

# PAS Information Sheet Planning (Scotland) Act 2019

2019 asp 13 - The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th June 2019 and received Royal Assent on 25th July 2019.

An Act of the Scottish Parliament to make provision about how land is developed and used.

The following table is a summary of the sections that have been passed as of 29 August 2020.

Sections passed	Main Content of the Sections
<b>1 December 2019</b>	
Section 18	Changes Ministers' powers to make regulations about preapplication consultation, in particular to allow them to make provision about the content of the report developers must produce following their consultation.
Section 20	A technical change so that provision about the procedure for applications to develop land without compliance with conditions can be made by regulations as well as by development order.
Section 24	Introduces specific reference to biodiversity, and net positive effects on biodiversity, in the power to make regulations on environmental impact assessment.
Section 26	Brings into force the power to make regulations to amend the requirements for certain large developments to include Changing Places Toilets.
Section 29	Activates the requirement for Scottish Ministers to lay a statement before the Scottish Parliament setting out the circumstances in which they consider it appropriate to call-in an application for their own decision.
Section 41	Changes the powers to make regulations about planning fees, including the ability to introduce more discretionary charging, discounts, and a surcharge for retrospective applications.
Section 47	Brings into force the power to appoint a National Planning Improvement Coordinator.
Section 48	A technical change to allow regulations made under the 1997 Act to make different provision for different areas, as well as different purposes.
Section 49	Activates the requirement for Scottish Ministers to publish and give reasons for all directions.
Section 51	Activates requirements for the Scottish Ministers to consult with communities before designating a National Scenic Area, and to report on the consultation at the end of the year.
Section 52	Changes the powers to make regulations about giving notice of applications for listed building consent, under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
Section 53	Brings into force the requirement for all planning authorities to prepare a forestry and woodland strategy.
Section 62	These are technical provisions that determine the Parliamentary procedure for scrutiny of regulations relating to Changing Places Toilets and the Planning Improvement Coordinator.
<b>20 December 2019</b>	
Section 23	amends section 34 of the 1997 Act on giving notice of applications. It requires that the planning authority must give notice of any application for a major development to each local authority Councilor, MSP and MP representing the district to which the application relates.
Section 25	inserts new section 41A into the 1997 Act, which relates to applications for planning permission for "noise-sensitive developments", where residents are likely to be affected by significant noise from existing activity in the vicinity.
Section 42	increases the maximum level of fines that can be imposed for failing to comply with the requirements of various types of notices issued to enforce planning

	controls, and provides that the courts should take into account any financial benefit gained from the offence.
<b>01 March 2020</b>	
Section 27	Removes the requirement that any application which has been subject to a pre-determination hearing must be determined by full council.
Section 30	The decision notice on an application must include a statement as to whether the authority consider the development is in accordance with the development plan, and their reasons for taking that view.

## **PART 1: DEVELOPMENT PLANNING**

### **1 Purpose of Planning**

#### **1ZA Purpose of Planning**

#### **3ZA Purpose of Planning**

The purpose of planning is to manage the development and use of land in the long-term public interest. Projects contributing to sustainable development or those achieving the national outcomes are considered as of long-term public interest.

This definition applies only to the Scottish Ministers'/Planning Authorities' functions related to the National Planning Framework and Development Plans.

- *Sections 3D (**Sustainable development: exercise of functions by Scottish Ministers**) and 3E (**Sustainable development**) are repealed.*

### **2 National Planning Framework**

The National Planning Framework often shortened NPF is a spatial plan for Scotland. This plan sets out the Scottish Ministers' policies and proposals for the development of land.

On top of being composed of these two items:

- a strategy for Scotland's spatial development;
- a statement of what the Scottish Ministers consider to be priorities for that development;

The Framework now also includes:

- a statement about how the Scottish Ministers consider that development will contribute to each of the outcomes set in the Framework;
- targets for the use of land in different areas of Scotland for housing;
- an assessment of the likely impact of each proposed National Development's lifecycle greenhouse gas emissions (to meet the Climate Change Scotland Act 2009 targets).

#### **3A Outcomes of the Framework**

The outcomes of the framework are:

- meeting the housing needs of people living in Scotland, focusing on vulnerable people (older people and disabled people);
- improving the health and wellbeing of people living in Scotland;
- increasing the population of rural areas of Scotland;
- improving equality and eliminating discrimination;
- meet the targets relating to the reduction of emissions of greenhouse gases;
- securing positive effects for biodiversity.

On top of containing these items:

- an account of matters that could affect land use and development;

- descriptions of developments and their designation, and their classification as 'National';
- other matters included by the Scottish Ministers.

The Framework now also includes:

- media such as maps, diagrams, illustrations and descriptions of demographic changes;

To prepare this Framework, The Scottish Ministers base themselves on the *National Scenic Areas Report*. If the Framework contains projects designated as 'national', it will consider an *Infrastructure Investment Plan* and include a statement explaining how this plan was done in preparing the Framework. It will also justify the designation of a project as 'national'. Although the National Planning Framework is a main guidance document, it is not exhaustive in terms of policies or proposals for land use.

Finally, the definition of biodiversity in the NPF corresponds to the *United Nations Environmental Programme Convention on Biological Diversity* of 5 June 1992 and its successive updates.

In section 3A, all sections from (6) to (10) are repealed and replaced with the following:

### **3AA Duty to review the National Planning Framework**

The Scottish Ministers have to keep the *National Planning Framework* under review.

They have to:

- review the Framework no later than 23 June 2024 (10 years from the date it was published);
- after that date, review the Framework at least once every 10 years beginning either with a revised Framework was adopted and published or an explanation was published.

After a review, the Scottish Ministers have to prepare a revised Framework or publish an explanation of why they decided not to revise it.

### **3AB Revising the framework: participation statement and considerations**

Before preparing the revised framework, the Scottish Ministers must prepare and publish their participation statement.

In preparing the revised framework, the Scottish Ministers must have regard to relevant policies and strategies:

- any national strategy and action plan for housing prepared by the Scottish Ministers;
- any infrastructure investment plan prepared by the Scottish Ministers to set out their priorities for the development of public infrastructure;
- any national transport strategy prepared by the Scottish Ministers;
- any strategic transport projects review prepared by the Scottish Ministers to set out their priorities for transport investment;
- any strategic transport projects review prepared by the Scottish Ministers to set out their priorities for transport investment;
- the land use strategy prepared under section 57 of the Climate Change (Scotland) Act 2009;
- the programme for adaptation to climate change prepared under section 53 of the Climate Change (Scotland) Act 2009;
- any national strategy in respect of the improvement of air quality prepared by the Scottish Ministers;
- any land rights and responsibilities statement prepared under section 1 of the Land Reform (Scotland) Act 2016;
- any national strategy or action plan for the ownership or use of land prepared by the Scottish Ministers;
- the national marine plan prepared under section 5 of the Marine (Scotland) Act 2010.

They must also have regard to the desirability of:

- resettling rural areas that have become depopulated;
- preserving disused railway infrastructure for the purpose of ensuring its availability for possible future public transport requirements;
- preserving peatland.

A Participation Statement is an account by the Scottish Ministers of:

- when consultation as regards the proposed revised framework is likely to take place;
- with whom they intend to consult, which must include planning authorities, key agencies (within the meaning of section 23D), the appropriate body under subsection (5), such persons or bodies who the Scottish Ministers consider have a role in the delivery of the outcomes mentioned in section 3A(3A);
- the steps to be taken to involve the public at large in the consultation;
- the likely form of the review.

An Appropriate Body is:

- the advisory body designated by an order under section 24(1) of the Climate Change Act 2009, or
- if no such order has been made, the Committee on Climate Change established under section 32 of the Climate Change Act 2008.

### **3AC Information to assist preparation of National Planning Framework**

In order to assist the Scottish Ministers in preparing or revising the Framework, the Scottish Ministers may direct one or more planning authorities to provide information about the following matters relating to an area specified in the direction:

- the principal physical, cultural, economic, social, built heritage and environmental characteristics of the area;
- the principal purposes for which land in the area is used;
- the size, composition and distribution of the population of the area;
- the housing needs of the population of the area;
- the capacity of education services in the area;
- the capacity of health services in the area;
- the health needs of the population of the area;
- the housing needs of older people and disabled people within the area;
- the desirability of allocating land for the purposes of resettlement;
- the infrastructure of the area (including communications, transport and drainage systems and systems for the supply of water and energy);
- how that infrastructure is used;
- any change which the planning authority or authorities think may occur in relation to any of the matters mentioned in paragraphs (a) to (k);
- such other matters as are prescribed.

In the case of the infrastructure of the area, references to systems for the supply of energy include in particular land available for the development and use of facilities for renewable sources of energy.

When a direction requires more than one Planning Authorities to provide information, they have to cooperate with each other.

- *Sections 3B (Proposals for National Planning Framework: Parliamentary consideration) and 3C (National Planning Framework to be laid before Parliament) are repealed.*

### **3CA National Planning Framework: procedure**

The Scottish Ministers may not adopt a revised Framework until a draft has been approved by resolution of the Parliament.

They may not lay a draft of the revised framework before the Scottish Parliament for approval unless they have complied with section 3AB and they have laid before the Scottish Parliament an explanatory document in accordance with subsection (6).

The Scottish Ministers must:

- consult in accordance with their participation statement;
- lay before the Scottish Parliament a copy of the draft of the revised Framework;
- have regard to any representations about the draft of the revised framework that are made to them within no more than 120 days of the date on which the copy of the draft of the revised framework is laid before the Parliament under paragraph (b).

In calculating any period of no more than 120 days for the purposes of subsection (3)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

If, as a result of any consultation required by subsection (3), it appears to the Scottish Ministers that it is appropriate to change the whole or any part of their proposals, they must undertake such further consultation with respect to the changes as they consider appropriate.

The explanatory document must set out:

- the consultation undertaken in accordance with subsections (3) and (5);
- a summary of any representations received as a result of the consultation;
- the changes made to the draft of the revised Framework as a result of those representations.

When the revised National Planning Framework is adopted, the Scottish Ministers have to publish it.

*Duties to assist in shaping the National Planning Framework*

### **3CB Key agencies to co-operate**

It is the duty of a key agency to co-operate with the Scottish Ministers in:

- the review of the National Planning Framework;
- the preparation of a revised Framework;
- the preparation of any amendment of the Framework.

## **3 Open space strategy**

### **3G Open space strategy**

Each Planning Authority has to prepare and publish an Open Space Strategy.

An Open Space Strategy sets out a strategic framework of the Planning Authority's policies and proposals for the development, maintenance and use of green infrastructure (environments that provide natural and social benefits) in their district, including open spaces (squares, marketplaces) and the connection between the two (known as "green networks").

Note that this provision does not include National Park Authorities.

This Strategy is composed of the following:

- an audit of the existing open space provision;
- an assessment of current and future requirements;
- any other matter considered appropriate by the Planning Authority.

The Scottish Ministers can decide on how this process is to be carried out by the Planning Authorities.

## **4 Housing needs of older people and disabled people: parliamentary report**

### **3CD Duty of Scottish Ministers to report on housing needs of older people and disabled people**

The Scottish Ministers must, as soon as possible after the end of each 2-year period (starting from **the day Section 4 of this act came into force**, and each subsequent 2-year period), present to the Scottish Parliament a report on how the planning system is operating to help ensure that the housing needs of older people and disabled people are met.

This report has to contain:

- how far the planning system is operating to ensure that new housing meeting the needs of vulnerable people is constructed;
- how far the planning system is operating to ensure that existing housing is adapted to meet the housing needs of vulnerable people;
- how far any other actions taken by the Scottish Ministers in relation to the planning system are ensuring that the housing needs for vulnerable people are being met;
- other matters relating to the planning system considered by the Scottish Ministers relevant to meeting the housing needs of vulnerable people.

In preparing the report, the Scottish Ministers have to consult:

- old people and disabled people, and their families;
- any parties considered by the Scottish Ministers to represent the interests of old people and disabled people (organizations and charities working for or on behalf of such people);
- carers;
- Planning Authorities;
- a body registered under section 20 (registered social landlords) of the Housing (Scotland) Act 2010;
- developers;
- any person considered having functions related to old people and disabled people, and their families, carers, housing, social work and health & social care;
- any persons considered appropriate by the Scottish Ministers.

The Scottish Ministers have to publish the report after its presentation to the Scottish Parliament.

## **5 Strategic development: regional spatial strategies**

### **4ZA Regional spatial strategies**

A Strategic Development is a development that is likely to have a significant impact on future development within the area of more than one Planning Authority.

Each Planning Authority has to produce and adopt a Regional Spatial Strategy. This can be done by multiple Planning Authorities acting jointly.

A Regional Spatial Strategy is a long-term spatial strategy for the strategic development of an area (or areas) which specifies the area of the Planning Authority designated as “region”, and identifies in that region:

- the need for strategic development;
- the outcomes expected by the Planning Authority of the strategic development;
- the priorities for the delivery of strategic development;
- the proposed locations for strategic development, which must be shown in the strategy in the form of a map or diagram.

Before adopting a Regional Spatial Strategy, a Planning Authority has to publish:

- a draft of the strategy;
- a summary of the information taken into account when preparing the draft;
- a statement inviting representations in relation to the strategy by a date to be specified in it.

After publishing these documents, the Planning Authority has to send a copy of them to:

- the Planning Authorities impacted by the future strategic development;

- key agencies;
- any person considered appropriate by the Planning Authority.

Otherwise, the Planning Authority must consult persons considered likely to have an interest in the strategy. After a Regional Spatial Strategy is adopted, the Planning Authority must:

- Publish the strategy by any means considered appropriate;
- Submit it to the Scottish Ministers.

#### **4ZB Duties to have regard to regional spatial strategies**

When preparing, revising or amending the National Planning Framework, the Scottish Ministers must consider any adopted Regional Spatial Strategy submitted to them.

When preparing, revising or amending a Local Development Plan, a Planning Authority must consider their adopted Regional Spatial Strategy or Strategies submitted to the Scottish Ministers.

#### **4ZC Regional spatial strategies: first strategy, review and revision**

A Planning Authority must adopt a Regional Spatial Strategy as soon as reasonably possible **after Section 5 of the Planning (Scotland) Act 2019 comes into force**.

A Planning Authority have to keep their adopted Regional Spatial Strategy under review, and if they consider appropriate, they may at any time prepare and adopt a replacement strategy. Moreover, a Planning Authority has to review their Regional Spatial Strategy at least once every 10 years, counting from the most recent date on which they either adopted the strategy or published an explanation after a review.

If a review takes place, a Planning Authority have to prepare and adopt a replacement Regional Spatial Strategy or publish an explanation of why they have decided not to do so.

Section 4ZA(2) to (4) and sections 4ZB and 4ZE apply to a Replacement Regional Spatial Strategy as they apply in relation to the strategy being replaced (and references in this Part to a regional spatial strategy include references to such a replacement strategy.?)

#### **4ZD Directions to prepare or review regional spatial strategies**

The Scottish Ministers may direct one or more Planning Authorities to prepare an adopt a Regional Spatial Strategy in relation to a region specified in the direction, or review an adopted Regional Spatial Strategy.

A direction may require the Planning Authority to consider the matters (if any) that are specified in the direction when preparing or reviewing the strategy.

When a direction requires more than one Planning Authority to prepare and adopt a Regional Spatial Strategy, they have to cooperate by each other.

#### **4ZE Guidance for Regional Spatial Strategy**

The Scottish Ministers may issue guidance in relation to the preparation, adoption, review and content of Regional Spatial Strategies.

A Planning Authority must comply with the procedures describes in this section when preparing or adopting a regional spatial strategy.

Before issuing guidance, the Scottish Ministers must consult each Planning Authority and any person considered appropriate.

The Scottish Ministers must make the guidance issued publicly available.

The power of the Scottish Ministers to issue guidance includes the power to issue guidance that varies guidance and revokes it.

## 6 Removal of requirement to prepare strategic development plans

- *Sections 4 to 14 (Strategic Development Planning Authorities) of the Town and Country Planning (Scotland) Act 1997 are repealed.*

## 7 Local development plans

### 15 Form and content of local development plans

The local development plan must also include targets for meeting the housing needs of people living in the part of the district to which it relates.

- *Subsection (2) (vision statement) is repealed.*

A Local Development Plan is to include a statement of the Planning Authority's policies and proposals as to the provision of public conveniences and the provision of water refill locations.

Where a Local Development Plan contains policies or proposals for, or views as to, the occurrence of development on land owned by the Planning Authority, the plan has to be followed by a schedule, which identifies the land, states that it is so owned and refers to the policies, proposals or views in question.

The matters referred to in subsection (2) (1)(a) are now also:

- the housing needs of the population of the area, including, in particular, the needs of persons undertaking further and higher education, older people and disabled people;
- the availability of land in the district for housing, including for older people and disabled people;
- the desirability of allocating land for the purposes of resettlement;
- the health needs of the population of the district and the likely effects of development and use of land on those health needs;
- the education needs of the population of the district and the likely effects of development and use of land on those education needs;
- the extent to which there are rural areas within the district in relation to which there has been a substantial decline in population;
- the capacity of education services in the district;
- the desirability of maintaining an appropriate number and range of cultural venues and facilities (including in particular, but not limited to, live music venues) in the district.

In subsection (5)(d), references to systems for the supply of energy include in particular land available for the development and use of facilities for renewable sources of energy.

### 16 Preparation and monitoring of local development plans

#### 16A Participation of children and young people in local development plan

A Planning Authority must make arrangements to promote and facilitate participation by children and young people (25 years old or younger) in the preparation of the Local Development Plan.

Planning Authorities must first consider discharging the duty by means of contact with schools, youth councils and youth parliament representatives within their district.

A Planning Authority must publish information about its arrangements and keep this information up to date.

#### 16B Evidence report for preparation of local development plan

Before preparing a local development plan, a Planning Authority have to prepare an evidence report. In preparing the evidence report the planning authority are to seek the views of:

- the key agencies;

- children and young people, in particular school pupils, youth councilors and youth parliament representatives;
- other persons as may be prescribed;
- the public at large.

The evidence report is to:

- set out the Planning Authority's view on the matters listed in section 15(5) for land in the part of the Authority's district to which the Local Development Plan will relate;
- set out a summary of the action taken by the Planning Authority to support and promote the construction and adaptation of housing to meet the housing needs of older people and disabled people in the authority's area along with an analysis of the extent to which the action has helped to meet those needs;
- set out a summary of the action taken by the Planning Authority to meet the accommodation needs of Gypsies and Travelers in the authority's area along with an analysis of the extent to which the action has helped to meet those needs;
- set out how the Planning Authority have invited local communities in their district to prepare local place plans in accordance with schedule 19 and the assistance provided to these to prepare those plans;
- include other matters as are prescribed.

The evidence report has also to include a statement:

- the steps taken by the Planning Authority in preparing the report to seeks the views of the public at large, including in particular the views of disabled persons, Gypsies and Travelers, and children and young people;
- the steps taken by the Planning Authority in preparing the report to seek the views of community councils;
- the extent to which the views expressed under paragraphs (a) and (b) have been taken into account in the report.

Before submitting a proposed evidence report under subsection (7), the planning authority must approve the proposed evidence report. Section 56 of the Local Government (Scotland) Act 1973 (arrangements for discharge of functions by local authorities) does not apply to the function of approving a proposed evidence report. The planning authority are to submit the evidence report to the Scottish Ministers.

On receiving an evidence report submitted under subsection (7), the Scottish Ministers are to appoint a person to assess whether the report contains sufficient information to enable the planning authority to prepare a local development plan. If, having completed the assessment, the appointed person is satisfied that the evidence report contains sufficient information to enable the planning authority to prepare a local development plan, the person is to notify the Scottish Ministers and the authority accordingly.

In any other case, the appointed person is to prepare a report (an "assessment report") setting out the reasons for not being so satisfied and recommendations for improving the evidence report received under subsection (7) and send a copy of the assessment report to the planning authority and the Scottish Ministers.

On receipt of an assessment report the planning authority are to revise the evidence report submitted under subsection (7) and resubmit it to the Scottish Ministers. Subsections (8) to (11) apply to an evidence report submitted under subsection (11) as they do to an evidence report submitted under subsection (7).

The Scottish Ministers may make regulations as to:

- meeting general administrative costs, staff costs and overheads incurred in relation to an assessment under subsection (8);

- the procedure to be followed in such an assessment (including by making provision that the procedure is to be at the discretion of the appointed person);
- what is to be assessed and matters by reference to which the assessment is to be made.

### **16C Effective community engagement: guidance**

The Scottish Ministers may issue guidance to Planning Authorities about undertaking effective community engagement in relation to the local development plan. This guidance focuses on:

- how planning authorities have to undertake effective community engagement;
- ways in which planning authorities should consult communities and encourage them to contribute to the preparation of a LDP;
- any other matters relevant to the function of planning authorities related to community engagement in LDP.

The Scottish Ministers must consult persons considered appropriate before issuing this guidance. They must also publish any guidance issued under this section, and a planning authority must have regard to any guidance issued to them.

The Scottish Ministers may vary or revoke guidance issued under this section.

### **16D Play sufficiency assessment**

A planning authority must assess the sufficiency of play opportunities in its area for children in preparing an evidence report.

The Scottish Ministers must determine:

- the form and content of the assessment;
- persons who must be consulted in relation to the assessment;
- publication of the assessment.

### **17 main issues report for preparation of local development plan**

➤ *This section is repealed.*

### **18 preparation and publication of proposed local development plan**

The date specified by virtue of subsection (8) of section 17 is replaced by the Planning Authority being notified under section 16B(9).

The Planning must then have regard to the evidence report relating to which notification was received, to prepare and publish a proposed a Local Development Plan. They also have to publish the evidence report at the same time and in the same manner as the proposed Local Development Plan.

They are also to send a copy of the evidence plan alongside the proposed plan.

1A a planning authority for a district all or part of which falls within the boundary identified by the Central Scotland Green Network Partnership are (for so long as such a body is included in the National Planning Framework as a national development) to consult the Network on the proposed local development plan

1B Before publishing a proposed local development plan under subsection (1), the planning authority must approve the plan

1C Section 56 of the Local Government (Scotland) Act 1973 (arrangements for discharge of functions by local authorities) does not apply to the function of approving a proposed local development plan.

The date included in the publication under subsection (1)(a) goes from 6 to 12 weeks.

When the authority have to submit a proposed LDP to the Scottish Ministers, if modifications have been made to the proposed plan under subsection (3), a report setting out the modifications made and the reasons for making them.

- *Paragraphs (b) and (c) of subsection (4) are repealed.*
- *Subsections (5) to (9) are repealed.*

### **19 Examination of proposed local development plan**

When a request is made under subsection (1), or an appointment is made under subsection (3) without a request having been made, the planning authority must publish in the prescribed manner the proposed plan and if modifications were made to the proposed plan, a report setting out the modifications made and the reasons for making them.

Recommendations under subsection (8)(a)(i) include recommendations that the planning authority make modifications to the proposed local development plan, and in a case where the appointed person considers that a change required is not suitable to be dealt with by such modification, a recommendation that, if adopted, the planning authority should amend the local development plan under section 20AA in relation to such matters as may be specified in the report.

Where a report prepared under subsection (8)(a) includes a recommendation of the type described in subsection (8A)(b), the appointed person must send a copy of the report to the Scottish Ministers.

- *Subsection (10) (b) to (d) are repealed.*
- *Subsection (12) is repealed.*

### **19ZA Examination under section 19(3): further provision**

This section applies when a person appointed (under subsection (3) of section 19) is conducting an examination of a proposed Local Development Plan under that subsection and the person is not satisfied that the amount of land allocated for housing in the proposed Local Development Plan is sufficient to meet the targets it includes.

The appointed person may (instead of preparing a report under section 19(8)), issue a notice to the planning authority requiring it to prepare another proposed Local Development Plan under section 18(1).

This notice must include:

- a statement that the proposed local development plan is unsatisfactory due to its failure to address the identified housing needs;
- the appointed person's reasons for coming to that conclusion.

The appointed person must send a copy of the notice issued to the Scottish Ministers and publish it, and notify the persons mentioned in paragraph (b) of section 19(6), and any person who made representations by virtue of section 19A that a notice has been given under subsection (2) (and its effect).

A planning authority that receives a notice may not take any further action related to the unsatisfactory proposed local development plan and must prepare another one in accordance with section 18.

The planning authority may use the evidence report prepared and assessed in respect of the unsatisfactory proposed local development plan for the purpose of subsection (5)(b).

### **19A Further provision as regards examination under section 19(4)**

- *Subsections (7) and (8) are repealed.*

### **20 constitution of local development plan**

A proposed local development plan may not be adopted before the end of the period that begins on the day it is submitted to the Scottish Ministers under section 18(4)(a) or (as the case may be) 19A(5)(b)(ii), and ends at the end of the day that falls 28 days later.

When a request is made under section 19(1) when a proposed local development plan is submitted to the Scottish Ministers, or if no such request is made but within the 28 day period the Ministers appoint

a person, the proposed local development plan may not be adopted until the planning authority have received a report in relation to the plan submitted under section 19(8)(b).

### **20A publication of and publicity for local development plan**

In addition to taking the steps required by subsection (1), the planning authority must publish in the prescribed manner a recommended-modification statement (if a person appointed recommended a modification to a proposed plan or the modification was not made), or a report on modifications if the constituted plan differs from the proposed one published as a result of modification.

In a case where a report in relation to a proposed version of the plan has been published as required, if no modifications were made there is no need for publication whereas if modifications were made, the report on modifications must only set out those modifications.

A recommended-modification statement means a statement that sets out the modification and explains why the modification was not made by reference to the grounds prescribed for the purposes of section 19(10)(a)(i).

A report on modifications is a report that sets out the modifications and the reasons for making them.

### **20B Development plan schemes**

In preparing the development plan scheme the planning authority must seek and consider the views expressed by the public at large as to the content of the participation statement.

## **8 List of persons seeking land for self-build housing**

### **16E Publication of list of persons seeking land for self-build housing**

A Planning Authority are to prepare and maintain a list of persons who have registered interest with the authority with the intention of acquiring land in the Authority's area for Self-Build Housing, which has to be published later.

Self-build Housing is where one or more individuals commission or are personally involved in the design and construction of a dwelling that is intended to be the individuals' main residence once it is built.

## **9 Supplementary guidance**

- *Section 22 of the Town and Country Planning (Scotland) Act 1997 and the italic heading immediately preceding it are repealed.*

## **10 Key agencies**

### **23D Meaning of "key agency"**

Any reference in a provision of Part 1A or this Part to a "key agency" is to a person (other than an individual or an officeholder) which the Scottish Ministers specify as such.

## **11 Delivery programmes**

### **21 Action programmes**

The word "action" is replaced by "delivery". The title of the section therefore becomes "Delivery programmes" and the italic heading immediately preceding section 20B becomes "*Development plan schemes and delivery programmes*".

It is the duty of the head of the planning authority's paid service (designated under section 4 of the Local Government and Housing Act 1989) to prepare the proposed delivery programme, which must be approved before publication.

Section 56 of the Local Government (Scotland) Act 1973 (arrangements for discharge of functions by local authorities) does not apply to the function of approving a proposed delivery programme.

## **12 Amendment of National Planning Framework and local development plans**

### **3CC Amendment of National Planning Framework**

The Scottish Ministers may at any time amend the National Planning Framework and make further provisions, in accordance with section 3AC. These provisions include:

- procedures not to be followed;
- consultation to be undertaken on proposed amendments;
- when the amendments take effect;
- publication of the amended framework;
- laying of the amended framework before the Scottish Parliament.

The Scottish Ministers must set out the circumstances in which they consider that an amendment would result in a significant change to the policies and proposals for the development and use of land of the most recent National Planning Framework, which would require that the National Planning Framework should be reviewed and revised under sections 3AA to 3CA.

### **20AA Amendment of local development plan**

A Planning Authority may at any time amend a Local Development Plan constituted for their district, under the eventual Scottish Ministers direction. When directed by the Scottish Ministers, these must set out their reasons for requiring an amendment of the Local Development Plan.

When amending a Local Development Plan, a Planning Authority has to take into account the National Planning Framework and any Local Outcomes Improvement Plan relating to their district. They have to regard the information as prescribed and investigate any information deemed relevant by them.

The Scottish Ministers may make further amendments of the document, considering:

- the procedures to be followed;
- the consultation to be undertaken on proposed amendments;
- when the amendments take effect;
- the publication of the amended plan.

In this procedure, section 16A to 20A apply.

## **13 Development plans**

### **24 Meaning of “development plan”**

For the purposes of the 2019 Planning Act and any other document related to town and country planning and land compensation, the development plan for an area must include:

- the National Planning Framework;
- any Strategic Development Plan for the time being applicable to the area (with the Scottish Ministers notice of the plan approval and supplementary guidance issued in connection with that plan);
- any Local Development Plan for the time being applicable to the area.

In the case of an incompatibility between a provision of the National Planning Framework and a provision of a Local Development Plan, the later of the two is to be retained. The date of the National Planning Framework is the latest date on which it was published under section 3CA(7) and the date of a Local Development Plan is the date on which it was constituted under section 20).

### **25 Status of development plan**

- *When making a determination under the planning Acts, the specific provisions for national developments are repealed.*
- *Subsections 2 and 3 are repealed.*

### **237 Validity of development plans etc.**

The National Planning Framework and any revised framework or amendment to it, whether before or after the framework, revised framework or amended framework is published.

### **238 Proceedings for questioning validity of development plans etc.**

If any person aggrieved by the National Planning Framework desires to question the validity of the framework on the ground that it is not within the powers conferred by Part 1A or that any requirement of that Part or of any regulations made under that Part has not been complied with, the person may make an application to the Court of Session under this section.

In the case of an application in respect of the National Planning Framework the date of its publication under section 3CA(7) or where the grounds of the application arise from an amendment to the National Planning Framework, the date on which the amendment took effect.

Where the grounds of the application arise from an amendment to the local development plan, the date on which the amendment took effect.

## **14 Local place plans**

### **15A Preparation of local development plan: invitation to prepare local place plans**

Before preparing a Local Development Plan, a Planning Authority have to publish an invitation to local communities in their district to prepare Local Place Plans in accordance with schedule 19, as well as information on the process and timing of their preparation of these plans (so that they are considered in the preparation of the Local Development Plan) and on the assistance available for these local communities to prepare those plans.

### **15B Review of local place plans**

The Scottish Ministers must after the end of the 7-year period (**beginning with the day on which the Bill for the Planning (Scotland) Act 2019 receives Royal Assent**):

- carry out a review of Local Place Plans;
- set out the conclusions of the review in a report;
- publish the report;
- lay it before the Scottish Parliament.

The report must set out:

- the number of Local Place Plans that have been submitted and the name of the community body that submitted them;
- the number of Local Place Plans registered;
- a summary of the participation of people who engaged in preparing and submitting local place plans, either through a community body or through consultation;
- the support given to community bodies to prepare and submit a Local Place Plan;
- an assessment of how the registered local place plans have influenced planning authorities' preparation of LDPs and the determination of applications for planning permission;
- an assessment of the impact and effectiveness of local place plans across Scotland, and of whether further support to community bodies should be provided to prepare and submit such plans.

The Scottish Ministers may require a Planning Authority to provide it with the information specified or described by them.

### **16 Preparation and monitoring of local development plans**

In preparing a local development plan the planning authority are now to take account of any registered local place plan (Schedule 19) that is for the part of their district to which the development plan relates (on top of the National Planning Framework and local outcomes improvement plans).

### **20AA Amendment of local development plan**

**Any registered local place plan (see schedule 19) that is for the part of their district to which the local development plan relates.**

**Schedule 19- Local Place Plans.**

## **PART 2 MASTERPLAN CONSENT AREAS**

### **15 Masterplan consent area schemes**

#### **54A Making and alteration of schemes**

Introduces Schedule 5A, which regulates the making and alteration of Masterplan Consent Area Schemes (including the right to request the making or alteration of a scheme), and gives the Scottish Ministers powers related to these schemes.

#### **54B Scheme grants planning permission, etc.**

A masterplan consent area scheme acts as a grant of authorisation for carrying out within an area a development that is either specified or described in the scheme itself. The development has to begin during the period of validity of the scheme. Authorisations granted by a scheme are subject to conditions, limitations and exceptions specified in it, including regulations found at Paragraph 19 of Schedule 5A. An authorization can be a planning permission or any of the following:

- consent to construction or extensions of a road;
- works related to listed buildings;
- works related to a building in a conservation area.

#### **54C Content of schemes: self-build housing (Precisions of the scheme for self-build housing)**

A scheme may specify a development in the form of Self-Build Housing or describe a development which includes Self-Build Housing.?

See section ... for the definition of Self-build Housing.

#### **54D Effect of altering scheme**

Any alteration made to a scheme takes effect from the day it is made. It is to be noted that an authorization that the scheme has granted for a development remains unaffected by an alteration, unless the altered scheme specifies it. However, this only applies if the said development has begun before the scheme alteration happens. In any case, a given authorization would not be altered if it implied an authorization removal.

#### **54E Further provision about effect of scheme**

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.?

Nothing in a scheme affects the right of a person to do anything that is not development, or carry out development that is authorized by the scheme or doesn't require permission, consent or authorization from it.

#### **54F Interpretation of provisions about schemes**

This section makes provision about the interpretation of sections 54B to 54E:

- Scheme refers to Masterplan Consent Area Scheme.
- Authorization granted by a scheme must be interpreted in accordance with section 54B(3).
- Development refer to any activity mentioned in section 54B(3)(b).

### **16 Bar to creation of new simplified planning zones**

#### **50 Making Alteration of simplified planning zone schemes**

- *Subsection (1) is repealed.*

Schedule 5 has effect with respect to the alteration only of simplified planning zone schemes and other related matters.

## **PART 3 DEVELOPMENT MANAGEMENT**

### **17 Meaning of “development”: use of dwellinghouse for short-term holiday lets**

#### **26B Material change of use: short-term lets**

Planning Authorities may designate all or part of their areas as short-term let control areas. In a short-term let control area, the use of a dwellinghouse for the purpose of providing short-term lets is considered to involve a material change of use of the dwellinghouse. Short-term lets exclude the following tenancies:

- A private residential tenancy under section 1 of the Private Housing (Tenancies) Act 2016;
- A tenancy of a dwellinghouse or a part of it where it is the only or principal home of the landlord or occupier.

A Planning Authority may at any time vary or cancel such a designation.

The Scottish Ministers may make further provision by consulting the Planning Authorities (and other persons considered appropriate), in particular:

- The procedure to follow in the process of designation, variation or cancellation;
- The form of a designation;
- what constitutes providing a short-term let;
- any circumstances or dwellinghouses on which this section doesn't apply.

### **01/12/2019 | 18 Pre-application consultation**

#### **35A Pre-application consultation: preliminary**

Regarding the compliance with pre-application consultation, the subsection does not apply to planning permissions to which 42 applies and to permissions in circumstances specified by the Scottish Ministers in regulations under this section.

A prospective applicant for planning permission for a development may require the planning authority to state whether compliance with section 35B is required. The Planning Authority may therefore respond that section 35B is not required.

The period of at least 12 weeks that must elapse between giving the notice and submitting any such application now cannot be longer than 18 weeks.

### **19 Assessment of health effects**

#### **40A Assessment of health effects**

The Scottish Ministers must make provision about the consideration to be given to the likely health effects of a proposed development, before a planning permission for a national or major development is granted.

### **01/12/2019 | 20 Regulations about procedure for certain applications**

#### **42 Determination of applications to develop land without compliance with conditions previously attached**

The Scottish Ministers may now make special provision regarding the procedure to be followed for this kind of applications.

### **21 Removal of requirement to recover costs before determining certain applications**

The condition to determine such applications of having paid costs incurred by the Planning Authority is cancelled.

### **22 Declining to determine an application**

The period available to a Planning Authority to decline to determine an application goes from two years to five years.

**20/12/2019** | **23 Notice by planning authority of certain applications made to them**

**2A** When an application for a major development is made, a Planning Authority must give notice of this application to:

- councillor of the Local Authority;
- member of the Scottish Parliament;
- member of the House of Commons,

Depending on the district to which the application relates.

**01/12/2019** | **24 Assessment of environmental effects**

The consideration to be given by the Secretary of State to the likely environmental effects of a proposed development must now include effects on biodiversity. The effects on biodiversity include the net positive effects on biodiversity that would likely result from the development.

**20/12/2019** | **25 Conditional grant of planning permission: noise-sensitive developments**

**41A Conditional grant of planning permission: noise-sensitive developments**

A development subject of an application for planning permission is a “noise-sensitive development” if residents or occupiers of the development may be affected by significant noise from existing activity in the vicinity of the development.

A Planning Authority must take account of whether the development intends to take sufficient measures to mitigate noise production and minimize its effects on its vicinity, but may not impose additional costs related to acoustic design to mitigate the noise.

**01/12/2019** | **26 Conditional grant of planning permission: provision of toilet facilities within certain large developments**

**41B Conditional grant of planning permission: provision of toilet facilities within certain large developments**

A Planning Authority may grant a Planning Permission for a development only if the latter includes accessible toilet facilities (Changing Places Toilets or CPT) as described. This applies to the following types of developments:

- schools, colleges and universities;
- community centres, sports and leisure centres, or similar public buildings;
- hospitals or other facilities for the provision of health services;
- retail outlets the gross floor space of which is or exceeds 10,000 square metres;
- cultural centres (museums, concert halls, art galleries);
- stadiums or large auditoriums;
- major transport terminus or interchanges;
- motorway service facilities.

The accessible toilet facility has to fulfil these conditions:

- has sufficient space, being not less than 12 square metres, to allow up to two carers to assist an adult to use the toilet and the equipment (a height-adjustable changing bench of a size suitable for an adult, a tracking hoist able to cover the full floor area of the facility);
- has a centrally-placed toilet with sufficient space, being not less than 1 metre, from the wall on either side for carers to assist an adult to use the toilet;
- is equipped with: a non-slip surface, a screen or curtain, a supply of hygienic disposable covering for the changing bench, suitable waste disposal facilities, a shelf suitable for temporary placing of colostomy bags and related equipment.

The Scottish Ministers may amend or remove the list of types of buildings concerned with this condition, or exempt a specific structure or circumstance from it. The Scottish Ministers can also change the description of Changing Places Toilets at a later time.

## 01/03/2020 | 27 Delegation of development decisions

- *Section 56 subsection 6A (arrangements for discharge of functions by local authorities) of the Local Government (Scotland) Act 1973 is repealed.*
- *Section 14 subsection 2 (pre-determination hearings) of the Planning etc. (Scotland) Act 2006 is repealed.*

## 28 Schemes of delegation

### 43A Schemes of delegation

A scheme of delegation is a scheme prepared by a Planning Authority by which an application of the types described below is to be determined by a person appointed by them.

A Planning Authority must prepare and keep under review a scheme of delegation and must review it at an interval of... or whenever the Scottish Ministers require it.

A Planning Authority may modify their scheme of delegation following a review.

The applications concerned are:

- an application for planning permission for a development within the category of local developments;
- an application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of local developments;
- an application for any approval of the planning authority required under a development order;
- an application for a certificate of lawfulness of existing use or development under section 150;
- an application for a certificate of lawfulness of proposed use or development under section 151;
- an application for advertisement consent required by virtue of regulations made under section 182.

Developments mentioned in section 38A are not concerned by this provision.

A Planning Authority may decide to determine an application which would otherwise be determined by the appointed person under the scheme of delegation. In this case, they must include in the decision statement of the reasons for which it was made and serve a copy of this decision to the applicant.

A Planning Authority cannot delegate the determination of applications to an officer other than in accordance with the scheme of delegation.

### 43AA Schemes of delegation: effect and operation

A determination of an Appointed Person is to be treated as that of the Planning Authority.

When an application for planning permission is to be determined by an appointed person, sections 27A(2), 27B(2), 30(3), 32A, 37(1) to (3), 38, 39, 40, 41(1) and (2), 42, 43(1) to (2), 46, 58, 59 and 60 and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (3)), as they would if an application were to be determined by the Planning Authority. Moreover, sections 150, 151 and 152 also apply.

When an application for approval of the Planning Authority (for a development) is to be determined by an appointed person, the development order applies as it applies to an application to be determined by a Planning Authority.

### 43AB Schemes of delegation: further provision and guidance

An applicant may require the Planning Authority to review the case if the appointed person:

- refuses an application for planning permission or grants it subject to conditions;
- refuses an application for any consent, agreement or approval of the planning authority required by a condition imposed on a grant of planning permission or grants it subject to conditions;
- refuses an application for any approval of the planning authority required under a development order or grants it subject to conditions;
- refuses an application for a certificate under section 150 or 151 (in whole or in part);
- has not given notice of the appointed person's decision within the relevant period.

This review may not be demanded by the applicant if they have been given notice that the power to decline to determine an application has been exercised (section 39) or the application has been referred to the Scottish Ministers (section 46).

Where a requirement to review is made because the appointed person did not give notice of their decision within the relevant period, the appointed person is, for the purposes of the review, to be deemed to have decided to refuse the application.

On a review, a Planning Authority may, if the appointed person refused an application for a certificate under section 150, 151:

- grant or refuse the applicant a certificate wholly or partly;
- modify the certificate granted by the appointed person;
- uphold the determination to refuse the application.

For any other review, the Planning Authority may:

- uphold, reverse or vary any part of the determination;
- deal with the application as if it had not been delegated to the appointed person.

The decision given by the Planning Authority after a review is final. (See section 239 for exceptions).

The relevant period in this section refers to a period prescribed by regulations or a development order or a period agreed in writing between the applicant and the Planning Authority/appointed person for the application.

#### **43AD Review of decisions of appointed person: further provision**

The Scottish Ministers may by regulations or development order, make provision as to the form and procedures of any review conducted. The regulations or order may:

- make different provision for different cases or types of case;
- make different provision for different stages of a case;
- provide that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority;
- make provision in relation to oral or written submissions and to documents in support of such submissions (and also about the consequences of any failure to make such submissions);
- subject to section 43B, make provision about what matters may be raised in the course of the review;
- make provision in relation to time limits (including a time limit for requiring the review);
- require the planning authority to give notice to the person who has required the review about how the review has been dealt with.

When the regulation or order require the Planning Authority to give notice to the person asking for the review, the notice statement has to specify the terms in which the Planning Authority have decided the case and the reasons on which the Authority based its decision. The statement has to include the information prescribed by the regulations or order as well.

#### **47 Right to appeal against planning decisions and failure to take such decisions**

A person who has made such an application may now also appeal to the Secretary of State if the planning authority have not given to the applicant notice of their decision on a review required by virtue of paragraph (e) of section 43AC(1).

Subsection (2)(a) does not apply when the applicant may require a review under paragraph (e) of section 43AC(1).

An appeal may not be made in relation to any action on the part of the Planning Authority as mentioned in section 237(3A) as it may not be made under subsection (1)(b) when the applicant may require review under section 43(1)(e).

**01/12/2019** | **29 Call-in of applications by Scottish Ministers: further provision**

**46A Call-in of applications by Scottish Ministers: further provision**

The Scottish Ministers must present before the Scottish Parliament and publish a statement setting out the circumstances in which they consider it appropriate to give directions as mentioned in section 46(1). The Scottish Ministers may publish a revised or replacement statement from time to time.

**01/03/2020** | **30 Determination of applications: statement to accompany notification**

The notice of the Planning Authority's decision on an application must include a statement as to whether the Authority consider that the application is for a development that is in accordance with the development plan for the time being applicable to the area to which the application relates together, with an explanation of why the authority have reached that view.

**31 Agreements relating to period before which an appeal may be made**

**47 Right to appeal against planning decisions and failure to take such decisions**

A person who has made such an application may now appeal to the Secretary of State within the relevant period. The relevant period may either be prescribed by regulations or a development order, or another period that may be agreed in writing between the applicant and the Authority regarding the application (whether before or after it is made).

**32 Duration of planning permission**

In a conditional grant for planning permission, conditions may be imposed on the grant now also for identifying when the applicant may be required to make an application for a consent, agreement or approval or carry out some other action in connection with the permission or development. (Section 41).

**58 Duration of planning permission**

When a planning permission is granted or deemed to be, it must be so subject to the condition that the development to which it relates must begin not later than the expiration of:

- 3 years beginning with the date the permission is granted or deemed to be granted;
- Another period (longer or shorter) as the Authority concerned may specify when granting the permission or making a direction under section 57.

If a planning permission is granted or deemed to be without conditions, the development has to start before the expiration of the 3-years period, otherwise, the planning permission lapses.

The period is now specified under the subsection 1(b).

This period begins with the date on which the planning permission is granted or deemed to be granted.

Planning permissions granted for a limited permission and those granted before section 20 came into force are not exceptions anymore to the application of section 58.

### **59 Planning Permission in principle**

When a planning permission is granted in principle, it must be granted subject to the condition that the development must be started not later than the expiration of 5 years after the permission is granted or another period specified by the Authority.

If a planning permission in principle is granted without conditions, it remains considered subject to the condition that the development starts no later than 5 years after the permission is granted.

If a development hasn't started and that period expires, the planning permission in principle lapses.

### **60 (provisions supplementary to sections 58 and 59)**

When a planning permission is granted, the conditions specified in sections 58 or 59 do not prevent these to be the subject of a review under section 43AC or an appeal under section 47.

## **33 Completion notices**

### **61 Termination of planning permission by reference to time limit: completion notices**

A completion notice must also state that a person may lodge an objection when served and specify the date on which the notice will take effect if no objection is lodged before that date.

The date specified must be a date at least 28 days after the date when the notice is served.

### **62 Effect of completion notice**

A completion notice takes effect on the date specified in it, unless before that date an objection is lodged under section 62A(1).

In confirming a completion notice, the Scottish Ministers may not substitute anymore some longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.

- *Subsections (2) and (3) are repealed.*

Subsection (2) becomes now Section 62A(5).

### **62A Objection to completion notice**

A person receiving a completion notice, may lodge an objection to the notice with the planning authority which served it, prior to the date mentioned on it. When an objection is lodged, the planning authority must give notice of the objection to every person who was served the notice and to the Scottish Ministers.

Before confirming a completion notice, the Scottish Ministers must allow the following people the opportunity to make representations to a person appointed for the purpose by the Scottish Ministers to the person who lodged the objection and to the planning authority. In confirming a completion notice, the Scottish Ministers may substitute a longer period than specified in the notice at the expiration of which the planning permission is to cease to have effect.

### **182 Regulations controlling display of advertisements**

In subsection (3)(a), 62 becomes 62A.

### **237 Validity of certain decisions**

In subsection (3)(c), 62 becomes 62A.

## **34 Planning obligations: financial agreements**

## **75 Planning obligations**

A person may in respect of land in the district of a Planning Authority by agreement with that authority or unilaterally enter into a planning obligation.

Planning obligation is an obligation which does any of the following:

- Restricts or regulates the development or use of land;
- Requires the payment of a specified amount or determined according to the relevant instrument or of periodical sums either indefinitely or for a period specified.

A planning obligation may now also impose a restriction or requirement either permanently or during a period specified in the relevant instrument. A planning obligation does not require the payment of a specified amount or periodical sums (subsection 3(b) is repealed).

In subsection (5)(a), (2) and (3)(b) become (1A)(b) and (2), respectively.

In this section and in sections 75A to 75C, "relevant instrument" means the instrument by which a planning obligation is entered into.

### **75C planning obligations: continuing liability of former owner etc.**

In subsection (3), (2) and (3)(b) become (1A)(b) and (2), respectively.

## **35 Planning obligations: publication**

### **75 Planning obligations**

A Planning Authority have to publish a relevant instrument to ensure that it is brought to the attention of residents of the area or district to which the relevant planning obligation relates.

### **75A modification and discharge of planning obligations**

A planning authority has to publish to the residents of the area to which the planning obligation relates:

- An agreement under subsection (1)(a);
- A notice of a determination under subsection (4).

## **36 Planning obligations: annual report**

After the end of each financial year, a Planning Authority are to prepare and publish a report detailing:

- The number of planning obligations that are entered into that year, into the previous year not yet expired and not yet complied with.
- The development to which each planning obligation relates;
- The name of the person that has entered into the planning obligation.

The financial year period begins on April 1.

## **37 Planning obligations: modification or discharge**

### **34 Notice by planning authority of certain applications made to them**

The applications are not for agreement under section 75(A) anymore, they are for modification or discharge of a planning obligation.

### **43 Directions etc. as to method of dealing with applications**

Section 75A(4) replaces subsection (4).

### **75A Modification and discharge of planning obligations**

In the case where a planning obligation is modified or discharged by agreement, the agreement has to be in writing.

➤ *Subsection (3) is repealed.*

When the Authority proposes to make a determination under subsection 4 (discharging or modifying the planning obligation) they must obtain the applicant's consent before making the determination.

When the Authority propose to make a determination under subsection (4) modifying the planning obligation so as to put or increase a burden on any non-applicant, they must obtain that person's consent before making the determination.

When an application under subsection (2) relates to more than one planning obligation, the authority may make a separate determination in relation to each planning obligation.

The authority are to give notice of their determination to any non-applicant against whom the planning obligation is enforceable on top of giving it to the applicant within the period prescribed. When this happens, in a case relating to an agreement under subsection (1)(a), the agreement does not take effect until the date on which it is recorded in the Register of Sasines or registered in the Land Register, and in a case relating to a determination under subsection (4)(b) or (c), the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.

Regulations making provisions regarding procedures for considering any representations made with respect to applications as well as proposed determinations.

### **75B Appeals**

When the Scottish Ministers propose to make a determination under subsection 4 (discharging or modifying the planning obligation), they must obtain the applicant's consent before making the determination. This also applies when putting or increasing a burden on any non-applicant. When an application under subsection (2) relates to more than one planning obligation, the Scottish Ministers may make a separate determination in relation to each planning obligation.

The Scottish Ministers are to give notice of their determination to the applicant within the period prescribed, as well as to any non-applicant against whom the planning obligation is enforceable.

## **38 Declining to determine an application: further provision**

### **39A Declining to determine an application: further provision**

The Scottish Ministers must publish guidance outlining what constitutes a "similar application" and a "significant change" for the purposes of section 39.

## **39 Withdrawal of planning permission granted by development order**

### **77A Compensation for withdrawal of planning permission granted by development order**

The Scottish Ministers may make provision about the payment of compensation by a Planning Authority in cases where:

- planning permission granted by a development order is withdrawn;
- on an application made under Part III or section 242A, planning permission for development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by that order.

These regulations may make provision in particular:

- about the circumstances in which compensation is payable;
- about what compensation is payable in respect of;
- about how the amount of compensation is to be calculated;
- about how a claim for compensation must be made in order to be valid (including the form and content of a claim, and the period within which it must be made);
- applying, or disapplying, any of the provisions of this Part, with or without modifications.

➤ *Section 77 is repealed.*

## **PART 4 OTHER MATTERS**

### **40 Promotion and use of mediation etc.**

#### **268A Promotion and use of mediation etc.**

The Scottish Ministers may issue, modify or revoke guidance for the promotion and use of mediation with the following:

- The preparation of local development plans and related evidence reports under **Part 2**;
- a prospective applicant's compliance with any requirements in respect of pre-application consultation imposed under or by virtue of section 35B;
- assisting in the determination of an application for planning permission;
- any other matter related to planning that they consider appropriate.

This guidance may include provision about the form of mediation to be used in a particular circumstance and the procedure to be followed in the mediation. The guidance has to be publicly available.

Local Authorities must take into consideration any guidance issued by the Scottish Ministers. Prior to issuing this guidance, the Scottish Ministers must consult Planning Authorities and any other person considered appropriate.

This guidance has to be issued within two years after the Act receives Royal Assent.

#### **01/12/2019 | 41 Fees for planning applications etc.**

Amends section 252 of the Act.

The Scottish Ministers may set the payment of a charge/fee to a Planning Authority related to the performance by a person appointed by virtue of a scheme of delegation under section 43A of the person's functions.

The Scottish Ministers may set up the payment of a charge/fee to them in respect of:

- the performance by the Scottish Ministers of any of their functions under the planning Acts or any order or regulations made under them;
- anything done by the Scottish Ministers which is calculated to facilitate, or is conducive or incidental to, the performance of any such function;
- the performance by a person appointed by the Scottish Ministers under paragraph 1 of schedule 4 of the person's functions.

Regulations under subsection (1) may not make provision for the charge/fee payable to different planning authorities and of different amounts on the basis of whether the functions of the authority did not perform satisfactorily.

The power to make provision as mentioned in subsection (1A)(e) and (ea) includes the power to specify the steps a planning authority are to take before or after waiving or reducing the charge/fee.

Regulations under subsections (1) and (1ZA) may provide the imposition of a surcharge related to an application for planning permission made after the carrying out of the development to which it relates, but those regulations may not provide for the imposition of a surcharge greater than the fee that would be payable otherwise in relation to the application.

In relation to applications for planning permission, provision may be made under those paragraphs for fees and charges to be waived if the application is for a development considered to have the primary purpose of contributing to a social enterprise or not for profit enterprise, or a development that is likely to contribute to health improvements.

#### **Enforcement**

#### **20/12/2019 | 42 Fines: increases and duty of court in determining amount**

The statutory maximum fine is now labelled level 5 (on the standard scale).

The offence where an enforcement notice is not complied with goes from £20,000 to £50,000.

When determining the amount of the fine to be imposed, the court is to have regard to any financial benefit which has (or will) accrued to the convicted person in consequence of the activity constituting the offence.

## **43 Liability for expenses under enforcement notice**

### **135 Execution and cost of works required by enforcement notice**

Regarding the non-compliance to an enforcement notice, the Planning Authority may now recover expenses not only from the person who is then the owner or lessee of the totality of the land, but also from any person owning a part of it or any person becoming the owner of the land at a later time, totally or partially.

Where there is a breach of planning control, the expenses incurred by the planning authority in taking steps required by such a notice to be taken won't be recoverable anymore from the breacher.

The right of recovery that an owner, lessee or occupier of land has under subsection (4) applies whether or not that person remains the owner, lessee or occupier of the land.

### **158B Liability under a charging order**

When a Planning Authority or the Scottish Ministers have charged a person (ref. 135(1)), they can make a charging order and apply to register it in the appropriate land register.

Once the charging order is registered, the amount payable can be paid in instalments (ref 158C) and includes the administrative expenses as well as potential interest charges.

By administrative expenses and interest charges we mean any administrative expenses incurred by the charging body in order to recover the due amount. Interest on the other hand potentially apply on:

- the expenses incurred by the charging body;
- at the rate specified in order;
- in respect of the period beginning with the first demand for payment of the expenses and ending with the payment of the due amount.

Charging orders may only be made or registered after **section 43** of this act comes into force.

### **158C Payments under a charging order**

A charging body must specify in the charging order:

- the number of instalments in which the amount is to be paid (between 3 and 30);
- the date on which each instalment is due.

The date of the first instalment is to be at least 56 after the date on which a copy of the charging order is served on a person, but... The payment can be made in full or with a lower amount earlier than the instalments dates.

The charging body retains the right to waive or reduce the amount to pay.

### **158D Form of a charging order**

A charging order can only be registered if it is prescribed by the Scottish Ministers in regulations. It has to mention:

- the land concerned;
- the action taken in relation to the land;
- the amount to pay or a description of that amount;
- the number of annual instalments and the date on which each one falls due;
- notice that an instalment which is not paid is recoverable as a debt.

A copy of the charging order must be sent to the owner of the land to which it relates.

### **158E Discharge of charging order**

The charging body must register a discharge of a registered charging order, after they have received the full payment of the amount to pay, or a lower sum agreed between the person and the charging body. This discharge may only be registered in the form prescribed by the Scottish Ministers.

### **158F Meaning of “register” and “appropriate land register”**

The term “register” means registering the information contained in the order, discharge or notice in the Land Register of Scotland or in the Register of Sasines.

**These modifications only apply after this section came into force.**

## **44 Enforcement charters: statement on major developments**

In section 158A, inserts subsection 1A.

The enforcement charters are now also to contain a statement relating to the Planning Authorities' monitoring of compliance with planning permissions previously granted for major developments.

- The statement has to set out how the Authority monitor compliance with such planning permissions;
- How the authority records the monitoring of activities undertaken and the findings of those;
- How the authority makes such records public.

### **Training for taking planning decisions**

## **45 Power to impose training requirements: planning authorities**

Any member of a Planning Authority (Local Authority/National Park) who has not fulfilled the specified training requirements is prohibited from:

- Exercising any of the Authority's specified (by the Scottish Ministers' regulations) functions on their behalf;
- Being involved in exercising any of those functions on the Authority's behalf as a member of a committee or any other body.

Regulations under this section specifying functions of a planning authority may only specify functions conferred by the planning Acts as defined by section 277 of the Town and Country Planning (Scotland) 1997 Act.

These regulations may specify that completing a training course is a requirement, or specify training requirements on the basis that the content and provider of the training must be accredited by the Scottish Ministers.

The Scottish Ministers may disapply this training requirements by regulation.

### **Performance of planning authorities**

## **46 Annual report by planning authorities on performance**

### **PART 12A: Performance of planning authority functions- Annual report**

#### **251A Annual report on performance of functions**

At the end of each financial year (ending on March 31), a Planning Authority have to prepare a report on the performance of their functions during that year. They have to submit a copy of the report to the Scottish Ministers and publish it.

The Scottish Ministers may make provisions about the form of the report, its content, the process to be undertaken in preparing it and how the report is to be published.

## 01/12/2019 | 47 National performance monitoring

### **National performance monitoring** **251B National planning improvement co-ordinator**

The Scottish Ministers may appoint a person as a co-ordinator to monitor the performance by Planning Authorities of their functions and provide advice to these (or to any relevant person) regarding the steps to take to improve their performance.

## 01/12/2019 | 48 Regulations

In section 275 2A, now regulations may make different provision for different areas as well as purposes.

## 01/12/2019 | 49 Publication of directions

### **275B Directions**

When the Scottish Ministers give a ministerial direction, they have to publish (online) the direction itself followed of their reasons for giving it.

This procedure does not apply for directions given under section 265A, given before section 49 of this Act comes into force, or given in the form of a regulation or order (as in section 173(1)).

## 50 Chief planning officers

### **1A Planning authorities: chief planning officer**

Each Planning Authority must have a Chief Planning Officer. The role of a Chief Planning Officer is to advise the authority about the carrying out of:

- The functions conferred to them by virtue of the Planning Acts;
- Any function conferred on them by any other enactment if related to development.

The Scottish Ministers must issue guidance to Planning Authorities regarding the role of the Chief Planning Officer.

A Planning Authority may not appoint a person as their Chief PO unless satisfied with their qualifications and experience for the role. In deciding on what these elements should be, the Planning Authority must consider any relevant guidance issued by the Scottish Ministers.

## 01/12/2019 | 51 National Scenic Areas

Before issuing a direction, the Scottish Ministers must now consult persons resident within or next to areas proposed for designation as well as a community body as described in the Community Empowerment (Scotland) Act 2015 interested in the area (this is on top of having to consult Scottish Natural Heritage and other persons deemed relevant).

### **263B National Scenic Areas: report on consultation**

When a National Scenic Area is designated, the Scottish Ministers must prepare and publish a report of the consultation undertaken, after the end of that year. The report must include how the expressed opinions of those who were consulted were taken into account and how the Scottish ministers intend to improve their consultation process before issuing similar decisions.

## 01/12/2019 | 52 Notice by planning authority of applications for listed building consent

When making application for listed building consent, the provision may now be made with respect to all previous elements, the planning authority gives notice of an application made to them to persons or categories of persons relevant, in a manner, for a period and on a number of occasions as may be prescribed.  
The applicant providing such person or persons as may be prescribed such information with respect to the application as may be prescribed.

## 01/12/2019 **53 Forestry and woodland strategy**

### **A159 Forestry and woodland strategy**

Each Planning authority have to prepare a forestry and woodland strategy. This strategy has to:

- Identify woodlands of high nature conservation value within its area;
- Set out the planning authority's policies and proposals to the development of forestry and woodlands, their protection, their resilience to climate change and their expansion of a range typed to provide social, physical, cultural economic and environmental benefits.
- Any other matter considered relevant by the authority.

When preparing this strategy, the authority must consult:

- The Scottish Ministers;
- Organizations appearing to represent those with an interest;
- Any other person considered appropriate.

When finished, the strategy must be published (online) by the Planning Authority.  
In some cases, two or more authorities can set a common strategy.

## **PART 5 INFRASTRUCTURE LEVY**

### **54 Power to provide for levy**

The Scottish Ministers may make provisions about an infrastructure levy. An infrastructure levy is a levy payable to a Local Authority in respect of development, wholly or partly within the Authority's area. This income will be used to fund infrastructure projects.

Schedule 1 elaborates on the regulation-making power conferred by this section.

### **55 Guidance**

The Scottish Ministers may issue guidance to one or more (or all) Local Authorities to stipulate how they are to discharge the infrastructure-levy functions and how the income made through it should be spent. They have to make the guidance publicly available.

Local Authorities are to follow any guidance issued by the Scottish Ministers. The Scottish Ministers may issue guidance that varies or revokes guidance at any time.

This income also includes money from financial penalties (see Schedule 1 Paragraph 9).

### **56 Interpretation of Part and schedule**

The term infrastructure includes the following:

- communications, transport, drainage, sewerage and flood-defense systems;
- systems for the supply of water and energy;
- green and blue infrastructure;
- educational and medical facilities;
- facilities and other places for recreation.

“green and blue infrastructure” means features of the natural and built environments (including water) that provide a range of ecosystem and social benefits

An infrastructure project is a project to provide, maintain, improve or replace infrastructure as mentioned above.

### **57 Power to change meaning of “infrastructure”**

The Scottish Ministers may modify section 56 in order to clarify the meaning of “infrastructure” for the purposes of this part (5) and Schedule 1.

### **58 Lapsing of power to provide for levy**

The regulation-making power conferred by section 54 ceases to be exercisable if no regulations are made within 7 years starting with 25 July 2019.

## **PART 6 FINAL PROVISIONS**

### **59 Ancillary provision**

The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.

### **60 Power to replace descriptions with actual dates**

The Scottish Ministers may by regulations amend a certain of sections as follows:

- Section 158B of the Town and Country Planning (Scotland) Act 1997 and the section 43(5) of this Act in order to specify the day when section 43 really came into force rather than officially;
- Section 275B(2)(b) of the Town and Country Planning (Scotland) Act 1997 for the same aim concerning section 49 of this Act;
- Finally, Section 58(1) to refer to the day the bill actually received Royal Assent.

### **61 Regulation-making powers**

A power to make regulations conferred by this Act includes the power to make different provision for different purposes and areas.

The regulations of the Ancillary Provision (section 59) are subject to the *affirmative* procedure in the case they add, replace or omit a part of the text of an Act, otherwise they are subjective to the *negative* procedure.

The regulations mentioned by the Sections 54 and 57 are subject to the *affirmative* procedure.

Before making regulations under section 54, the Scottish Ministers must consult the Local Authorities affected by the regulations and any person considered appropriate by them.

### **01/12/2019 | 62 Minor and consequential amendments and repeals**

Schedule 2 makes provision for minor and consequential amendments and repeals.

### **63 Commencement**

The Sections 58 to 61, and 63 to 64 come into force on the day after Royal Assent, however the other provisions of this Act will come into force later on Scottish Ministers' regulations. These may appoint different days for different purposes and contain transitional, transitory or saving provisions.

### **64 Short title**

The short title of this Act is the **Planning (Scotland) Act 2019**.