

PLANNING ETC. (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 10 – Miscellaneous and General Provisions

Section 50 – National Scenic Areas

216. This section allows the Scottish Ministers to designate an area as a National Scenic Area by direction, and to vary or revoke the designation. It also enables Ministers to issue guidance for the purpose of this section to which planning authorities must have regard. In deciding whether to designate an area as a National Scenic Area, Ministers will take account of whether the area is of outstanding natural beauty, and of the amenity of the area. It also allows Ministers to make regulations as to:
- (a) the form of direction;
 - (b) the manner in which a National Scenic Area is to be described in any such direction;
 - (c) the publicity to be given to any such direction, and
 - (d) other procedural matters in connection with the making of any such direction.

Section 51 – Equal Opportunities

217. This section inserts **new section 270B** in the 1997 Act, which places a duty on Ministers and planning authorities to perform any functions that they are required or empowered to carry out under the Act in such a way as to promote equal opportunities and compliance with equal opportunity requirements.

Section 52 – Regulations in connection with inquiries etc.

218. This section inserts **new section 275A** in the 1997 Act, which provides powers for the Scottish Ministers to make regulations as regards the procedure to be followed in connection with inquiries, hearings, referrals or reviews conducted under or by virtue of the 1997 Act. It also amends the Tribunals and Inquiries Act 1992 to alter the definition of “statutory inquiry” in relation to the application of section 9 of that Act.

Section 53 – Old development plans

219. This section amends Schedule 1 to the 1997 Act to set out how existing development plans will be superseded by strategic development plans and local development plans

Section 54 – Further amendment of the principal Act

220. **Subsection (2)** adds an additional subsection to section 1 of the 1997 Act to confirm that section 1 is subject to the provisions of the 1997 Act and any other Act.

- 221. **Subsection (3)** amends section 30(2) of the 1997 Act to allow the use of development orders to cover the allocation of developments to the different levels in the hierarchy set out in section 4 of this Act.
- 222. **Subsection (4)** adds an additional subsection to section 33 of the 1997 Act to cover the situation where an enforcement notice has been issued before an application for retrospective planning permission has been made.
- 223. **Subsection (5)** makes a minor amendments to section 37 of the 1997 Act.
- 224. **Subsection (6)** amends section 130(1)(b) of the 1997 Act to clarify that the matters it refers to are those referred to an enforcement notice issued under section 128(1) of the 1997 Act.
- 225. **Subsection (7)** amends section 135(11) of the 1997 Act to clarify that references to 'compliance period' in new section 136A have the same meaning as references to 'compliance period' in sections 136, 140 and 141.
- 226. **Subsection (8)** amends section 156(1)(b) of the 1997 Act (right to enter without warrant) to extend the enforcement measures included in this section to include new section 144A (temporary stop notices).
- 227. **Subsections (9) and (10)** include references to Acts of the Scottish Parliament in sections 160(6)(c) and 216(6)(b) of the 1997 Act.
- 228. **Subsection (11)** substitutes new wording for subsection 237(1)(a) of the 1997 Act to insert references to strategic development plans and local development plans planning obligations and good neighbour agreements into the provisions on validity. It also updates subsection 237(3) to include decisions made by the Scottish Ministers on planning obligations and good neighbour agreements, and appeals against an enforcement notice relating to tree preservation provisions.
- 229. **Subsection (12)** updates section 238 of the 1997 Act by inserting references to strategic development plans and local development plans.
- 230. **Subsection (13)** amends section 242A (urgent Crown development applications) of the 1997 Act to take account of the repeal of sub-sections (5) and (6) of section 46 of the 1997 Act, which provide for planning authorities or applicants to require a public local inquiry to be held.
- 231. **Subsection (14)** updates the references to development plans in section 255 of the 1997 Act.
- 232. **Subsection (15)** updates the references to development plans in section 269 of the 1997 Act.
- 233. **Subsection (16)** includes references to Acts of the Scottish Parliament in section 275 of the 1997 Act, and provides that on the first occasion that regulations are made under paragraph (d) of new section 7(1) and paragraph (a)(i) of new section 19(10) of the 1997 Act, they shall be subject to affirmative procedure. It also provides that regulations made under section 136A(4) or 145A(4) shall be subject to affirmative procedure.. Subsection (16) also confirms that any regulation making powers conferred by the Act includes those necessary for any incidental, supplemental, consequential, transitory transitional or saving provision that Ministers consider necessary or expedient.
- 234. **Subsection (17)** inserts new definitions in section 277 (interpretation) of the 1997 Act, and also inserts new subsection (11), which states that any reference to registering an instrument of other document in the Land Register of Scotland is to be construed as a reference to registering the information contained therein in the Register.
- 235. **Subsection (18)** amends various references in Schedule 4 to the 1997 Act.
- 236. **Subsection (19)** makes consequential amendments to Schedule 14 to the 1997 Act.

Section 55 – Further amendment of the listed buildings Act

237. **Subsection (2)** amends section 13 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 (“the listed buildings Act”) to specify that the Scottish Ministers may give directions to a single planning authority or to a described class of authorities as to any requirement to notify applications for listed building consent .
238. **Subsection (3)** amends section 69(1) of the listed buildings Act by removing the specific reference to conservation areas of “outstanding architectural or historic interest”. This broadens the Scottish Ministers’ discretion to make grants or loans applicable to any conservation area.
239. **Subsection (4)** inserts a definition into section 81 of the listed buildings Act (interpretation) to extend the meaning of “demolition” to include “partial demolition”.
240. This amendment is in response to the House of Lords case of *Shimizu (UK) v Westminster City Council (1997 1A11 ER 481)* where the court decided that “demolition” meant demolition of a building or structure *as a whole*. This meant partial demolition of a building could no longer be regarded as “demolition” but as an “alteration”, and therefore consent under section 66(1) of the listed buildings Act was no longer required for partial demolition of buildings and structures (including gates, walls or fences) in conservation area. By amending the scope of the definition of demolition, the effect of the provision will be that listed building and conservation area controls, where applicable, will encompass both partial and total demolition works.
241. **Subsection (5)** amends section 82(1) of the listed buildings Act to enable the Scottish Ministers to make regulations on the provision of information or evidence, for the purposes of that Act.

Section 56 – Repeals

242. **Section 56** indicates that the schedule to the Act contains a list of the enactments which are repealed by the Act.

Section 57 – Interpretation

243. **Section 57** defines the “principal Act” to be the Town and Country Planning (Scotland) Act 1997, and the “listed buildings Act” to be the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 58 – Supplementary and consequential provisions

244. **Subsections (1) to (3)** give the Scottish Ministers powers to make orders to implement supplementary, incidental, consequential, transitory, transitional and saving provisions, including the amendment or repeal of any enactment or instrument.
245. **Subsections (4) and (5)** provide that any order which adds to, replaces or omits any part of an Act shall be subject to an affirmative resolution procedure in Parliament. Other than this, orders will be subject to negative resolution procedure.

Section 59 – Commencement

246. **Section 59** sets out the arrangements for commencement of the provisions of the Act. Sections 59 and 60 come into force on Royal Assent, and all other provisions are to be commenced by order.

Section 60 – Short title

247. **Section 60** gives the short title of the Act as the Planning etc. (Scotland) Act 2006.