

# **PLANNING ETC. (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Planning etc. (Scotland) Bill introduced in the Scottish Parliament on 19 December 2005:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 51-PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

4. The Bill will provide a mechanism for the delivery of a modernised planning system, as set out in the Policy Memorandum. It takes forward the commitment in *A Partnership for a Better Scotland* to improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investment decisions.

5. The package set out in the White Paper *Modernising the Planning System*, June 2005, brings together the Scottish Executive's final proposals for modernisation of the system in a single document. The Paper identifies elements of the modernisation package that require changes to primary legislation, secondary legislation, and elements that can be dealt with through guidance.

6. The purpose of the Bill is to amend existing planning legislation to implement the proposals in the White Paper *Modernising the Planning System*, which require changes to primary legislation. It also introduces provisions to implement Business Improvement Districts in Scotland, as set out in *A Partnership for a Better Scotland*.

### **COMMENTARY ON SECTIONS**

#### **The main provisions of the Bill**

7. The Bill is in 10 parts and 1 schedule.

These are:

- Part 1 – National Planning Framework – sets out arrangements for the preparation and publication of the National Planning Framework, a spatial plan for Scotland. It also describes the procedure for Parliamentary consideration of the Framework and its laying before Parliament.
- Part 2 – Development plans – replaces Part 2 of the Town & Country Planning (Scotland) Act 1997 (the 1997 Act). It sets out provisions for the preparation, examination and publication of strategic development plans and local development plans, which will replace the existing structure plans and local plans. It also defines a

new duty on planning authorities to exercise their development planning functions with the objective of contributing to sustainable development.

- Part 3 – Development management – selectively amends Part 3 of the 1997 Act to bring about a range of improvements to the handling of applications for planning permission. It also revises the provisions relating to appeals and planning agreements, now known as planning obligations.
- Part 4 – Enforcement – introduces provisions for temporary stop notices and enforcement charters.
- Part 5 – Trees – updates and amends the provisions in the 1997 Act relating to Tree Preservation Orders.
- Part 6 – Correction of errors – introduces new provisions to allow the correction of errors in official decision letters.
- Part 7 – Assessment – introduces new powers for the Scottish Ministers to assess the performance of planning authorities in carrying out their development management functions, and to investigate the decision making.
- Part 8 – Financial provisions – amends existing provisions relating to fees and charges and to the making of grants for advice and assistance to those who use the planning system.
- Part 9 – Business improvement districts – introduces provisions to allow local businesses to invest collectively in improvements to the area they operate in.
- Part 10 – Miscellaneous and general provisions – contains provisions for minor amendments, repeals and commencements.
- The schedule – sets out a list of repeals to existing primary legislation.

## **THE BILL – SECTION BY SECTION**

### **PART 1 – NATIONAL PLANNING FRAMEWORK**

#### **Section 1 – National Planning Framework**

8. This section inserts new Part 1A into the 1997 Act. New section 3A introduces the requirement for a “National Planning Framework” - a spatial plan which sets out how the Scottish Ministers consider development and use of land in Scotland should occur.

9. New subsection 3A(3) requires the National Planning Framework to contain a statement of priorities and a strategy for the long term spatial development for Scotland. It will set out national developments, which will include developments such as new railway lines and trunk roads. New section 3A(6) also makes the requirement for the Scottish Ministers to prepare, publish, review and revise the National Planning Framework.

## **PART 2 – DEVELOPMENT PLANS**

### **Section 2 – Development plans**

10. Section 2 replaces the Part 2 of the 1997 Act.

#### *Sustainable development*

11. **New section 3D** 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*

12. **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 (4) describes the group as the “strategic development plan authority” (SDPA), subsection (2) requires that no part of the area the plan covers is outside the districts of the planning authorities making up the SDPA and subsection (5) 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.

13. **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. Subsections (3) gives Scottish Ministers powers to determine where the boundary should be and subsections (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 (5), is final).

14. **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.

15. **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).

16. **New section 8** sets out the main sources of information on which the planning authority is to draw in preparing the plan. Subsection (1) requires the authority to take into account the National Planning Framework, 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.

17. **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 for a copy to be sent to the Scottish Ministers.

18. **New section 10** covers the production of the proposed strategic development plan. Subsection (1) covers the production of the proposed plan and notification of such 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.

19. **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.

20. **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 carrying out of consultation on the plan conforms with its consultation 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.

21. **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, copied to the planning authority. Subsection (2) gives the authority 4 weeks to make representations to Ministers. Subsection (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 considers 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.

22. **New section 13** sets out the procedure to be followed by the Scottish Ministers on submission 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 them to specify a date by which any representations with respect to the proposed modifications must be made to Ministers, before the final decision on the plan. Subsection (7) clarifies the meaning of modifications at this stage, while subsection (8) requires them to notify the planning authority of any such representations.

23. **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*

24. **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 that 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).

25. **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 is 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 has failed to produce a local development plan.

26. **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 for a copy to be sent to the Scottish Ministers.

27. **New section 18** covers the production of the proposed local development plan. Subsection (1) covers the production of the proposed plan and notification of such 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) 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.

28. **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 to 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 that person to examine the extent to which the authority carrying out of consultation on the plan conforms with its consultation 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).

29. **New section 19A** sets out how the person appointed under new section 19 is to proceed if he/she is not satisfied with the way the planning authority have carried out the consultation on the proposed plan. Subsection (1) requires him/her 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 considers 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.

30. **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 generally take place within 28 days of notice of intention to adopt the plan. 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 for Ministers to approve the local development plan.

31. **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*

32. **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 consultation statement stating when and with whom consultation is likely to take place, and its likely form. Under subsection (5), the form and content and procedures for the preparation of a plan may be set out in regulations.

33. **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 its preparations. 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*

34. **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 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.

#### *Supplementary provisions*

35. **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.

36. **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. It also, in subsection (2), gives the Scottish Ministers powers to direct planning authorities in relation to the procedure for carrying out their development planning functions and their supplying information to Ministers.

37. **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 has not done what is required within a reasonable period, or has not met a time limit, the Scottish Ministers can, under subsections (2) to (4), direct the authority to carry out its 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.

38. **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.

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

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

#### *General*

41. **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.

### **PART 3 – DEVELOPMENT MANAGEMENT**

#### **Section 3 – Meaning of “development”**

42. **Subsection (1)(a)** inserts new provisions after the existing section 26(2) of the 1997 Act and gives the Scottish Ministers the power to specify in a development order the circumstances in which section 26(2)(a) of the 1997 Act will not apply to operations which have the effect of increasing the gross floor space of a building. Previously, under subsection 2(a)(i) of section 26 of the 1997 Act, works which only affected the interior of a building were not considered to fall within the meaning of “development” and therefore did not require a development order. An example of operations that may have the effect of increasing the gross floor space is the installation of a mezzanine floor in a building.

43. **Subsection (1)(b)** expands the definition of “development” in section 26(6) of the 1997 Act to include fish farming within 12 nautical miles from the baselines from which the territorial sea is measured. This subsection also includes a definition of a nautical mile. Fish farming in inland waters is already subject to planning control under the 1997 Act and those provisions are retained. The effect of the provision is that fish farms coming within the definition of development will require planning permission under the 1997 Act.

44. **Subsection (1)(c)** introduces new subsections (6C) to (6I) into section 26 of the 1997 Act. Subsections (6C) to (6F) allow the Scottish Ministers to make orders regarding the placing or assembly of equipment for the purpose of fish farming in waters described in section 26(6)(b) or (c) of the 1997 Act. They also make provision for the Scottish Ministers to allocate responsibility in the order to a particular planning authority or National Park authority.

45. Subsection (6G) requires that the Scottish Ministers consult SEPA and every planning authority and enables consultation with such other persons as they see fit before making any order under subsection (6C).

46. Subsection (6H) clarifies the extent to which any order under subsection (6C) may be made to ensure that there are sufficient powers to make any amendments to secondary legislation that are required as a consequence of this change.

47. Subsection (6I) clarifies that any reference to the National Park in section 9 of the National Parks (Scotland) Act 2000, where the planning functions extended to National Park Authorities by section 26(6C) of the 1997 Act, includes those waters described in paragraphs (b) and (c) of section 26(6) of the 1997 Act.

48. **Subsection (2)** explains that a development order made under section 26(2AA), which specifies that operations which have the effect of increasing the gross floor space of a building, does not retrospectively affect any operations begun before that order is made.

49. Under **subsection (3)** an existing certificate shall be of no effect if a development order is made under subsection (2AA) which specifies that the operations now fall within the meaning of development as they affect the interior of the building and will increase the gross floor space. Providing that no operations have begun before the date the development order comes into force, the certificate will be of no effect.

50. **Subsection (4)** amends section 275 of the 1997 Act relating to the Scottish Ministers' powers to make regulations and orders, by inserting the new section numbering.

#### **Section 4 – Hierarchy of developments for purposes of development management etc.**

51. This section inserts new section 26A into the 1997 Act. Subsection (1) sets out the three categories to which all developments will be allocated. Subsections (2) and (4) give the Scottish Ministers powers to make regulations to describe the classes of major and local development. National developments are those designated as such in the National Planning Framework. Subsection (3) enables the Scottish Ministers to direct that a particular local development is assigned to the class of major developments or vice versa.

#### **Section 5 – Initiation and completion of development**

52. **Subsection (1)** inserts new section 27A, “Notification of initiation of development”, into the 1997 Act. The provisions require the developer to inform the planning authority when development is to be commenced. The planning authority is to issue a notice to the applicant informing them of the requirement.

53. **Subsection (1)** also inserts new section 27B “Notification of completion of development”, into the 1997 Act. This subsection contains provisions requiring the planning authority to be informed by the developer when development has been completed. Where the development is to be carried out in phases, the planning authority are to impose a condition on the planning permission requiring the developer to inform the planning authority of the completion of each phase.

54. **Subsection (2)** makes commencement of development without informing the planning authority of initiation of development a breach of planning control.

## **Section 6 – Applications for planning permission and certain consents**

55. **Subsection (1)** replaces the existing section 32 of the 1997 Act to enable the Scottish Ministers to prescribe in regulations or a development order both the form and content in which a planning application must be made and submitted to planning authorities. Regulations or a development order made under this section may make different provision for different cases and levels of development or for different planning authority areas. These must require that certain descriptions of applications be accompanied by a statement detailing how issues relating to access to the development have been dealt with. The secondary legislation can also specify the form and content of such a statement. Where specified in secondary legislation an application must also be accompanied by a pre-application consultation report, as explained in relation to section 10 in these notes.

56. **Subsection (2)** extends section 182 of the 1997 Act by inserting a new subsection (2A) into the provisions relating to regulations controlling the display of advertisements to specify the form and manner in which an advertisement application must be made.

57. **Subsection (3)** amends section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the listed buildings Act”) which stipulates how applications shall be made to planning authorities. Subsection (3)(a) of the listed buildings Act is replaced so that the provision to allow the planning authority power to specify the form and manner in which an application for planning permission must be made is consistent with the provision in **subsection (1)**, affecting the 1997 Act.

58. Subsection (3) also inserts new subsections (4) and (5) into section 9 of the listed buildings Act to ensure consistency with the new section 32 of the 1997 Act as set out in subsection (1), so that certain applications for listed building consent are also required to be accompanied by a statement detailing how issues relating to access to the development for the disabled have been dealt with. The form and content of the statement will also be as prescribed in regulations.

## **Section 7 – Variation of planning applications**

59. **Section 7** inserts two new sections after section 32 of the 1997 Act. **New section 32A** sets out the circumstances under which a planning application may be varied with the agreement of the planning authority after it has been made. Subsection (2) provides that a planning authority may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development. Subsection (3) enables the Scottish Ministers to make regulations or a development order setting out the circumstances in which an application may be varied. Subsection (3) also states that an application must not be varied if it is the subject of an appeal under section 47 of the 1997 Act.

60. Subsection (4) gives the planning authority powers to give notice of the variation to a planning application.

61. **New section 32B** sets out the circumstances under which a planning application may be varied after it has been referred to Scottish Ministers and with their agreement. Subsection (2)

provides that the Scottish Ministers may not agree to vary an application if they consider that the variation would result in a substantial change in the description of the development. Subsection (3) allows the regulations or development order to make provision for the timing and the procedures for applications to be varied.

62. Subsection (4) gives the Scottish Ministers powers to give notice of a variation to an application.

### **Section 8 – Development already carried out**

63. This section inserts a new section 33A in the 1997 Act. This gives the planning authority the power to issue a notice requiring the owner of the land where planning permission has not been granted but development has already been carried out to make an application for planning permission. The existing section 33 of the 1997 Act only provides that planning permission for development already carried out may be granted. Issuing the notice constitutes enforcement action under section 123(2) of the 1997 Act.

### **Section 9 – Publicity for applications**

64. **Subsection (1)** replaces existing section 34 of the 1997 Act. This section gives the Scottish Ministers the power to set out in regulations or development order to whom, how and for how long a planning authority should give notice of an application. It sets out the types of applications for which the planning authority must give notice. It also makes provision for criteria which must be satisfied before the application can be determined. The Scottish Ministers have the power to require the planning authority to provide information on how they have carried out functions under section 34 of the 1997 Act.

65. **Subsection (2)** refers to minor changes to section 38 of the 1997 Act, to reflect the changes under new section 34.

### **Section 10 – Pre-application consultation**

66. This section introduces new sections 35A, 35B and 35C into the 1997 Act. The existing section 35 already gives the Scottish Ministers the power to make regulations or a development order on the procedures and the form and content of notices of application for planning permission.

67. The **new section 35A** places a duty on a prospective applicant for planning permission for certain prescribed classes of development to comply with the pre-application procedures set out in section 35B before submitting an application for planning permission. The classes of development are to be prescribed by regulations or a development order and different classes can be prescribed for different areas.

68. The new section 35A(3) enables applicants by notice to require the planning authority to determine whether or not the applicants proposed development falls within a prescribed class. The planning authority can request the applicant provides additional information if they feel insufficient information has been submitted. If the planning authority responds stating that they

consider the proposed development does not fall within the classes requiring a pre-application consultation then providing the application for planning permission is submitted within 12 months of the notice and it does not differ materially from the information given in the notice, then pre-application consultation would not be required.

69. The new section 35A(7) places a duty on the planning authority to respond to an applicant's "proposal of application notice" within 21 days or as otherwise prescribed in regulations or development order.

70. The **new section 35B** sets out the details for the pre-application consultation process. This will be initiated by the prospective applicant submitting a "proposal of application notice" to the planning authority. The new section 35B(3) requires there to be a 12 week period between submission of the notice and the application. New section 35B(4) sets out the minimum content of the "proposal of application notice". The contents, persons to be consulted and the form of the consultation are to be set out further in regulations or a development order made under section 35B(5). If the planning authority considers that the additional consultation to that prescribed in such regulations or development order should be undertaken, then it must inform the applicant within 21 days of receipt of the notice. If it fails to respond within the 21 days then it can be assumed to have considered that no additional consultation is required.

71. The **new section 35C** requires the submission of a "pre-application consultation report" with the application for planning permission, the form of this report being prescribed in regulations or development order.

## **Section 11 – Public availability of information as to how planning applications have been dealt with**

72. Section 36(1) of the 1997 Act requires planning authorities to keep a register containing information on applications for planning permission, their approval of applications, the manner in which the applications have been dealt with and information on planning zone schemes within that authority's area. The Scottish Ministers have the power to set out in regulations or a development order the content and manner of the register.

73. The changes made by section 11 are intended to ensure that the planning authorities provide a full record of the relevant factors considered in determining each application including all documents relating to the application and considered in the decision making process, the reasons for the decision (material considerations) with regard to the development plan and any pre-application consultation report submitted with the application. They are also required to make available an explanation of the manner in which the application has been dealt with and provide a copy of the notice informing the applicant of the authority's decision.

## **Section 12 – Keeping and publication of lists of applications**

74. This section inserts a new section 36A into the 1997 Act. **Subsection (1)** places a duty on every planning authority to keep a list of applications and proposal of application notices for pre-application consultations.

75. The duty is extended in **subsection (2)** to require the planning authority to revise/update the list weekly. The Scottish Ministers may substitute a different period by means of regulations. The section gives the Scottish Ministers the power to make regulations or a development order to set out the frequency in which the list is to be published and how the list could be published.

76. **Subsections (3) and (5)** require the planning authority to advertise the availability of the list in a local newspaper. Provision is also made for publishing by electronic means.

77. **Subsection (4)** allows the planning authority through regulations or development order to recover any costs incurred as a result of preparing, publishing and advertising the availability of the list of applications.

78. **Subsection (6)** defines when a proposal for application notice ceases to be current and can therefore be removed from the list as set out in the new subsection (2)(a)(ii).

### **Section 13 – Pre-determination hearings**

79. This section inserts a new section 38A into the 1997 Act. New **section 38A(1)** provides that regulations or a development order may set out which developments are subject to pre-determination hearings. These hearings give the applicant and anyone else referred to in the regulations an opportunity to appear before and be heard by a committee of the planning authority.

80. **New sections 38A(2) and 38A(3)** allow the planning authority to determine the procedures for such a hearing, and who else may attend. **New section 38A(4)** allows the authority to hold hearings in circumstances other than those set out in new section 38A(1).

### **Section 14 – Additional grounds for declining to determine application for planning permission**

81. **Subsection (1)** amends section 39 of the 1997 Act by substituting new subsections (1) to (1D) for the existing subsection (1).

82. The new subsection (1) sets out the circumstances in which a planning authority may decline to determine an application for planning permission.

- Paragraph (a) applies where the Scottish Ministers have refused a similar application in the previous two years and there has been no significant change to the development plan or any other material considerations.
- Paragraph (b) applies where the planning authority has refused more than one similar application in the previous two years and there has been neither appeal to Ministers nor any significant change to the development plan or other material considerations since the more recent of these refusals.
- Paragraph (c) applies where the planning authority has refused more than one similar application in the previous two years, there has been an appeal to Ministers but no such appeal has yet been determined, and there has been no significant change to the

development plan or other material considerations since the more recent of these refusals.

- Paragraph (d) applies where there has been no refusal by the planning authority but an appeal following on non-determination of an application has been made in the previous two years in respect of two similar application and those appeals remain undetermined and no significant change to the development plan or other material considerations have occurred since the more recent of the appeals was made.
- Paragraph (e) applies where two similar applications have been received in the previous two years. Where the planning authority has refused one application and an appeal that has been made on another similar application has still to be determined, the planning authority may decline to determine a further appeal if there has been no significant change to the development plan or other material considerations since the more recent of the refusal or the appeal.

83. The new subsections (1A) to (1D) place a duty on the planning authority to refuse an application for planning permission if the applicant has failed to comply with the pre-application consultation requirements introduced by new section 35B. The authority is required to inform the applicant of the reason for refusing it but may request additional information from the applicant before doing so.

#### **Section 15 – Manner in which applications for planning permission are dealt with etc.**

84. Section 15(a)(i) inserts the new paragraph (aa) into section 43(1) of the 1997 Act. This gives the Scottish Ministers the power to direct that the planning authority are to consider attaching conditions when granting a planning application for a development or for a development of a class. The direction would also require the planning authority to satisfy the Scottish Ministers that they have taken the necessary steps to comply with the direction before they grant planning permission. The new subsection enables the Scottish Ministers to set out in the direction conditions for specified development or classes of development, rather than having to call it in.

85. Section 15(a)(ii) inserts the new paragraph (bb) into section 43(1) of the 1997 Act. This will allow the planning authority to require supporting documents or evidence which will enable them to deal with an application.

86. Section 15(b) also inserts a new subsection (1A) into the existing section 43 the 1997 Act. Section 43(1)(d) and (e) give the Scottish Ministers the power to make regulations or a development order which require the planning authority to give notice to the applicant following its consideration of an application for consent, agreement or approval of an application for planning permission. The new subsection (1A) sets out the contents of the notice issued to an applicant and places a requirement within primary legislation for a planning authority to give reasons on which it has made its decision.

87. Section 15(c) adds new subsections (3) and (4) to section 43 of the 1997 Act. These subsections apply the provisions of section 43(1) to applications for modification or discharge of planning obligations made under section 75A(2) with necessary modifications.

## **Section 16 – Local developments: schemes of delegation**

88. This section inserts new sections 43A and 43B into the 1997 Act. Section 43A(1) requires each planning authority to prepare a scheme of delegation, describing how local developments are to be determined by appointed persons (such as officials) instead of elected members. Section 43A(3) allows regulations to set out the procedures for preparing and adopting schemes of delegation, and their form and content. Section 43A(4) applies the relevant parts of sections 37 to 39, 41, 42 and Part 1 of Schedule 3 to the 1997 Act to planning applications dealt with by the appointed person. Section 43A(5) allows the authority to determine any delegated application themselves, and section 43A(6) requires them to produce a statement of reasons for doing so, which must be copied to the applicant.

89. Sections 43A(7) to 43A(14) cover the procedure under which the applicant can require a review of a delegated decision where an application was refused or granted subject to conditions, or where the appointed person failed to determine an application within the prescribed time period. The form and procedure of such a review may be set out in regulations or a development order under section 43A(9). There is no right of appeal to the Scottish Ministers (other than in relation to a failure to determine the application). The applicant has a right to apply to the Court of Session under section 239 of the 1997 Act.

90. Section 43A(15) substitutes paragraph 1(6)(b) of Schedule 3 to the 1997 Act. This applies to planning applications dealt with by the appointed person as set out in section 43A(4).

91. New section 43B sets out the circumstances under which the applicant may be allowed to raise a matter which was not part of the application determined by the appointed person, when the planning authority conducts a review under section 43A(7).

## **Section 17 – Call-in of applications by the Scottish Ministers**

92. This section makes minor changes to section 46 of the principal Act which gives the Scottish Ministers the power to make directions to call in applications. The directions may apply to one or more planning authorities and may relate to an individual application or a class of applications as described in the directions. This section inserts a subsection (1A) giving the Scottish Ministers the power to either withdraw directions or modify existing directions by making further directions. Subsection (3) is amended consequentially to make explicit reference to subsection (1).

## **Section 18 – Appeals etc.**

93. **Subsection (1)** amends section 47 of the 1997 Act to clarify that an appeal under subsection (1) is to be against the decision of a planning authority to refuse an application or grant it subject to conditions. It also adds a new subsection (1A) to exclude from subsection (1) actions taken by an authority in a review of a delegated decision under section 43A. This change combined with the changes made by subsections (3) and (4) give a party aggrieved by the decision on a review of a delegated decision the right to appeal to the Court of Session rather than to the Scottish Ministers.

94. **Subsection (2)** inserts a new section 47A into the 1997 Act. This sets out the circumstances under which the applicant may be allowed to raise a matter which was not part of the application determined by the planning authority, when making an appeal under section 47(1).

95. **Subsection (3)** amends section 237 of the 1997 Act (validity of certain plans, schemes, orders and actions) in relation to the delegation of decisions by planning authorities under new section 43A.

96. **Subsection (4)** amends section 239 of the 1997 Act (proceedings for questioning the validity of certain orders, decisions and directions) in relation to the delegation of decisions by planning authorities under new section 43A.

97. **Subsection (5)** amends section 267 of the 1997 Act (procedure on certain appeals and applications) to extend the scope of regulations to cover appeals and applications under the 1997 Act irrespective of whether the Scottish Ministers are required to afford any person an opportunity of appearing before and being heard by a person appointed by Ministers. It inserts new subsections (1A) and (1B) which clarify further the content of the regulations. These provisions replace subsection (3) which is repealed.

#### **Section 19 – Duration of planning permission and listed building consent etc.**

98. **Subsections (1) and (2)** amend section 58 of the 1997 Act (which is re-entitled “Duration of planning permission”). In section 58, subsections (1) to (3) are substituted by new subsections (1) to (3A). Under the new subsections a planning permission lapses after three years unless the development is begun within that time. The planning authority may under new subsection (2) direct that a different time limit shall apply.

99. **Subsection (3)** makes similar amendments to section 16 of the listed buildings Act.

#### **Section 20 – Planning permission in principle**

100. **Section 20** replaces the existing section 59 of the 1997 Act with a new section 59, “Planning permission in principle”. New subsection (1) defines “planning permission in principle”, and new subsections (2) and (3) set out time limits within which an application must be made for the approval of any matters set out in conditions imposed under subsection (1)(b).

101. An application for approval must be made within 3 years of the date when the “planning permission in principle” was granted or within 6 months of when a previous application of approval has been refused or an appeal against a refusal has been dismissed, whichever is the latest date. Approval does not necessarily have to be given for the whole application at the same time. The planning authority may direct that a longer or shorter period than 3 years is to apply.

102. Subsection (4) provides that planning permission in principle lapses on the expiry of a period of two years after the date (or the last date) on which approval mentioned in subsection (1)(b) is given unless development has begun before that date. The planning authority may direct that a longer or shorter period should apply. Subsection (6) states that a direction under

subsection (4) is to be treated as a condition for the purposes of section 47 of the 1997 Act. Subsection (7) allows that different periods may apply to different parts of the development. Subsection (8) requires the planning authority to have regard to any provisions set out in its development plan or other material considerations if it chooses to adjust time limits set out under subsections (5) and (7).

### **Section 21 – Further provisions as regards duration of planning permission etc.**

103. Section 21 amends various sections of the 1997 Act to bring them into line with the revised wording of sections 58 and 59 of the 1997 Act resulting from sections 19 and 20 of this Act.

### **Section 22 – Planning obligations**

104. **Subsection (1)** replaces section 75 of the 1997 Act – planning agreements – with new sections 75, 75A, 75B and 75C.

105. In **new section 75 – Planning obligations** – subsection (1) provides that a person may enter into a planning obligation, either by agreement with a planning authority or unilaterally. The obligation in respect of land in the authority's district restricts or regulates the development or use of the land, either permanently or during a specified period. Typical examples could relate to the provision of road improvements, community facilities or extensions to schools relating to the development, either directly by the developer or through funding to the local authority.

106. Subsection (2) confirms that obligations can require operations or activities to be carried out, or require the land to be used in the specified way.

107. Subsection (3) states that an obligation may be subject to conditions, require the payment of a specified amount or periodic sums, and contain such other provisions as the planning authority or the person entering into the obligation believe to be necessary or expedient.

108. Subsection (4) states that an obligation can have effect on a specified date or a date determined by reference to an event.

109. Subsection (5) states that an obligation is enforceable by the planning authority against the owner of the land or (in the case of obligations other than those mentioned in subsection (2) or (3)(b)) any other person having use of the land if it is recorded in the Register of Sasines or registered in the Land Register of Scotland. To be so recorded or registered the owner of the land must be a party to the obligation. In terms of subsection (12) it does not matter if the owner of the land at the time of recording or registration was owner at the time when the obligation was entered into. Subsection (6) prevents enforcement of a planning obligation under subsection (5) where a third party acquires right to the land prior to the obligation being recorded or registered.

110. Subsection (7) gives the planning authority powers to enter land, carry out operations and recover costs where there is a breach of a requirement in an obligation to carry out any operation. Subsection (8) requires the authority to give 21 days notice of their intention to do so.

111. Subsection (9) states that anyone wilfully obstructing someone who is acting in the exercise of the power of entry under subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 (at present £500).

112. Subsections (10) and (11) define owner in relation to planning obligations.

113. **New section 75A – Modification and discharge of planning obligations** – sets out the circumstances in which an obligation can be modified or discharged. Subsection (2) states that a person may apply to a planning authority for their agreement that an obligation should be modified or discharged. Subsection (1)(a) requires agreement to modification or discharge of a planning obligation to be pursuant upon an application made under subsection (2).

114. Subsection (4) gives the authority powers to continue, discharge or modify an obligation, and subsection (5) requires the authority to give notice of their determination to the applicant.

115. Subsections (6) to (8) set out that where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland the modification or discharge is effective from the date of recording or registration of the notice that the obligation is to be discharged or modified..

116. Subsection (9) allows regulations to provide for the form and content of an application under subsection 75A(2), the publication of notice of any such application, procedures for considering representations and the form and content of any notice given under subsection 75A(5).

117. **New section 75B – Appeals** – provides a right of appeal to the Scottish Ministers where a planning authority fails to comply with subsection 75A(5) (its duty to give notice of their determination of an application to modify or discharge an obligation) or determines that an obligation is to continue without modification.

118. Subsection (3) states that an appeal may be made within such period and by a notice served as prescribed in regulations. Subsection (4) allows the Scottish Ministers to continue, discharge or modify an obligation, and subsection (5) requires Ministers to give notice of their determination to the applicant.

119. Subsections (6) to (8) set out that when this determination takes effect where the obligation has been recorded in the Register of Sasines or registered in the Land Register of Scotland this is the date of recording or registration as the case may be.

120. Subsection (9) allows regulations to provide for the form and content of a notice served under subsection 75B(3), or given under subsection 75B(5).

121. Subsection (10) provides that the determination of an appeal under this section by Scottish Ministers is final save to the extent that there is a right to apply to the Court of Session under section 239 of the 1997 Act.

122. **New section 75C – Planning obligations: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by a planning obligation when ceasing to be the owner of that land. Under subsection (4), unless the obligation states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but in terms of subsection (5) that person may recover any expenditure incurred from the former owner.

123. **Subsection (2)** provides that subsections (3) and (4) of the existing section 75 of the 1997 Act will continue to apply to agreements entered into before the coming into force of subsection 22(1) of this Act.

### **Section 23 – Good neighbour agreements**

124. Section 23 inserts new sections into the 1997 Act to govern the operation of good neighbour agreements.

125. **New section 75D – Good neighbour agreements** – allows a person to enter into a good neighbour agreement with a community body. The subsections (2) to (4) defines which bodies may consider to be community bodies, for the purposes of a good neighbour agreement. Subsection (6) further describes the regulations and restrictions that can be specified in an agreement and subsection (7) describes conditions that may be attached to the obligation. Subsection (9) makes provision for good neighbour agreements to be recorded in the Register of Sasines or registered in the Land Register for Scotland. Where an agreement has been recorded/registered then the obligation is enforceable against the owner, tenant or other person entering into the agreement. Subsection (10) provides that any new owner of the land will be bound by the agreement unless it has been acquired in advance of the agreement being registered/recorded.

126. **New section 75E – Good neighbour agreements: modification and discharge of obligations** – sets out the circumstances under which an obligation under a good neighbour agreement can be modified or discharged and the process by which either party may apply to the planning authority for its determination if they are unable to reach agreement on the modifications or discharge. Subsections (4) to (7) set out the effect of the planning authority's determination, the requirement to give notice of its determination and when any modification or discharge is to take effect. Subsection (8) give the Scottish Ministers the power to make regulations with respect to applications for determination.

127. **New section 75F – Good neighbour agreements: appeals** – sets out the circumstances under which either party may serve a notice on the Scottish Ministers, appealing against the planning authority's determination or failure to make a determination within the period prescribed under section 75E(5). The Scottish Ministers have the power to make regulations on the form, content and notice periods for appeals. The determination of an appeal to the Scottish Ministers may be appealed to the Court of Session in accordance with the terms of Part XI of the 1997 Act.

128. **New section 75G – Good neighbour agreements: continuing liability of former owner etc.** – sets out the circumstances in which an owner of land does not cease to be bound by

an obligation contained in a good neighbour agreement when ceasing to be the owner of that land. Under subsection (4), unless the good neighbour agreement states otherwise, a person who becomes an owner of land subject to an obligation is severally liable with any former owner, but may recover any expenditure incurred from the former owner.

## **PART 4 – ENFORCEMENT**

### **Section 24 – Temporary stop notices**

129. **Subsection (1)** inserts new sections 144A, 144B, 144C and 144D into the 1997 Act, which cover the operation of the new system of temporary stop notices. In new section 144A, subsection (1) sets out the circumstances in which planning authorities may issue temporary stop notices. The planning authority have to consider that there has been a breach of planning control, which comprises an activity and to consider that there is a valid reason for stopping it immediately.

130. Subsection (2) of new section 144A requires that the notice must be in writing and specify the activity which is to stop, prohibit its continuation and set out the authority's reasons for issuing the notice.

131. Subsection (3) of new section 144A states that notice may be served on a person who either appears to be engaged in the activity and/or a person who has an interest in the land.

132. Subsection (4) of new section 144A states that the authority must display a copy of the notice and a statement on the effect of section 144C (relating to offences) on the land in question.

133. Subsections (5) to (7) of new section 144A set out when the notice starts and ceases to have effect. It may only have effect for a maximum of 28 days. Subsection (8) of new section 144A provides that if the notice is withdrawn it ceases to have effect at that point.

134. In new section 144B (restrictions to temporary stop notices) subsection (1) sets out that such notice do not prohibit the use of a building as a dwelling house or the engagement in any activity which is prescribed in regulations. Subsection (2) states that such notices do not apply where the activity has been carried out for more than 4 years prior to the notice being displayed, and subsection (3) disapplies this where the activity relates to building, engineering, mining or the deposit of refuse or waste materials.

135. Subsections (5) and (6) of new section 144B prohibit the issue of a further temporary stop notice unless another enforcement action has been taken.

136. In new section 144C (offences) subsections (1) to (4) set out when a person is guilty of an offence for contravening a temporary stop notice and allow for convictions to be made for any number of offences with reference to different days or periods.

137. Subsection (5) of new section 144C sets out the statutory defences under this section, which are that the notice was not served on the accused and that he did not know, and could not reasonably have known of its existence.

138. Subsections (6) and (7) set out the penalties for offences under these new sections, including a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the activity which constituted the offence.

139. In new section 144D (compensation) subsections (1) and (2) set out who is entitled to compensation in respect of any loss or damage which can be directly attributed to the notice being served. Subsection (3) applies subsections (3) to (7) of section 143 of the 1997 Act to compensation under this section. These provisions cover how the claim for compensation is to be made, give further details of what the compensation may cover and provide that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

140. **Subsection (2)** gives persons duly authorised by the planning authority rights of entry in relation to the service of temporary stop notices.

## **Section 25 – Enforcement charters**

141. This section inserts new section 158A into the 1997 Act. It places a duty on the planning authority to prepare an enforcement charter, setting out the contents for such a document. The planning authority is obliged to have regard to any guidance issued by the Scottish Ministers concerning this section. The section also places a duty on the planning authority to update and re-publish its enforcement charter, to issue copies to the Scottish Ministers and make it publicly available.

## **PART 5 – TREES**

### **Section 26 – Tree preservation orders**

142. This section amends Part VII, Chapter I of the 1997 Act. **Subsection (1)** amends section 159 of the 1997 Act and places a duty on the planning authority to review existing tree preservation orders (TPOs).

143. **Subsection (2)** amends section 160 of the 1997 Act to expand the powers to include trees, groups of trees, or woodlands of cultural or historical significance, when a planning authority is making a TPO.

144. **Subsection (2)** also amends section 160(6) of the 1997 Act. Currently, under schedule 2 paragraph 4 of the Town and Country Planning (Tree Preservation Order and trees in Conservation Areas)(Scotland) Regulations 1975, statutory undertakers are not required to notify the planning authority of operations on operational land as described in section 215 of the 1997 Act. Removing the reference to paragraphs (a) and (b) has the effect that anyone carrying out operations either in accordance with the statutory obligations under section 160(6)(c) of the 1997 Act or as a statutory undertaker must now notify planning authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO.

145. **Subsection (2)** also inserts a new section 160(8) into the 1997 Act. The Scottish Ministers already have the power to make regulations on the form and manner of tree preservation orders in section 161(3) of the 1997 Act. The new subsection (8) extends the powers to make regulations setting out the form and manner of applications for consent (under tree preservation orders).

146. **Subsection (3)** replaces the existing section 161(1) of the 1997 Act to provide that all tree preservation orders will take effect on the date specified in the order, rather than the date it is confirmed. The provision removes the distinction between tree preservation orders made under previous section 161 and provisional orders under section 163 (which is repealed in the Schedule to the 1997 Act). Under new subsection (1)(b), a tree preservation order will expire unless confirmed by the planning authority within 6 months.

147. **Subsection (4)** inserts a new section 161A to provide a new power for a person authorised by the planning authority to enter land for the purposes of affixing a copy of a tree preservation order, where such an order has been made and where a tree or trees may be at risk of imminent damage or destruction. This does not affect any requirements for giving notice that an order has been made or confirmed which may be made in regulations by virtue of section 161(3)(b) and (4) of the principal Act.

148. **Subsection (6)** inserts a new subsection (3A) into section 168 of the 1997 Act. Section 168 gives the planning authority the power to serve a notice on a land owner who has failed to plant replacement trees as a condition of a consent under a tree preservation order. The new subsection (3A) extends the order applied to the original trees to also cover all replacement trees required as a condition of consent for tree operations as mentioned in section 167(1)(b).

## **PART 6 – CORRECTION OF ERRORS**

### **Section 27 – Correction of errors**

149. This section inserts a new Part 11A into the 1997 Act. The new part gives the Scottish Ministers or a person appointed by them power, subject to various conditions, to correct specified types of errors contained in decision letters.

#### *Section 241A: Correction of errors in decisions*

150. This section applies if the Scottish Ministers or an appointed person issues a decision document which contains a correctable error. It sets out the circumstances in which an error can be corrected. The Scottish Ministers or an appointed person may correct the error when requested to do so in writing, or where they have written to the applicant explaining that they are considering making a correction and received written consent, if necessary.

#### *Section 241B: Correction notice*

151. Section 241B provides that the exercise of the power of correction will be by written notice (a "correction notice") which will either specify the correction which has been made or give notice that the power to correct the decision has not been used. The section also specifies on whom the correction notice or decision not to correct must be served.

*Section 241C: Effect of correction*

152. Section 241C sets out the status of decisions which have been corrected and of decisions where it has been decided not to make a correction. Where a correction to the original decision is made, the original decision will be treated as though it had never been made. The corrected decision will be treated as having been made on the date the relevant correction is made and the statutory period for challenging the corrected decision will start to run from that date. Any person wishing to challenge the decision is therefore not prejudiced by the time taken to correct the decision. Where a decision not to correct has been made, the original decision will stand and the statutory period for challenge will be unaffected.

*Section 241D: Provisions supplementary to section 241A to 241C*

153. This section makes supplementary provisions to the sections of the new Part 11A of the 1997 Act, including definitions of a decision document, a correctable error and the applicant.

## **PART 7 – ASSESSMENT**

### **Section 28 – Assessment of planning authority’s performance or decision making**

154. This section inserts a new part 12A into the 1997 Act.

*Section 251A – Assessment of planning authority’s performance*

155. This section gives the Scottish Ministers powers to conduct an assessment of a planning authority’s performance, or to appoint a person to do so. The assessment may cover the authority’s performance of its planning functions in general or of a particular function.

*Section 251B – Assessment of planning authority’s decision making*

156. Subsections (1) and (2) give the Scottish Ministers or an appointed person the power to conduct an assessment of how a planning authority deals with applications for planning permission. This power is limited to exclude decisions made within the year preceding the date that the planning authority is notified of the assessment. The assessment may cover the basis for determinations, the processes by which they have been made and whether they were in accordance with the development plan or conformed with advice given by the Scottish Ministers.

*Section 251C – Further provision as respects assessment of performance or decision making*

157. Subsection (1) requires the Scottish Ministers to notify the planning authority of their intention to carry out an assessment, and to indicate its intended scope, and where they appoint a person to carry out the assessment they are to advise the authority who the appointed person is.

158. Subsection (2) gives Ministers powers to determine that the scope of an assessment under section 251B shall relate to a type of application, a period of time or a geographical area. Subsection (3) provides that Ministers or the appointed person may require access to any premises of the authority and any documents which appear to be necessary for the purposes of the assessment. Subsection (4) allows Ministers or the appointed person to require a person to give them such information as necessary and to give them in person information or documents.

159. Subsection (5) requires the authority to provide Ministers or the appointed person with every facility and all information which they may reasonably require. Subsection (6) requires Ministers or the appointed person to give 3 clear days notice of any requirement under this section and to produce a document of identification if required to do so. Subsection (7) makes it an offence for a person without reasonable excuse to fail to comply with a requirement under subsection (3), (4) or (5), which can result on summary conviction to a fine not exceeding level 3 (at present £500).

#### *Section 251D – Report of assessment*

160. Subsections (1) to (3) require the Scottish Ministers or the appointed person to prepare a report, referred to as an assessment report, and issue it to the planning authority. The report may recommend improvements which the planning authority should make.

161. Subsection (4) requires the planning authority to prepare and submit a response report to Scottish Ministers within 3 months of receipt of the assessment report. This report will set out the extent, the manner and the period within which they propose to implement the recommendations. If the planning authority does not intend to implement the recommendations, they must set out their reasons for declining to implement any or all of the recommendations. Subsection (5) allows Ministers to issue a direction specifying actions where the authority decline to implement recommendations or appear not to be timeously carrying out what they propose in their response report.

## **PART 8 – FINANCIAL PROVISIONS**

### **Section 29 – Fees and charges**

162. Subsection 29(a) substitutes new provisions in place of subsection (1) of section 252 of the 1997 Act. New subsection (1) gives the Scottish Ministers powers to make regulations which provide for fees and charges in relation to the performance of a planning authority's functions, and anything done by the authority in relation to the performance of those functions. New subsection (1A) gives regulation making powers to set out the procedural details. New subsection (1B) confirms that different provisions may be made for different classes of case under subsection (1A)(d), including different provisions for applications made after development has been carried out.

163. Subsection 29(b) substitutes new provisions in place of subsections (3) to (5) of section 252 in the 1997 Act. New subsection (3) gives regulation making powers that cover the remission or refunding of charges or fees. New subsections (4) and (5) describe the procedure for annulment of the regulations by the Scottish Parliament, and new subsections (6) and (7) require the planning authority to secure that the income from fees and charges does not exceed the cost of performing the related functions, taking one financial year with another.

### **Section 30 – Grants for advice and assistance**

164. This section enables the Scottish Ministers to make grants to those providing advice and assistance in relation to functions under planning legislation. This would include, for example

training for planners and funding to organisations involved in giving planning advice. The Scottish Ministers would be able to set the terms and conditions that would apply to these grants.

## **PART 9 – BUSINESS IMPROVEMENT DISTRICTS**

### **Section 31 – Arrangements with respect to business improvement districts**

165. Section 31 enables a local authority to make arrangements for a Business Improvement District (BID) in a defined area within the local authority's boundary for the benefit of those identified in the BID proposals. In practice, a local authority will be required to supply the information that the persons drawing up the "BID proposals" need to identify the relevant non-domestic properties in the area, and the level of service provision currently provided in that area.

### **Section 32 – Joint arrangements**

166. Section 32 allows the Scottish Ministers to make regulations outlining the procedure for when a BID proposal covers an area lying within the boundaries of 2 or more local authorities.

### **Section 33 – Additional contributions and action**

167. Section 33 allows local authorities, and any other person identified in the "BID arrangements", to make voluntary financial contributions towards funding a BID project. It also allows such persons and the local authority to undertake any necessary work required for BID projects to be carried out.

### **Section 34 – Duty to comply with arrangements**

168. Section 34 places a duty on a local authority to comply with the BID arrangements, once these are in force.

### **Section 35 – BID Revenue Account**

169. Section 35 requires a local authority to open an account which is exclusively used to hold all revenues pertaining to a particular BID arrangement. It also gives the Scottish Ministers powers to make further provision relating to the BID account by regulations.

### **Section 36 – BID proposals**

170. **Subsection (1)** ensures that a BID project will only go ahead if the "BID proposals" have been approved by a ballot of those ratepayers identified in the "BID proposals".

171. **Subsection (2)** allows the Scottish Ministers to set out in regulations the persons who can draw up BID proposals, the procedures which a person taking forward a BID arrangement should follow when drawing up BID proposals, what should be outlined in the BID proposals, and when the BID arrangements would commence.

172. **Subsection (3)** ensures that a ballot to approve a BID proposal cannot take place unless the persons who drew up the proposals can demonstrate to the local authority that the proposals are supported by at least 5% of those ratepayers who are entitled to vote.

### **Section 37 – Approval in ballot**

173. This section sets out the conditions that must be met before a BID ballot can be regarded as approved. It also states that the rateable value of the lands and heritages identified in the BID proposals is as shown on the valuation roll on the day of the ballot. The conditions are:

- (a) The majority of those who vote, vote in favour of the BID proposal;
- (b) At least 25% of those entitled to vote have done so;
- (c) Those who vote in favour represent a greater aggregate rateable value than those who vote against;
- (d) At least 25% of the eligible rateable value in the defined BID area is represented by those who have voted.

### **Section 38 – Approval in ballot – alternative conditions**

174. This section allows those who have drawn up BID proposals to set a higher margin of either rateable value, or numbers voting, or both, before a BID ballot can be taken as approved.

### **Section 39 – Power of veto**

175. This section allows local authorities to veto BID proposals under certain prescribed circumstances, prior to any ballot going ahead. The local authority is required to give notice of its intention to veto, and its reasons, to the persons drawing up the proposals. They are also required to inform the person drawing up the BID proposals that they have a right of appeal against the veto to the Scottish Ministers. A copy of this notification must be sent to the Scottish Ministers.

### **Section 40 – Appeal against veto**

176. This section allows any person who would have been entitled to vote in the BID ballot to appeal to the Scottish Ministers against a local authority's decision to veto BID proposals. Ministers will be able to make further provision via regulations as to the process behind an appeal.

### **Section 41 – Commencement of BID arrangements**

177. This section provides for the BID arrangements to come into force on the day detailed in the BID proposals. It also places a duty on the local authority to ensure the BID arrangements commence on the relevant day.

#### **Section 42 – Duration of BID arrangements etc.**

178. This section sets a maximum time limit for BID projects of 5 years. It also provides for BID arrangements to be renewed but only where a further ballot is approved under the same conditions as outlined in section 37.

179. This section also allows the Scottish Ministers to make regulations setting out the procedure for the alteration and termination of BID arrangements.

#### **Section 43 – Regulations about ballots**

180. This section allows the Scottish Ministers to make regulations governing the ballot process, particularly, but not exclusively, in relation to:

- (a) the timing of ballots,
- (b) the non-domestic ratepayers entitled to vote in a ballot,
- (c) the question to be asked in a ballot,
- (d) the form that ballots may take,
- (e) the persons who are to hold ballots,
- (f) the conduct of ballots,
- (g) allowing Ministers to declare ballots void in cases of material irregularity,
- (h) enabling a local authority to recover the costs of a ballot

#### **Section 44 – Further provisions as to regulations under Part 9**

181. This section provides that any regulations made under Part 9 are subject to negative resolution procedure in the Parliament.

#### **Section 45 – Crown application of Part 9**

182. This section binds the Crown.

#### **Section 46 – Interpretation of Part 9**

183. This section defines certain terms included in the Part 9 provisions relating to BIDs.

### **PART 10 – MISCELLANEOUS AND GENERAL PROVISIONS**

#### **Section 47 – Old development plans**

184. . 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 48 – Further amendment of the principal Act**

185. **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.

186. **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 Bill.

187. **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.

188. **Subsection (5)** makes a minor amendment to section 37(4) of the 1997 Act.

189. **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.

190. **Subsections (7) and (8)** include references to Acts of the Scottish Parliament in sections 160(6)(c) and 216(6)(b) of the 1997 Act.

191. **Subsection (9)** substitutes new wording for subsection 237(1)(a) of the 1997 Act to insert references to strategic development plans and local development plans 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.

192. **Subsection (10)** updates section 238 of the 1997 Act by inserting references to the strategic development plan or local development plan.

193. **Subsection (11)** updates the references to development plans in section 255 of the 1997 Act.

194. **Subsection (12)** updates the references to development plans in section 269 of the 1997 Act.

195. **Subsection (13)** includes references to Acts of the Scottish Parliament in section 275 of the 1997 Act, and makes consequential changes to take account of order-making powers introduced by the Bill.

196. **Subsection (14)** 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.

197. **Subsection (15)** amends various references in Schedule 4 of the 1997 Act.

198. **Subsection (16)** makes consequential amendments to Schedule 14 of the 1997 Act.

### **Section 49 – Further amendment of the listed buildings Act**

199. **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 .

200. **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.

201. **Subsection (4)** inserts a definition into section 81 (interpretation) to extend the meaning of “demolition” to include “partial demolition”.

202. 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.

203. **Subsection (5)** amends section 82(1) to enable the Scottish Ministers to make regulations on the provision of information or evidence, for the purposes of the listed buildings Act.

### **Section 50 – Repeals**

204. **Section 50** indicates that the schedule to the Bill contains a list of the enactments which are repealed by the Act.

### **Section 51 – Interpretation**

205. **Section 51** 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 52 – Supplementary and consequential provisions**

206. **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.

207. **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 a negative resolution procedure.

### **Section 53 – Commencement**

208. **Section 53** sets out the arrangements for commencement of the provisions of the Bill.

### **Section 54 – Short title**

209. **Section 54** gives the short title of the Act as the Planning etc. (Scotland) Act 2006.

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

210. This memorandum sets out the financial implications of the Planning (Scotland) Bill.

### **Background**

211. The Scottish Executive is committed to reforming and modernising the planning system, in line with its Partnership Agreement commitment “to improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investment decisions.”

212. The Scottish planning system is at present governed by existing planning legislation, in particular the Town and Country Planning (Scotland) Act 1997 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and related orders and regulations. The Bill and ensuing regulations amend and augment existing primary legislation, and will apply to the operation of the planning system in Scotland only.

213. The Bill also contains provisions for the introduction of business improvement districts in Scotland.

### **PLANNING PROVISIONS**

#### **COSTS ON THE SCOTTISH ADMINISTRATION**

214. As planning is a devolved matter, the overall management of the system is the responsibility of the Scottish Executive. The main functions of the Executive in relation to planning are to maintain and develop the legislative framework, provide policy guidance and advice, to take decisions on structure plans, some major planning applications and appeals, and to oversee the operation of the system. These functions are exercised for the most part within the Scottish Executive Development Department - Planning and Building Standards Group where they are carried out both by qualified professional planners and by administrators. The Scottish

Executive Inquiry Reporters Unit (SEIRU) deals with planning and related appeals using a mix of full-time and self-employed reporters.

215. The running costs for both the Scottish Executive Planning Division (i.e. that part of the Planning and Building Standards Group that deals exclusively with planning) and for SEIRU for 2005/06 are:

|         | <u>Planning Division</u> | <u>SEIRU</u> |
|---------|--------------------------|--------------|
| 2005/06 | £2.584m                  | £2.118m      |

216. The proposals set out in the Bill would have resource implications for the Scottish Executive. For Planning Division, there would largely be a need for additional resources in order to be able to exercise the additional functions foreseen for the Executive by the Bill. For SEIRU, the picture is more complicated, with potential significant savings offset also by new costs. The impacts of the main proposals are set out below.

217. All the estimates involved are based on the best available assumptions about how the planning system might function after the enactment of the Bill. Some of these are difficult to predict with accuracy, as they are predicated on probable actions by other bodies (such as planning authorities, appellants and applicants) that are outside the Executive's immediate control. The margin of uncertainty is believed to be about 15%. Estimates about staff costs are based on existing salary structures and, for professional planners, take account of additional administrative costs such as accreditation to the Royal Town Planning Institute.

### **National Planning Framework**

218. The second National Planning Framework is due to be published in 2008 (the first was published in 2004). The Bill makes provision for the second Framework to have an enhanced status from the first, and – in particular – to have a role in identifying “national developments,” which will be subject to a specific development management procedure. The procedures for drawing up the next National Planning Framework will be more complex, with the requirement for a Strategic Environmental Assessment, a consultative draft and more extensive procedures for consulting Parliament and stakeholders than was previously the case. This will require the creation of a new, dedicated team, comprised of an additional two B3 members of staff and an A4. This would have a cost of approximately £105,000, including overheads, for each of the financial years 2006/07 and 2007/08. ( 2xB3=2x£42,000; A4=£21,000 ) Assuming we are likely to have to prepare a new NPF every 4 years, this is equivalent to an annual cost of about £60,000.

### **Development planning**

219. Strategic development plan approvals – the Bill removes the upper tier of development plans (formerly known as structure plans) for most of Scotland, except in the city regions. Here, in addition to local development plans, there are to be strategic development plans that will deal with key land and infrastructure issues which cross the planning authority boundaries. It is the intention of the Scottish Executive that there should be four city regions, based on the four major cities of Glasgow, Edinburgh, Dundee and Aberdeen. Currently, the Executive liaises with planning authorities over the drafting of structure plans to ensure that planning policies are being

adhered to, and provide advice before the plans are submitted for approval by Scottish Ministers (there is currently no role for SEIRU). In some respects, therefore, the removal of a tier of development plans for most of Scotland will free up resources within the Executive. Instead of being exercised in respect of 17 structure plans, these functions will now only be needed for the 4 strategic development plans.

220. However, there will be new pressures. Strategic development plans will be required by statute to be updated every 5 years – a much more rapid turnover than the current average for structure plans. There will also be front-loaded costs. As this is a new process, the new planning bodies created by the Bill – strategic development plan authorities – will aim to draft and publish their plans in the aftermath of the Bill’s enactment. Furthermore, unlike with recent practice for structure plans, strategic development plans will be subject to examinations – involving a mix of inquiries, hearings and consideration of written submissions – run by Reporters from SEIRU: an entirely new requirement for them.

221. We would therefore anticipate a modest saving for the Scottish Executive Planning Division, equivalent to one-third of the time of an officer at C1 grade (£18,700 including overheads). However, we would anticipate this being more than offset by new costs to the Inquiry Reporters’ Unit, averaged out over 5 years, of approximately £24,200 per annum. This is equivalent to the costs of 88 days of Reporters’ time conducting examinations and subsequently reporting at £275 per day in each year.

222. Local development plan approvals – Similar in scope to the existing local plans, under the Bill local development plans will be required in all of Scotland’s 32 planning authorities plus the 2 National Park Authorities. The Executive will have a role in liaising with planning authorities over the drafting and preparation of local development plans, and SEIRU will be required to conduct an examination where representations are not resolved or withdrawn. As the Bill will stipulate that local development plans are to be updated every 5 years, the main financial impact on the Executive will be that their existing functions are to be carried out more frequently. This will mean a small increase in the amount of liaison work for Planning Division, equivalent to about one B3 officer (£42,000 including overheads). Implications for SEIRU will be more significant, as there will be a sharp increase in the number and frequency of examinations into local development plans. Our estimate – based on a 5 year renewal cycle for about 50 plans; with an assumption of 10 local development plan examinations a year – is that this will require an additional 1000 days of Reporters’ time per year, equivalent to £275,000. In addition, we estimate that each of the 10 examinations per annum will require central administrative support equivalent to 50% of an A4 member of staff. In total, this equates to an additional £100,000 per year.

### **Development management**

223. Assessing notified cases – Scottish Ministers have a general power to intervene in any planning application. Planning authorities are required to notify the Scottish Executive of planning applications that meet specified criteria. This enables the Executive to decide whether to call in an application for their own determination, most commonly where it raises an issue of national importance or where proposals represent a significant departure from a development plan. Through the Bill and associated measures, the Executive proposes to extend the criteria for notifying cases to Scottish Ministers, to cover applications for major and local developments

which are significantly contrary to the development plan; those that require an Environmental Impact Assessment; and applications for developments defined in secondary legislation as larger-scale “bad neighbours,” for which specific provision has not been made in the development plan. All local authority interest cases will require planning permission (following the withdrawal of the existing notice of intention to develop procedure), and these applications will also be notified to the Executive if they depart from the development plan or are subject to a substantial body of objection. In addition, the new development management procedure for “national developments” also provides for all such applications to be notified to the Executive.

224. We believe that these reforms will lead to a major increase in the number of applications notified to the Executive, and therefore an increase in the workload for Planning Division who are required to provide advice to Ministers on whether to call in notified applications for their own determination. The nature of the increase is difficult to estimate, not least because applications are not currently classified in the same way as they will be once the Bill is enacted. We have nevertheless estimated that, of the approximately 52,000 planning applications received each year:

Less than 0.1% will be for national developments. We estimate that 100% of these - i.e. 10 - will be notified;

1% will be for major developments. We estimate that 100% of these – i.e. 520 - will be notified;

60% will be for local developments. We estimate that 1% - i.e. 310 – of these will be notified

39% will be for minor developments. We do not expect these to be notified to Ministers, and many will be removed from the need to apply for planning permission..

These estimates would lead to a 180% increase in the numbers of applications notified to the Scottish Executive: from 300 a year at present, to 840.

225. It is also necessary to consider the likely amount of cases that, once notified, Ministers will actually call in for their own determination. This too will have an impact on Executive resources. Based on Ministerial involvement in previous cases, and assuming that, except for national developments, only about 10% of called in applications are determined by Ministers (in line with the figures from recent years) we estimate the following:

20% of the 10 applications for national developments (i.e. 2) will be called in;

10% of the 520 applications for major developments (i.e. 52) will be called in;

10% of the 310 applications for local developments (i.e. 31) will be called in.

This would represent a 183% increase in the numbers of applications currently called in for Ministers’ own determination, from 30 per annum to 85.

226. The impact on the Executive’s Planning Divisions and on SEIRU would be significant. For Planning Division, we estimate that there would need to be additional staff – both professional planners and administrators - to consider the extra notified applications and provide advice to Ministers on whether to call them in. There would also be new requirements on staff to examine the cases that were called in, and provide a recommendation for Ministers on whether to approve or decline planning permission. Our best estimate is that this would require 2 new

members of staff at A3 grade; 1.5 at B1; 3 at B2; and 2.5 at B3; and 0.5 at C1; and a possible upgrade of one C1 to a C2. This would represent a total cost including overheads of £315,300. The breakdown of this into costs for Planning Division1 and Divisions 2-4 is:

Division 1= 2xA3; 1.5xB1; 2xB2; 1xB3; 1xupgrade C1-C2 (including £7,000 admin costs)

Divisions 2-4=1xB2; 1.5xB3; 0.5xC1 (including £8,550 admin costs)

For SEIRU, calculating the additional costs of these cases involves making assumptions about the length of inquiries which would be involved over a range of cases including local, major and national developments. Assuming that, over this range, an average inquiry length of 21.5 days would result, the additional costs to SEIRU would be £325,200, based on 55 cases at 21.5 days each and £275 per day.

## **Appeals**

### *Reforms to appeal system*

227. Applicants aggrieved by the decision of a planning authority to refuse planning permission or to grant planning permission subject to conditions currently have a right of appeal to the Scottish Ministers within 6 months of the issue of the decision notice. They may also appeal if the planning authority has failed to make a decision on a planning application within the required period (normally 2 months but 4 months where an Environmental Impact Assessment is required). Responsibility for determining most appeals is delegated to the Scottish Executive Inquiry Reporters Unit (SEIRU).

228. The Bill will bring about a number of changes to the appeals regime that will have financial impacts for SEIRU and for Planning Division. There are three reforms that will result in fewer appeals being the subject of full consideration by SEIRU, and therefore result in significant savings.

229. Firstly, we propose to introduce a process to allow early determination of planning appeals where an appeal clearly does not merit more extensive consideration. This will result in early refusal of those appeals that, for example, do not properly address the reasons for refusal or which involve proposals that clearly depart from an up to date development plan. We estimate that as many as 25-30% of appeals might be subject to early determination, at least in the first year or two while applicants adjust to the new regime, though the number might drop after that.

230. Secondly, following our proposals to allow planning authorities to delegate most decisions on applications for local developments to planning officers, we propose that appeals on these decisions will be determined locally by a local review body, made up of local elected members. This will result in a large number of appeals no longer being dealt with by SEIRU - we estimate perhaps as many as 30% of all appeals might be handled in this way.

231. Thirdly, our proposals to expand the scope of permitted development rights will exempt a number of minor developments from the need for planning permission, with a consequent effect on the number of appeals. This will be informed by work at present in hand to carry out a review of the General Permitted Development Order, but our current best assumption is that we may be able to remove as many as 20%.

232. It is difficult to assess the combined impact of these three reforms, but our current best estimate is that they might together result in a drop of up to 60% in the number of appeals being considered by SEIRU. We assume that these cases will mostly be those that are currently dealt with by written submission only – which in 2003/04 represented about 36% of SEIRU's overall workload. We therefore estimate that the overall savings to SEIRU by reforms to the appeals system could be equivalent to about £430,000 per annum (i.e. 60% of 36% of SEIRU's current running costs).

233. On the other hand, these reforms would have some costs for Planning Division, who would need to exercise some new functions. In particular, Planning Division would need to examine all the appeals lodged with Scottish Ministers and conduct the assessment to see whether any met the criteria for an early determination. If we assume, in line with the above figures, that the number of appeals being dealt with by the Scottish Executive would fall by 50%, then this would mean Planning Division needing to assess 400 planning appeals a year in this way.

234. Another reform may cause this number to rise. We propose to reduce the time limit for lodging an appeal from 6 months to 3 months. For reference, a similar reform in England and Wales led to an increase of around 25% in the number of appeals. This may be because a shorter time limit leads applicants to feel that they should simply submit an appeal, rather than take time to consider alternatives, such as re-submitting an amended application. Were this to happen in Scotland, we might assume a similar increase in appeals of some 25%.

235. In total, we would therefore estimate some 500 appeals a year (400 plus the 25% increase due to a 3 month time limit) coming to the Scottish Executive for assessment. This would require additional resources. Our best estimate is that this would require in total 1 new member of staff at A1 grade; 3 at A3; 1 at B1; 0.2 at B3; and 0.2 at C1. This would represent a total cost including overheads of £131,600. The breakdown of this into costs for Division 1 and Divisions 2-4 is:

Division 1 = 1xA1; 3xA3; 1xB1; (including £3,000 admin costs)

Divisions 2-4 = 0.35xB3; 0.35xC1 (including £1,996 admin costs)

236. The additional cost to SEIRU of processing the additional 25% of cases that might be caused by a 3 month time limit for appeals would amount to £392,000 per annum.

## **Enforcement**

237. There will be some additional non-recurring costs of about £20,000 involved in implementing the Bill provisions on enforcement, mainly resulting from drafting revised guidance. This is likely to fall in 2007-08. Once this has been done, we would not anticipate the measures on enforcement having a significant impact on the Scottish Executive's resources.

## **Tree Preservation Orders**

238. While there would be a one-off cost of about £15,000 to implementing the new provisions and writing guidance, which is likely to fall in 2007-08 or 2008-09. We do not envisage that there will be significant resource implications here.

## Summary

239. Taking the various items together, the total recurring costs on the Scottish Executive resulting from the implementation of the reforms set out in the Bill are shown in the table below. These costs are likely to arise from 2008-09, with some additional expenditure in 2007-08.

| <b>TABLE 1 - ESTIMATE OF COST ON SCOTTISH EXECUTIVE – per year</b> |                    |              |                      |
|--|--------------------|--------------|----------------------|
| <b>Cost heading</b>  | <b>SE Planning</b> | <b>SEIRU</b> | <b>Ref paragraph</b> |
| National Planning Framework  | £60K               | 0            | 218                  |
| Strategic development plans  | -£19K              | £24K         | 219-221              |
| Local development plans  | £42K               | £375K        | 222                  |
| Development management (including notifications)                   | £315K              | £325K        | 223-226              |
| Handling of appeals  | £132K              | -£432K       | 227-233              |
| Reduction in time limit for appeals from 6 to 3 months             | 0                  | £392K        | 234-236              |
| <b>Total</b>   | <b>£530K</b>       | <b>£684K</b> |                      |

## COSTS ON LOCAL AUTHORITIES

240. Local authorities are charged with the day to day operation of the planning system including preparing development plans (development planning ), deciding on most applications for planning consents (development management ) and taking action against development that has been carried out without consent or in contravention of conditions (enforcement ).

241. There has been increasing concern expressed in recent years within central and local government, within the planning profession and also within the business community as to whether the existing level of staff and financial resources available to local authorities is sufficient to allow planning services to be provided efficiently and effectively. At the same time there has also been evidence of increasing concern on the part of developers, the business community generally and Ministers and MSPs about the performance of the planning system both in respect of development planning and development control.

242. The Bill proposes a number of changes to the way local authorities would be expected to carry out their development planning, development management, and enforcement functions. The aim is to introduce a system which is fit for purpose, is more efficient, and more inclusive. It is expected that during the Bill's Parliamentary passage, a number of questions will be asked about the adequacy of the current level of resources provided for the planning system and the financial impact of implementing the reform proposals.

243. In the light of these concerns, and following a formal request made by COSLA and the Scottish Society of Directors of Planning (SSDP), the Executive commissioned the planning consultants Arup to undertake research into the existing adequacy of the staff and financial resources available to local authority planning departments. The research was commissioned in February 2004 and was concluded in July 2005. The research specification required the consultants to examine evidence relating to the level of existing staff and financial resources available to planning departments, to analyse the nature, scale and cause of resource problems and to provide advice on possible solutions to identified problems. Arup were also asked to provide, as an extension of the first report, an assessment of the potential staffing and cost impacts of the proposals for reform and modernisation of the planning system. A draft final report was received in September 2005, and discussions with CoSLA, and SSDP have been initiated.

244. Feedback from these discussions will help inform the final research report. Both reports will be published by the end of 2005. Consultation responses and further discussions will help inform a more detailed, accurate and comprehensive estimate of the administrative, compliance and other costs and savings. This will be reported in the Regulatory Impact Assessments which are required to accompany secondary legislation. A Planning Finance Working Party has also been established, with the participation of COSLA and SSDP, for the purpose of developing a more detailed and reliable assessment of the extent to which local authority planning services are under-funded at present, to develop further the assessment of the financial impact of planning reform and to identify options for increasing the financial resources available to planning departments.

245. Current best estimates of the main additional costs of reform on local authorities based on the “resources research” are summarised below. It should be emphasised that this is an initial costing assessment and that there are significant degrees of uncertainty here, perhaps of around 20%. More definitive answers to the questions about resources for local planning authorities will be reported by the Planning Finance Working Party in January 2006.

### **Development planning**

246. Provisions for the new development planning system are aimed at providing a framework that will both lead to greater confidence and speed in the system. Efficiency savings are expected in terms of the Scottish Executive’s intention to remove of the need for two tiers of development plan across most of Scotland, reducing the number of strategic development plans from 17 to 4. Speeding up plan preparation by replacing the current two stages of draft and finalised plans with one proposed plan, and requiring the preparation of shorter and more focused local development plans that are fit-for-purpose, are also expected to result in efficiency savings. Provisions for the use of model development plan policies for certain topics are estimated to contribute to further efficiency savings, equating to **a saving of £335,300 or a average saving of half a day per week for a senior policy officer in each planning authority.**

247. Based on the results of survey, on average local authorities in Scotland have between 10 and 11 staff per forward planning team, a resource level that experience elsewhere in the UK suggests is adequately resourcing. However, on average only half of the time spent by these teams is devoted to work on the statutory plan, the remainder going to other non-statutory work, or other planning related activities such as area regeneration. Achieving resource efficiency will

require development planning teams to be much more focused and managed. If this can be achieved Arup's general conclusion is that authorities could potentially have sufficient staff to resource the development plan system as reformed. This is especially the case, with the exception of City region areas, as resources are being released from work on Structure Plans.

248. Costs are associated with the provisions for mandatory examination of strategic development plans. The estimated cost is equivalent to one month of both senior professional input and administrative support at estimated £283,700 for senior staff and £141,900 for administration staff. Further costs are associated with the provisions which require local authorities to update development plans within 5 years equating to one additional full time member of staff for all authorities from an estimated £491,800 for junior staff to £670,600 for more senior staff. However research suggests that some of these costs could be absorbed by the diversion of resources, and efficiency savings elsewhere with no additional net charge to the overall cost of providing the planning service, or to actively increase the staffing establishment.

249. The main likely exceptions to the ability of authorities to manage within current resource levels are in terms of specialist skills required to prepare, monitor and review action programmes, ensuring statutory timescales are met, and the costs of neighbour notification of new site specific proposals in local development plans. There are also other resource demands arising from more effective engagement of key stakeholders and members of the public in the preparation of development plans. Research suggests that in total these costs might reach £3.35m per year. The organisation of the transition from the existing to new system will also present significant additional demands in terms of staff training and management.

250. Overall, research estimates that the additional costs of development plan provisions equates to around one additional middle ranking staff member per authority when savings and reallocation of resources are taken into account. Including local authority overheads this equates to approximately **£3.4m across the system as a whole, or on average £100,000 per authority per annum**. The extent to which efficiencies can be expected to be achieved in the early year of reform is difficult to predict. To smooth the adjustment process, research suggests that an additional 15%-20% above the total additional cost estimates might be prudent to allow for the time taken to achieve efficiencies. This is reflected in Table 2 below, depicting overall additional costs.

### **Development management**

251. To make the planning system fit for purpose, the Bill provisions would introduce changes to the way local authorities carry out their development management function. Provisions would introduce a new hierarchy into the planning system, so that central and local government are able to plan effectively for a range of different types of development, and respond appropriately to applications according to their size and impact. Provisions include: introducing a new process for the determination of applications for developments of national strategic importance (called national developments); introducing new procedures for the determination of applications for a range of key large-scale development proposals including housing and economic development (called major developments); introducing new procedures for the majority of planning applications (called local developments) which are of local importance to allow determination and appeals to be handled at a local level; and would remove very small-scale development proposals (called minor developments) from the scope of the planning system altogether.

252. The level of “call in” of national and major development applications is uncertain at this stage, but the research estimates that an average of 2-3 applications per authority per year might be ‘called-in’ by the Executive, although this average may vary per authority. There may be some additional costs in terms of administration in notifying the Executive, but this too is thought to be marginal, possibly equating to around an average of one hour per week of administrative/technical time at an additional **cost of around £50,000 across the system as a whole, or £1500 per authority.**

253. The provisions relating to major development applications aim to prioritise these cases by planning authorities, involving processing agreements and increased application fees for these types of applications. The provisions are estimated to require an average of one additional full time member of staff per authority across all planning authorities at an estimated cost of £2,458,900 for a junior case officer, or £3,353,100 for a senior member of staff. Research also suggests that an increase of half a day per week of management’s time would enable greater focus on performance monitoring at a cost of £469,400 across Scotland. It is however the intention that the fee paid would be closely linked to the real cost of processing the application and that as the fee scale would be revised to increase fees for major applications, provisions for major developments **would be largely cost neutral once up and running.** An exception is provisions requiring hearings for major applications in defined circumstances which are estimated to result in an increased workload for case officers, with associated democratic cost implications for the authority where additional committee sessions are required. This is estimated at a national additional cost **of £95,800 per annum.**

254. Local development applications currently take up a large proportion of the planning authorities’ time. The Bill provisions introduce a clearer and more expeditious process for these applications including greater use of delegation where a development is in line with the development plan. Overall, research suggests that these measures would largely be cost neutral. However, measures to increase levels of delegation represent an efficiency saving. Even if delegation only resulted in modest time savings for senior staff, this could translate into a significant saving when considered across the system as a whole. In terms of management input into the committee process, if increased delegation resulted in an average time saving of one hour per week for one FTE manager this is estimated to **equate to an overall saving of around £134,100.** This is unlikely to result in an “actual” cost saving but would be felt through increased productivity and turnaround of applications.

255. The time and cost impact of instigating, resourcing and interfacing with a local review body are likely to be roughly analogous to those of the existing planning committees.

256. The Bill provisions would enable the removal of a significant number of minor development applications from the planning system. Local authorities would likely see a significant decrease in the number of planning applications in the system freeing up resources to boost performance based on a lighter caseload. Improved guidance to householders should reduce concerns regarding expected increases in the volume of queries in the long term. The effect of the loss of fee income for these applications should however be considered.

257. One of the major potential increases in costs to local authorities is the provision requiring local authorities to handle neighbour notification on planning applications. The associated cost

is estimated to be £1.7m across all planning authorities, for an average of one member of administration or technical staff per authority who would undertake neighbour notification duties. Research suggests that increased fees could cover this cost, with no net additional cost.

258. Provisions requiring local authorities to advertise their weekly list are estimated to cost an additional £167,700 per annum.

259. The reduction in the time period allowed for appeals to be lodged from 6 to 3 months is predicted to increase the propensity to appeal with associated national additional costs of £335,300. Mezzanine floors being brought into the planning system would result in a small increase in applications, thought to equate to two hours of additional casework per week at a cost of £146,800. If the provisions to enact a reduction in the duration of planning consents from 5 to 3 years led to a notional 10% annual increase in applications, the cost of the development management service would increase by 10% correspondingly, which would lead to an additional resource requirement equivalent to £2.9m across Scotland. Research suggests that increases in planning application fees could cover this potential cost. As with the development planning provisions, the resources research does not consider it valid to total the costs outlined in this section, as it is unlikely that all authorities will be able to make all the projected efficiency gains.

260. Research concludes that the additional costs for the provisions for development management are very marginal when balanced against efficiency savings in some areas and full fee cost recovery for applications. The additional cost is estimated to be a modest **£347,000 across Scotland per year** to account for additional costs associated with delivery of national development priorities, advertising weekly lists, the increased workload in undertaking hearings and the reduction in the time period for lodgement of appeals. Research suggests that application fees could be raised to fully recover the costs of the current level of development control and that these fees could be used to benefit other areas of planning activity, development planning and enforcement. However, this assumes that any increase in resources within planning department budgets realised by increases in fee income will be retained within planning budgets. Local authorities' actual practice in allocating resources to planning services in recent years runs counter to this assumption.

## **Enforcement**

261. The Bill provisions would introduce an enforcement system which is pro-active, rather than the existing enforcement service which is operating on a predominantly reactive basis whereby staff investigate and respond to complaints and reported breaches of planning control. The current cost of enforcement and related work is estimated to be roughly equivalent to two senior enforcement officers per authority on average. If a junior enforcement officer were to be added to enable a more proactive approach this would result in an estimated additional increase of **almost £2.5m to costs**. Measures such as increased fees for the submission of retrospective applications might provide a source of increased funding for enforcement work.

## **Tree Preservation Orders (TPOs)**

262. The new provisions to monitor and review TPOs and for local authorities to consult with the Forestry Commission and to notify neighbours would require additional resources and

specialist skills. Research estimates additional costs to equate to an average of one full time trees officer per authority at an annual net cost of around **£2.7m across the system**.

## Summary

263. In summary, research suggests that the overall additional costs to the local authority planning function as a result of the Bill Provisions is estimated to result in an **increase of £8.9m to the annual cost of the planning service. This equates to an average of £261,000 per individual authority relative to the operation of the current system.** This is because although many of the measures will allow the system to be operated more efficiently and expeditiously, the cost saving effects will be offset by the increased regularity of plan reviews and performance improvements (quality and speed) in determining applications which will require additional resources. With a notional 20% bedding in calculation to allow time to achieve transition to the new system and efficiencies to be achieved, the **total cost of reform is estimated to equate to around £10.7m per year during the transitional period, which is likely to be concentrated in 2008-09 and 2009-10.**

| <b>TABLE 2 - ESTIMATE OF ADDITIONAL COST ON LOCAL AUTHORITIES - per year</b>                                  |               |                      |
|---|---------------|----------------------|
|   |               | <b>Ref paragraph</b> |
| Development planning  | £3.4m         | 246-250              |
| Development management  | £347,000      | 251-260              |
| Enforcement   | £2.5          | 261                  |
| Trees   | £2.7          | 262                  |
| <b>TOTAL ONGOING COSTS</b>  | <b>£8.9m</b>  | <b>263</b>           |
| <b>TOTAL INCLUDING TRANSITIONAL COSTS (Including calculation to allow time to achieve efficiencies (20%))</b> | <b>£10.7m</b> | <b>263</b>           |

264. This conclusion must be considered in the context of Arup's findings in the earlier studies that the planning service has not been given the resource priority it has needed to operate effectively in recent years. This is especially the case in areas such as forward planning, enforcement and monitoring. Thus additional resources will be required to address this situation, particularly in terms of neglected areas. The extent of the additional resources required to bring the current system up to an acceptable level of resources are of course authority specific and to some extent reflect the priority that has been given to planning within Scottish authorities in recent years, and are difficult to identify.

265. Undoubtedly, however, there is a case for improving the resources available to the planning service. Research suggests that raising fees payable for applications represents one method of increasing resources for the planning service. Additional resources for some of the planning reforms may also be found from existing resources where authorities are able to focus on statutory planning and introduce more effective performance management.

266. There are however significant degrees of uncertainty with these findings. The research places great reliance on increases in planning fees as a means of obtaining additional resources for planning and that local authorities would decide to retain these additional resources within their planning budgets.

267. Our assessment of the financial impact of modernising the planning system on local authorities, based on the limited information available is as follows. We have to accept as a starting point that the planning system at present is under-resourced and under-performing. The reform proposals that would be implemented with the Bill provisions will generate both costs and savings for local authorities. However, the reform proposals, particularly when transitional costs are taken into account, seem likely in the early years to generate more costs than savings. It seems unwise to depend upon an assumed significant increase in planning fee income to close this funding gap. Instead, the long term solution to the under-resourcing of the planning system and ensuring that the reform package is financially viable lies in persuading local authorities to allocate more resources to planning services and considering the scope for some form of additional funding being made available by the Executive.

268. Feedback from consultation on the conclusions of the resources for planning research will help inform a more detailed, accurate and comprehensive estimate of the administrative, compliance and other costs and savings of the Bill provisions on local authorities, and best estimates of the timescales over which these costs are expected to rise, and margins of uncertainty. This will be reported in the Regulatory Impact Assessments which are required to accompany secondary legislation. We have also established a Planning Finance Working Party, as described in paragraph 243 above.

## **COSTS ON BUSINESSES, OTHER BODIES, AND INDIVIDUALS**

### **Businesses**

269. We have sought information from a range of business interests on the likely cost of complying with the proposals set out in the White Paper, many of which are implemented by this Bill. Those who have responded have only been able to provide a very general indication of the likely cost implications, and they have all said that our proposals – as set out in the White Paper – do not allow them to make any reliable estimate of the likely costs of operating the proposed new system. There is also uncertainty about the way the new arrangements will be implemented by individual planning authorities and interpreted by the courts, and about the level of resources that planning authorities will have to carry out the changes.

270. To a large extent these concerns are understandable, as the White Paper and the draft Bill set out a range of proposals but do not in general provide detailed descriptions of how the new systems are to operate. This is because the nature of planning legislation is that much of that detail is set out in secondary legislation, and in particular in the two main Orders, the General

Development Procedure Order and the General Permitted Development Order. We are committee to revising both of these Orders once the Bill has passed through Parliament

271. As each set of new or revised regulations is drafted, we will prepare a Regulatory Impact Assessment. This will look in detail at the actual costs to business, communities and individuals of complying with the new system. There will therefore be further opportunities for Parliament to examine in detail how much the costs of compliance with the planning system are likely to change as a result of the changes produced by the Bill.

272. We would expect the overall effect of the modernised system to be broadly neutral in cost terms, but with some extra direct costs falling on those who carry out major developments. These will in part arise from higher fees, which will be more closely related to the actual costs to the planning authority of processing the application. For instance, the maximum fee for a commercial or residential development, which applies to developments of over 50 houses or 3,750 square metres, is at present £13,000. Under the new arrangements, this could rise to about £40,000, but this would be for much larger developments of, for instance, over 500 houses or 37,500 square metres. There will of course be further detailed consultation before any actual fee increases are implemented. Higher costs may also result from requiring developers to undertake pre-application consultations on major developments. While many developers carry out such consultations already, they might have to do them earlier and in a more structured way. We estimate that the extra costs here could be around £20,000 per development. However, these increased costs would be offset by quicker processing of major developments under agreed timescales, with the inducement to planning authorities that failure to comply with the timetable could result in a refund of part or all of the fee.

273. In response to the White Paper, several major business interests have expressed concerns, which they have raised before, that the major uncontrollable cost of compliance with the planning system arises from the delays which result from slow processing of applications and the negotiation of planning agreements under section 75 of the 1997 Act. We have set out in the White Paper how we intend to tackle both of these issues. To improve the time taken to process major planning applications, we propose as mentioned above that the applicant and the planning authority will agree on a realistic timetable for the planning application to be determined, informed by the views of the statutory consultees. This will be set out in terms of an agreement between the parties. Where the agreement is not met, part or all of the planning fee will be returned to the applicant. We hope that this procedure will result in significantly faster processing, which could save a major development about £1000 per week in interest charges.

274. We also intend to improve the speed of producing planning agreements by issuing clearer guidance and using standard agreements to assist planning authorities to reach faster resolution with developers.

275. The benefit from such changes should be that major developments will receive planning permission more quickly – we are aware of the process taking up to two years at present, and we would hope to reduce this by at least six months. Setting aside land and construction costs, the upfront outlay on preparatory work for a large development can be as much as £1million, so we estimate that a six month delay could cost up to £30,000 in interest charges. The table below indicates that while there is likely to be a small net compliance cost for a large development, it

would not be significant in the overall costing of such projects. The greater certainty resulting from a more efficient system should also create greater business confidence.

276. Most of all, we would expect to deliver a system that was more transparent, more predictable in its outcomes and delivering better planning decisions. It is difficult to quantify the effect this would have, but we believe that it would be a positive one, both on the development industry and for the wider economy as a whole.

| <b>TABLE 3 - COST ESTIMATES ON BUSINESS - per major development</b>    |             | <b>Ref paragraph</b> |
|--|-------------|----------------------|
| Development planning additional costs                                  | 0           | 272                  |
| Development management – increased fees, up to                         | £25K        | 272                  |
| Inclusion measures – pre-application consultation and hearings, around | £20K        | 272                  |
| Typical saving from earlier determination, up to                       | -£30K       | 275                  |
| <b>Total</b>   | <b>£15K</b> |                      |

### **Other bodies and individuals**

277. The general public most often become involved with the planning system when applying for planning permission, objecting to proposed development or commenting on development plans. Many community bodies and other interest groups take an active interest in planning matters, and engage extensively in the examination of planning applications and the scrutiny of development plan proposals.

278. We intend to remove many simple householder developments from the planning system by enlarging the scope of permitted development. This will be done by amending the relevant statutory order, and does not require primary legislation. We are undertaking a review of the General Permitted Development Order (GDPO) which will be completed around the same time as the Bill completes its Parliamentary passage. Where they remain subject to planning control, we would not expect any significant increase in compliance costs for householder developments.

279. Individuals and community groups who object to proposed developments generally do so in their own time, so there are only limited direct costs involved. We would hope to involve a wider range of individuals and community interests by having mandatory pre-application consultations for major developments. The load on individuals should not therefore increase. Other bodies, especially environmental NGOs, already spend significant resources on planning matters, and we would expect these to continue at about the same level.

280. The revised pattern of development plans is intended to be easier to understand and quicker to produce. Those who get involved in the process should therefore find that their time is better used and their contributions are more effective.

## **BUSINESS IMPROVEMENT DISTRICTS**

### **Costs on the Scottish Administration**

281. Once the legislation is in place, BID projects will be funded directly by local businesses and other organisations who will decide for themselves whether they want to establish BIDs to provide the extra services they want. However prior to the legislation, there will be a need for funding to be made available for the BID pilot projects (which are planned to begin work around June 2006) and also to employ a project manager to oversee development work. **This funding will be up to £500,000** spread over the 3 years 2005-06 to 2007-08, though the bulk of the expenditure will be in 2006-07.

### **Costs on local authorities**

282. Although local authorities will be required to undertake the billing and collecting of the additional levy they will have the option of recovering any costs associated with this from the revenue raised by the levy. Local authorities will also have a veto power against any proposals that conflict with any of their own development plans for the area, or wider agreed policy objectives. This will ensure that no resources are wasted as a result of a clash of objectives. They can voluntarily provide financial support to a BID project, but this will only be if they see merit in doing so.

### **Costs on other bodies, individuals and businesses**

283. The private sector (i.e. local businesses) will contribute directly to the funding of BID projects (although based on experience in England other contributors, such as local authorities, could supply up to 50% of the funding required). The levy applied to the rates bill is likely to be small, the recommendation in the guidance document produced by the Working Group is that a maximum levy of 1% of rateable value should be set. Any levy higher than this would need strong justification as it would be difficult to persuade businesses (a majority of whom must vote for the proposal in a ballot) that the benefits they would see are worth the financial outlay. For a small business with a rateable value of £20,000 this could entail **an additional payment of around £200** spread over 10 months. Ultimately the levy will be agreed by the businesses themselves.

284. Local authorities will also have a veto power against any proposals that place a disproportionate financial burden on any business or class of business, in comparison to other contributors. This will help to ensure that the levy is set at a fair and reasonable level, taking account of the benefits that are intended to accrue to those businesses paying it.

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## **EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE**

285. On 19 December 2005, the Minister for Communities (Malcolm Chisholm MSP) made the following statement:

*These documents relate to the Planning etc. (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 19 December 2005*

“In my view, the provisions of the Planning etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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**PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE  
COMPETENCE**

286. On 14 December 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Planning etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Planning etc. (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 19 December 2005*

# **PLANNING ETC. (SCOTLAND) BILL**

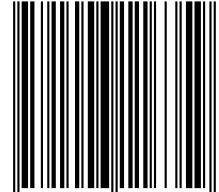
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