

PLANNING ETC. (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Development Plans

Section 2 – Development plans

12. **Section 2** replaces Part 2 of the 1997 Act.

Sustainable development

13. **New section 3E** sets out the duty to contribute to sustainable development which applies to planning authorities when exercising their functions in relation to development planning. It also gives the Scottish Ministers powers to issue guidance to authorities on how such a duty should be undertaken.

Strategic development planning

14. **New section 4** gives the Scottish Ministers powers to designate the group of planning authorities which is to prepare each strategic development plan. Subsection (1) sets out when the group is to prepare the plan and requires it to keep the plan under review. Subsection (5) describes the group as the “strategic development plan authority” (SDPA), subsection (2) requires that no part of the area the plan covers is to be outside the districts of the planning authorities making up the SDPA, and subsection (6) requires that there is never more than one such plan for the area. Subsection (3) gives the Scottish Ministers power to direct that employees of the planning authorities comprising the SDPA will be assigned to the task of preparing the plan. Subsection (4) prevents Scottish Ministers from issuing such a direction within the 3 month period following the designation of the strategic development planning authority. Subsection (8) gives Ministers powers to request information from a planning authority on the assignment of staff for strategic development planning purposes, and requires the authority to provide the information within 14 days of the request. Subsection (9) provides further detail on the requirement in subsection (1)(b) to review a strategic development plan, both in terms of monitoring the changes in the area and monitoring the impact of the policies and proposals in the plan. Subsections (10) and (11) set out the requirements for publishing a statement on this monitoring.
15. **New section 5** sets out the process for determining the boundary of the area to be covered by the strategic development plan. Subsection (1) requires each SDPA to submit to the Scottish Ministers a plan showing the proposed boundary for the area. Subsection (2) gives individual planning authorities a right to submit alternative plans if they do not agree with the boundary being proposed by the other authorities in the SDPA. Subsection (3) gives Scottish Ministers powers to determine where the boundary should be and subsection (4) gives the Scottish Ministers powers to request further information from either the SPDA or an individual planning authority before reaching their decision (which, under subsection (6), is final). Subsection (5) requires Ministers

*These notes relate to the Planning etc. (Scotland) Act 2006
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to give notice to the strategic development planning authority of their decision on the boundary, and to give reasons for their decision.

16. **New section 6** gives the strategic development plan authority powers to change the boundary of the area to be covered by the strategic development plan, where there has been a material change in circumstances.
17. **New section 7** gives details of the form and content of the strategic development plan. Subsection (1) describes the main items that it will contain. Subsections (2) and (3) relate to the maps and diagrams which are either to be contained in or to accompany the plan. Subsection (4) sets out the matters that must be considered in drawing up the vision statement referred to in subsection (1)(a).
18. **New section 8** sets out the main sources of information on which the planning authority are to draw in preparing the plan. Subsection (1) requires the authority to take into account the National Planning Framework, and to have regard to matters prescribed by the Scottish Ministers and to other matters they think to be relevant. Subsection (2) gives the Scottish Ministers power to direct that the plan is completed by a specified day.
19. **New section 9** describes how a main issues report is to be compiled in preparation for the strategic development plan. Subsection (1) requires the compilation of a main issues report, whose contents are defined in subsections (2) and (3). Subsection (4) sets out a duty to consult and subsection (5) places a duty on key agencies to co-operate with the authority in its production. Subsections (6) to (9) require the publication of the report, and that a copy is to be sent to the Scottish Ministers.
20. **New section 10** covers the production of the proposed strategic development plan. Subsection (1) covers the production of the proposed plan and notification of this to relevant persons. Subsection (2) requires the specification of a date by which any representations about the plan must be made to the authority. Subsection (3)(a) permits modifications of the proposed plan and subsection (3)(b) covers the procedure for submitting the proposed plan to the Scottish Ministers after the period for making representations has ended. Subsections (4) and (5) set out the procedure for preparing and publishing a new proposed plan where the authority considers that modifications would change the underlying aims or strategy of the proposed plan. Subsection (7) requires the authority to advertise that they have submitted the plan to Scottish Ministers. Subsection (8) requires the proposed plan to be submitted within 4 years of the date when the current plan was approved, and subsection (9) places a duty on key agencies to cooperate in its production.
21. **New section 11** sets out how individual planning authorities may submit alternative proposals where they are unable to agree on the content of the proposed plan.
22. **New section 12** sets out the procedure that Scottish Ministers are to follow in examining a proposed strategic development plan. Subsection (1) gives them a duty in certain circumstances to direct that a person appointed by them will examine the plan, and subsection (2) requires that person to examine the extent to which the authority's carrying out of consultation on the plan conforms with its participation statement. Subsections (3) to (5) give details of the financial and procedural arrangements for such examinations, and the duties of the strategic development planning authority and the Scottish Ministers to advertise and serve notice of any direction made under subsection (1). Subsections (6) to (8) cover the preparation of the report, its publication and its submission to the Scottish Ministers.
23. **New section 12A** sets out how the person appointed under new section 12 is to proceed if not satisfied with the way the planning authority have carried out the consultation on the proposed plan. Subsection (1) requires a report to be prepared and sent to the Scottish Ministers and copied to the planning authority. Subsection (2) gives the authority 4 weeks to make representations to Ministers. Subsections (3) to (5) give powers of direction to Ministers in relation to further steps to be taken by the

authority and the appointed person carrying out the examination required under new section 12(1). Subsections (6) and (7) set out the procedure for preparing and publishing a new proposed plan where the authority consider that modifications would change the underlying aims or strategy of the proposed plan. Subsection (8) requires the authority to advertise that they have submitted the plan to Ministers. Subsections (9) and (10) apply sections 11, 12, 12A and 13 to a proposed plan submitted following modification as a result of further consultation in the same way as they apply to the original proposed plan, but with necessary modifications.

24. **New section 13** sets out the procedure to be followed by the Scottish Ministers on receipt of the plan. Subsection (1) allows Ministers to approve, amend or reject the plan. If approved, it then becomes the strategic development plan. Subsection (4) covers modification of the proposed plan. Subsections (5) and (6) require Ministers to specify a date by which any representations with respect to the proposed modifications must be made to them, before the final decision on the plan. Subsection (7) clarifies the meaning of modifications at this stage, while subsection (8) requires Ministers to notify the planning authority of any such representations.
25. **New section 14** gives details of the publication and publicity arrangements for a strategic development plan, once it has been finally approved.

Local development plans

26. **New section 15** gives details of the form and content of local development plans. Subsection (1) describes the main items that each plan will contain. Subsection (2) requires the plan to contain a vision statement where the land is not within a strategic development plan area. Subsection (3) requires the plan to include a schedule setting out any land that is owned by the planning authority which is affected by policies and proposals in the plan. Subsection (4) relates to the maps and diagrams which are either to be contained in or to accompany the plan. Subsection (5) sets out the matters that must be considered in drawing up the vision statement referred to in subsection (2).
27. **New section 16** sets out how planning authorities are to proceed in preparing and monitoring local development plans. Subsection (1) sets out when authorities are required to prepare plans, and requires them to keep plans under review. Subsection (2) sets out the main sources of information on which the planning authority are to draw in preparing the plan. Subsections (3) to (5) explain that different plans can be prepared for different areas, and two or more authorities can if they wish prepare a joint plan covering parts of their districts. Subsection (6) requires authorities to ensure that local development plans are consistent with any strategic development plans covering the same area. Subsection (7) gives the Scottish Ministers powers to direct that a report is prepared where a planning authority have failed to produce a local development plan. Subsection (8) provides further detail on the requirement in subsection (1)(b) to review a local development plan, both in terms of monitoring the changes in the area and monitoring the impact of the policies and proposals in the plan. Subsections (9) and (10) set out the requirements for publishing a statement on this monitoring.
28. **New section 17** describes how a main issues report is to be compiled in preparation for the local development plan. Its contents are defined in subsections (2) and (3). Subsection (4) sets out a duty to consult, and subsection (5) places a duty on key agencies to co-operate with the authority in its production. Subsections (6) to (10) require the publication of the report, and that a copy is to be sent to the Scottish Ministers.
29. **New section 18** covers the production of the proposed local development plan. Subsection (1) covers the production of the proposed plan and notification of this to relevant persons. Subsection (2) requires the specification of a date by which any representations about the plan must be made to the authority. Subsection (4) covers the procedure for submitting the proposed plan to the Scottish Ministers, after the period for making representations has ended, and subsection (5) requires further neighbour

notification to be carried out by the planning authority if they make modifications of a kind described in regulations. Such modifications are likely to include situations where a site included in the proposed plan attracts a large amount of objection and an alternative site is proposed by a landowner or developer. The planning authority may consider this alternative site to be preferable but, in order to ensure that everyone affected by the alternative site has had an opportunity to comment on the plan, further neighbour notification should be carried out. Subsections (8) and (9) set out the procedure for preparing and publishing a new proposed plan where the authority consider that modifications would change the underlying aims or strategy of the proposed plan.

30. **New section 19** sets out the procedures to be followed in the examination of a proposed local development plan. Subsections (1) to (2) give planning authorities a duty to request the Scottish Ministers to appoint a person to examine the plan, where representations were neither taken account of nor withdrawn. Subsection (3) enables the Scottish Ministers to make such an appointment if they consider that those circumstances arise and no request has been made. Subsection (4) requires the appointed person to examine the extent to which the authority's carrying out of consultation on the plan conforms with its participation statement. Subsections (5) to (7) give details of the financial and procedural arrangements for such examinations, and subsections (8) and (9) cover the preparation and publishing of the report and its submission to the planning authority. Subsections (10) to (12) set out the procedures for the planning authority to follow on receipt of the report under subsection (8)(b).
31. **New section 19A** sets out how the person appointed under new section 19 is to proceed if not satisfied with the way the planning authority have carried out the consultation on the proposed plan. Subsection (1) requires the appointed person to prepare a report and send it to the Scottish Ministers, copied to the planning authority. Subsection (2) gives the authority 4 weeks to make representations to Ministers. Subsections (3) to (5) give powers of direction to Ministers in relation to further steps to be taken by the authority and the appointed person carrying out the examination required under new section 19(1). Subsections (6) and (7) set out the procedure for preparing and publishing a new proposed plan where the authority consider that modifications would change the underlying aims or strategy of the proposed plan. Subsection (8) requires the authority to advertise that they have submitted the plan to Ministers, while subsections (9) and (10) apply sections 19 and 19A to a plan submitted following modification as a result of further consultation in the same way as they apply to the original proposed plan, but with necessary modifications to take into account any steps required on further consultation and neighbour notification, and any subsequent representations received.
32. **New section 20** sets out the procedure for adoption of the local development plan by the planning authority. Subsection (3) states that adoption may not take place within 28 days of notice of intention to adopt the plan. Subsection (4) enables the Scottish Ministers to extend the period. The Scottish Ministers have powers under subsections (5) and (6) to direct that a planning authority should consider modifying the proposed plan. Subsection (7) allows Ministers to approve the local development plan.
33. **New section 20A** gives details of the publication and publicity arrangements for local development plans once they have been finally adopted or approved.

Development plan schemes and action programmes

34. **New section 20B** sets out how and when planning authorities are to prepare development plan schemes. Subsections (1) and (2) require a scheme to be prepared by each planning authority for each plan whenever required to do so by the Scottish Ministers or within a year of last preparing a plan. Subsections (3) and (4) explain what a scheme is, and that it should include a participation statement (stating when and with whom consultation is likely to take place and its likely form, and the steps taken to involve the public at large). Subsection (5) sets out the requirement for publishing the

scheme. Under subsection (7), the form and content and procedures for the preparation of a plan may be set out in regulations.

35. **New section 21** covers the preparation of action programmes for strategic and local development plans. Subsection (1), (2) and (4) state that an action programme will be prepared for each strategic development plan and each local development plan and published at the same time as each proposed strategic and local development plan. Subsection (3) sets out a duty to consult. Subsection (3)(a) requires key agencies to be consulted, and subsection (5) requires them to co-operate with the planning authority in the preparation of any programme. Subsection (6) explains what an action programme is, and subsection (7) provides that the form and content and procedures for the preparation of an action programme may be set out in regulations. Subsection (8) gives the authority 3 months after approval or adoption of the SDP or LDP to finalise the action programme for each plan. Subsection (9) requires the authority to keep the action programme under review, and to publish it when required to do so by the Scottish Ministers, and otherwise at least every 2 years.

Supplementary guidance

36. **New section 22** covers supplementary guidance. Subsection (1) allows planning authorities to issue supplementary guidance. Under subsection (2), procedures for consultation and adoption of such guidance, and the matters which may be dealt with in it, may be set out in regulations. Subsections (3) to (5) cover the manner in which planning authorities are to publicise such guidance, and consider representations about it. Subsections (6) to (8) require the authority to submit proposed guidance to Scottish Ministers for approval, and give Ministers powers to require the authority to modify it before adopting it or direct that it is not issued. Subsection (9) allows strategic development planning authorities and planning authorities to adopt and issue non-statutory supplementary guidance in connection with a strategic development plan or local development plan, as long as it does not cover matters that are specified in regulations as being matters for statutory supplementary guidance under this section.

Supplementary provisions

37. **New section 23** allows the Scottish Ministers and planning authorities to disregard representations made in respect of developments authorised under sections 5, 7, 9 or 12 of the Roads (Scotland) Act 1984 or section 1 of the New Towns (Scotland) Act 1968.
38. **New section 23A** covers regulations under the new Part 2 of the 1997 Act. Subsection (1) explains that regulations and directions under Part 2 may apply to the whole of Scotland or to parts of Scotland. Subsection (2) gives the Scottish Ministers powers to direct planning authorities in relation to the procedure for carrying out their development planning functions and supplying information to Ministers.
39. **New section 23B** sets out the default powers of the Scottish Ministers in relation to the preparation of development plans. Subsection (1) sets out when the default powers apply. Where an authority have not done what is required within a reasonable period, or have not met a time limit, the Scottish Ministers can, under subsections (2) to (4), direct the authority to carry out their functions, or may prepare the plan themselves. In the case of a strategic development plan, Ministers may also direct one of the constituent authorities to prepare the plan. Subsection (5) requires the defaulting authority to repay to Ministers or to any other planning authority any expenses reasonably incurred.
40. **New section 23C** replaces section 23 in the 1997 Act, and requires planning authorities to review plans in the light of the designation or modification of enterprise zone schemes.
41. **New section 23D** defines “key agencies” in relation to Part 2 by reference to any regulations in which they are specified. Key agencies are likely to include Scottish

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Natural Heritage, the Scottish Environment Protection Agency and Local Enterprise Companies.

42. **New section 24** defines which documents comprise a development plan.

General

43. **New section 25** explains the status of the development plan where any determination is made under the planning Acts. Subsection (1) sets out that the determination is to be made in accordance with the development plan, and, where applicable, with certain statements in the National Planning Framework, unless material considerations indicate otherwise. Subsections (2) and (3) explain how statements in the National Planning Framework are to be treated, and how any incompatibility between the National Planning Framework and the development plan is to be resolved.