the prescribed date.

Chapter 2: Powers in relation to procedure, etc.

125. Paragraph 21 gives the Scottish Ministers power to make directions about how the authority are to formulate their procedures for carrying out their functions under schedule 5A, and provides that planning authorities must comply with any such direction. Scottish Ministers may also make a direction specifying information that the planning authority are to provide to the Scottish Ministers, provided that information is required to allow the Scottish Ministers to carry out their functions in relation to MCAs under schedule 5A.
126. Paragraph 22 gives the Scottish Ministers powers to make regulations about the form and content of schemes, and the procedure to be followed in making or altering a scheme. The regulations may (amongst other things) set out requirements in relation to: publicity requirements; consultation, including specifying who should be consulted; and representations and how these should be made and considered. Regulations may also set out requirements in relation to the publication and inspection of any scheme that has been made, or to a document setting out alterations that have been made, or are to be made, to a scheme.
127. The regulations can also make provision in relation to copies of documents. Sub-paragraphs (d) and (e) of paragraph 22(2) require a planning authority, in circumstances prescribed in the regulations, to give copies of documents which have been made public to anyone who requests those documents, and allows for the possibility of permitting the authority to impose a reasonable charge for providing such copies. Under paragraph 25(2)(g), regulations can also provide for the sale of copies of schemes, and any document that sets out details of alterations to a scheme.

Part 6: Interpretation

Application of section 54F

128. Paragraph 23 applies the interpretation set out in section 54F, in relation to the shorthand reference to some key terms, to schedule 5A.

Calculation of periods

129. Paragraph 24 explains how periods described in the schedule as ending after a specified number of months or years are to be calculated. There are two such references, to months or years, within Schedule 5A:
- Paragraph 1(4) – which means schemes cannot cover a period longer than 10 years.
 - Paragraph 13(2) – which bars the planning authority from making certain restrictive alterations to schemes until 12 months after the completion of the consultation process.
130. In calculating these periods, paragraph 24(1) means that the end of the period of however many months will fall, within the final month, on the same day of the month as it started on, unless the final month has fewer days than the month it began, in which case it would be the last day of that calendar month.
131. Paragraph 27(3) provides a worked example to show when a six month period from a set date would be calculated to finish.

Section 16: Bar to creation of new simplified planning zones

132. The intention is that once the new provisions around masterplan consent areas are in place, existing simplified planning zones will be allowed to run their course but there will be a bar to the creation of new simplified planning zones, as the new MCA tool should be used instead. Therefore section 16 of the Act repeals various references to making or preparing simplified planning zone schemes, while leaving in place (for the

*These notes relate to the Planning (Scotland) Act 2019
(asp 13) which received Royal Assent on 25 July 2019*

duration of their existing term) the ability to alter any such schemes which are already up and running.