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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Planning (Scotland) Bill: as amended at Stage 2



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction and Background to the Bill

1. At its meetings on 19 February, and 2 and 30 April 2019, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Planning (Scotland) Bill (“the Bill”) as amended at Stage 2.ⁱ
2. The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
3. This Scottish Government Bill was introduced by the then Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP, on 4 December 2017. The lead Committee is the Local Government and Communities Committee. The Delegated Powers and Law Reform Committee published its Stage 1 Report on the Bill on 13 March 2018.ⁱⁱ
4. The Bill amends the Town and Country Planning (Scotland) Act 1997 (the “1997 Act”) to make changes to planning law in Scotland.
5. The Bill completed Stage 2 on 14 November 2018 and a substantial number of amendments were made. The Government lodged a Supplementary Delegated Powers Memorandum (“SDPM”) after Stage 2.ⁱⁱⁱ
6. The Committee agreed to write to the Government with questions on a number of the revised and new delegated powers provisions.^{iv} This correspondence is reproduced at Annex A. The Government responded in writing on 5 March 2019.^v This correspondence is reproduced at Annex B.
7. The Committee considered each of the delegated powers provisions in the Bill as amended at Stage 2 and reports as set out in the following sections:
 - (a) Section 1 sets out the delegated powers the Committee agreed to draw to the attention of the Parliament where no commitment has been given to amend the Bill at Stage 3.
 - (b) Section 2 sets out the substantive delegated powers in respect of which the Government has committed to lodging amendments at Stage 3.
 - (c) Section 3 sets out the delegated powers with redundant and/or empty cross-references in respect of which the Government has committed to lodging amendments at Stage 3.
 - (d) Section 4 sets out the delegated powers in the Bill as amended at Stage 2 that are not drawn to the attention of the Parliament.

ⁱ The Bill as amended at Stage 2 is available [here](#).

ⁱⁱ 11th Report 2018 (Session 5) available [here](#).

ⁱⁱⁱ The Supplementary Delegated Powers Memorandum is available [here](#).

^{iv} Letter dated 20 February 2019 available [here](#).

^v Letter dated 5 March 2019 available [here](#).

Section 1: delegated powers drawn to the attention of the Parliament where no commitment has been given to amend the Bill at stage 3

8. The Committee agreed to draw the following provisions to the attention of the Parliament.

Development planning

Section 3(4), inserting new section 16A(1A)(b) and (10) into the 1997 Act – Evidence report for preparation of local development plan

- Power conferred on: **Scottish Ministers**
- Power exercisable by: **Regulations made by SSI**
- Parliamentary procedure: **Negative**
- Revised or new power: **New**

Provisions

9. New section 16A(2A) of the 1997 Act, inserted by section 3(4) of the Bill as amended at Stage 2, requires that the evidence report includes a statement on steps taken to seek the views of “Gypsies and Travellers” – a term which is currently undefined. New section 16A(10) of the 1997 Act provides that “Gypsies and Travellers” has the meaning specified in regulations made by the Scottish Ministers. Such regulations are subject to the negative procedure.

Committee consideration

10. The Committee sought clarification from the Government on whether:
 - (a) it intends to widen the scope of the power to include reference to other groups, such as the Roma community;
 - (b) the affirmative procedure would be a more appropriate level of scrutiny; and
 - (c) it would be appropriate to amend the power to include a requirement to consult before the regulations under the new section 16A(10) of the 1997 Act are made.
11. Full details of the questions raised by the Committee are set out in paragraph 126 of Annex A.
12. On the point referred to at paragraph 10(a) above, the Government responded that the definition of Gypsies and Travellers could potentially include the Roma community, subject to consultation with the community. However, it has no plans at present to add other groups to the requirement in section 16A(2A) of the 1997 Act.

It observed that the Scottish Ministers may prescribe “other persons” whose views must be sought under section 16A(1A)(b) of the 1997 Act if this appears to be desirable.

13. On the point referred to at paragraph 10(b) above, the Government stated that it considered the negative procedure to be appropriate. It observed that terms relating to the community are already used in Scots law without definition, and are widely understood, and that the power will allow regulations to clarify the boundaries of the term.
14. Finally, on the point referred to at paragraph 10(c) above, the Government indicated that it intends to consult with the community on the definition and that it will consider whether to bring forward an amendment at Stage 3 to include a requirement to consult on the face of the Bill.
15. Full details of the Government’s response are set out in paragraphs 166 to 169 of Annex B.
16. The Committee noted that the Supplementary DPM recognises that there is at present no definition of the term “Gypsies and Travellers” in Scots law for the Bill to draw on and that there has been no consultation with the community on an appropriate definition. The meaning of the term “Gypsies and Travellers” has not been set out in any detail on the face of the Bill and it is not clear that the community will be easy to define.^{vi}
17. For these reasons, the Committee considered that there should be enhanced scrutiny of how the community is defined in the Bill. The Committee also considered that a requirement to consult before regulations are made under this provision should be set out on the face of the Bill.
18. The Committee agreed to write to the Minister for Older People and Equalities regarding the definition of “Gypsies and Travellers”.^{vii}

Recommendations

19. **The Committee calls on the Government to bring forward an amendment to the Bill at Stage 3 to apply the affirmative procedure to regulations made under section 16A(10) of the 1997 Act.**
20. **The Committee also encourages the Government to bring forward an amendment to include a requirement on the face of the Bill to consult before regulations are made under this power.**

^{vi} See, for example, the House of Commons Library Briefing Paper “Gypsies and Travellers” (Number 08083, 8 May 2018), at p.9, which is available [here](#).

^{vii} The Committee’s letter, dated 5 April, is available [here](#).

Masterplan Consent Areas

Section 10(2), inserting new section 54CA into the 1997 Act – Masterplan consent area schemes may make provision for land value capture by compulsory purchase of land

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Affirmative**
- **Revised or new power: New**

Provisions

21. Section 10(2) as amended at Stage 2 inserts new section 54CA into the 1997 Act. This provides that a Masterplan Consent Area scheme, if it so provides, has the effect of permitting a local authority to purchase land within the area to which the scheme relates.
22. The delegated power is contained in new section 54CA(2) of the 1997 Act, which requires the Scottish Ministers to make regulations containing further provision about land that may be purchased in a Masterplan Consent Area and the process the local authority must follow in the purchase of such land.
23. The regulations must include provision for the compensation that is payable in respect of land that is purchased under new section 54CA. They must also make provision disapplying, or applying with such modifications as the Scottish Ministers consider appropriate, any provisions of the Land Compensation (Scotland) Act 1963 (the “1963 Act”).

Committee consideration

24. The Committee sought information from the Government in relation to the compulsory purchase of land under a Masterplan Consent Area scheme.
25. In summary, the Committee asked whether:
 - (a) the new section authorised compulsory purchase;
 - (b) if it did, the power was proportionate and framed to enable an adequate level of compensation to be paid in all circumstances in accordance with the European Convention on Human Rights (ECHR); and
 - (c) the power to disapply, or apply with modifications, the provisions of the 1963 Act is a wide power better suited to being set out in primary legislation and, more generally, whether the content of the regulation-making power should instead be set out in full on the face of the Bill.
26. Full details of the questions raised by the Committee are set out at paragraphs 130 and 131 of Annex A. Full details of the Government’s response are set out in paragraphs 174 to 178 of Annex B.

27. The Committee agreed with the Government's response that it is not clear that new section 54CA of the 1997 Act achieves the effect of authorising *compulsory* purchase of land. The Committee also considered that there are doubts about whether the regulation-making power as framed can enable provision to be made in a manner that guarantees compliance with Article 1 of Protocol 1 (A1P1) of the ECHR in all circumstances, particularly insofar as compensation may be payable below market value.
28. In addition, the Committee also considered that a relevant factor in determining whether the provision is proportionate as required by A1P1 will be the other policy options available for achieving land value capture. Furthermore, the Committee concluded that the power to disapply, or apply with modifications, the 1963 Act is particularly wide.

Recommendation

29. **The Committee draws the Parliament's attention to its concerns about the delegated powers provisions in new section 54CA as set out in paragraphs 27 and 28 above.**

Culturally significant zones

30. The following provisions relate to culturally significant zones added to the Bill by amendment at Stage 2. The Committee noted that the Government had not yet reached a settled view on its approach to culturally significant zones. However, the Committee considered that the provisions of the Bill as amended at Stage 2 read in conjunction with the information in the SDPM was sufficient for it to reach a view on the following delegated power provisions.

Section 11A(4), inserting new section 56A(5) into the 1997 Act – Designation of culturally significant zones; request to designate

AND

Section 11A(4), inserting new section 56A(7) into the 1997 Act – Designation of culturally significant zones; discharge of functions and meaning of “culturally significant zone”

- **Powers conferred on: Scottish Ministers**
- **Powers exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new powers: New**

Provisions

31. The Bill as amended at Stage 2 includes new section 11A, which inserts new section 56A into the 1997 Act. This requires a planning authority to designate a Culturally Significant Zone if a valid request to do so has been received.
32. Section 56A(5) provides that a request is valid if the requirements prescribed in regulations made by the Scottish Ministers have been met in relation to the request. Such regulations may include requirements as to how a request is to be made and the steps that must be taken before a request may be made.
33. The Supplementary DPM states that the requirements and steps to be followed will be subject to consultation and that the negative procedure would be appropriate after this consultation process has been completed.
34. Furthermore, section 11A(4) of the Bill as amended at Stage 2 inserts section 56A(7) into the 1997 Act. This confers power on the Scottish Ministers by regulations to make further provision on how planning authorities are to discharge their functions and on the meaning of “culturally significant zone” for the purposes of section 56A.
35. The Supplementary DPM justifies this power on the basis that there is no existing definition of “Culturally Significant Zone”, no statutory procedure to follow and no list of matters to be considered by a planning authority in determining which parts of their area are Culturally Significant Zones. This definition and the functions of planning authorities can be established in regulations.
36. The Supplementary DPM indicates that consultation on this will be undertaken. It states that the negative procedure is most appropriate as the regulations would only set out procedural matters.

Committee consideration

37. In relation to the power in new section 56A(5) of the 1997 Act, the Committee considered that the requirements that determine whether a request to designate a Culturally Significant Zone is valid could potentially impact on the number of zones designated.
38. As regards the power in new section 56A(7), the Committee considered that further detail about how planning authorities are to discharge their functions and the meaning of “Culturally Significant Zone” are significant matters that have the potential to significantly alter the powers and obligations of planning authorities. In particular, regulations made under the power will be capable of defining the scope of a Culturally Significant Zone, which is a key term in primary legislation, and the effect of designating an area as such.
39. For these reasons, in relation to both these powers, the Committee suggested that the affirmative rather than the negative procedure would provide a more appropriate level of scrutiny.
40. Given the significance of both these powers, and that the Supplementary DPM indicates that consultation will be conducted before regulations are made under both of them, the Committee also considered that in both cases there should be a requirement set out on the face of the Bill to consult before regulations are made under these powers.

Recommendations

41. **Accordingly, the Committee calls on the Government to bring forward amendments to the Bill at Stage 3:**
 - (a) to provide for the affirmative procedure to apply to regulations made under the power in new section 56A(5) of the 1997 Act, as inserted by section 11A of the Bill; and
 - (b) to provide for the affirmative procedure to apply to regulations made under the power in new section 56A(7) of the 1997 Act, as inserted by section 11A of the Bill.
42. **The Committee also encourages the Government to include in any such amendments a requirement on the face of the Bill to consult before regulations are made under these powers.**

Development management

Section 11B(2), inserting new section 26(8) into the 1997 Act - Meaning of “development”: use of dwellinghouse for short term holiday let - guidance

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Guidance**
- **Parliamentary procedure: No procedure**
- **Revised or new power: New**

Provisions

43. Section 11B(2) amends section 26 of the 1997 Act (meaning of “development”) to provide that the use of a dwellinghouse for the purpose of providing short-term holiday lets involves a material change in the use of the building (thereby attracting a requirement for planning permission).
44. Section 11B(2) adds subsection (8) to section 26 of the 1997 Act, which allows the Scottish Ministers to make guidance on the interpretation of “*providing short-term holiday lets*”.
45. The Supplementary DPM acknowledges that guidance cannot definitively define this term. However, the power is intended to provide some clarity on its meaning. As it does not have the force of law, the Supplementary DPM argues that it is appropriate that the guidance is neither laid before the Parliament nor subject to any parliamentary procedure to ensure the best use of parliamentary time.

Committee consideration

46. The Committee asked the Government whether it agreed that it would be more appropriate that the meaning of “providing short-term holiday lets” is set out on the

face of the Bill, or in regulations subject to the affirmative procedure. Full details of the questions raised by the Committee are set out at paragraphs 138 to 140 of Annex A.

47. The Committee noted that the Government agreed that the definition of “providing short-term holiday lets” was critical to the operation of this power but that it had not yet reached a settled view on its approach to section 11B of the Bill in advance of Stage 3.
48. The Committee considered, however, that the provisions of the Bill as amended at Stage 2 read in conjunction with the information in the SDPM and the Government’s response were sufficient for it to reach a view on this delegated power.
49. The Committee considered that the interpretation of “providing short-term holiday lets” is an important issue that will involve various policy considerations that do not appear to be appropriate for guidance. For example, it is not clear what duration of let would amount to a “short-term” holiday let.

Recommendation

50. **Accordingly, the Committee calls on the Government to bring forward an amendment to the Bill to either:**
 - (a) set the meaning of “providing short-term holiday lets” on the face of the Bill; or**
 - (b) provide this meaning by regulations subject to the affirmative procedure.**

Section 14E, inserting new section 38(1A) into the 1997 Act – Consultation in connection with the determination of applications

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations or development order**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

Provisions

51. New section 14E of the Bill, as amended at Stage 2, inserts section 38(1A) into the 1997 Act. Existing section 38(1) of the 1997 Act requires the planning authority to take into account any representations they receive relating to an application relating to a planning permission, an approval required by a development order, a condition of planning permission or a planning obligation.
52. New section 38(1A) requires that regulations or a development order are to prescribe that, before determining an application for planning permission where the development involves any land on which there is a music venue, the planning authority must consult the Music Venues Trust (registered charity number 1159846).

53. Regulations made under this power are subject to the negative procedure.

Committee consideration

54. The Committee sought clarification on whether, in relation to the requirement for regulations to include the Music Venues Trust as a statutory consultee for relevant planning applications:
- (a) there should be a power to prescribe the manner and timescales associated with such consultation;
 - (b) there should be a power to modify the identity of Music Venues Trust in circumstances where the charity changes its name or ceases to exist; and
 - (c) the Music Venues Trust had been consulted on its inclusion in the Bill.
55. Full details of the questions raised by the Committee are set out at paragraph 143 of Annex A.
56. The Committee noted that the Government was still considering its approach to this section. However, it had observed that all other requirements on planning authorities to consult particular bodies before determining an application for planning permission are set out in secondary legislation – namely regulation 25 and schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the “2013 Regulations”).
57. The Committee also noted that the Government had indicated that it understood the Music Venues Trust had not been consulted on its status as a statutory consultee. The Government understands that the Trust has some concerns around the level of resources that would be required in order to fulfil the role. Full details of the Government’s response are set out in paragraphs 184 and 185 of Annex B.
58. The Committee observes that regulation 25 of the 2013 Regulations requires a planning authority to give not less than 14 days’ notice that an application for planning permission is to be taken into consideration. The planning authority must not determine the application until after the expiration of that period. Schedule 5 of the 2013 Regulations identifies particular persons that must be consulted in particular circumstances. Those persons can notify the planning authority that they do not need to be consulted in respect of any case or class of case or in respect of development within any area.
59. The 2013 Regulations can be amended to allow the manner and timescales for consultations to be specified and also to allow for the bodies listed to be modified or replaced in case they change their name or cease to exist. Accordingly, it would appear to be preferable that provision to consult the Music Venues Trust is made by amendments to the 2013 Regulations, rather than on the face of the Bill insofar as it amends the regulation-making power in the 1997 Act. It appears that making provision on the face of the Bill is unduly restrictive, particularly if the identity of the Music Venues Trust changes.

Recommendations

60. **The Committee encourages the Government to bring forward an amendment at Stage 3 to remove the provision made in section 14E of the Bill, inserting section 38(1A) into the 1997 Act.**
61. **The Committee suggests that the Scottish Ministers commit both to consulting the Music Venues Trust and, to the extent that the Music Venues Trust is content to be consulted, amending schedule 5 the 2013 Regulations to include the Music Venues Trust as a consultee.**

Section 20B, inserting new section 77A into the 1997 Act – Withdrawal of planning permission granted by development order

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

Provisions

62. New section 20B of the Bill introduced at Stage 2 by way of non-government amendment inserts new section 77A into the 1997 Act and repeals existing section 77 of the 1997 Act.
63. Section 77A(1) gives the Scottish Ministers power to make regulations about the payment of compensation by planning authorities in the following circumstances: where planning permission granted by a development order is withdrawn and planning permission for development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by the order.
64. Subsection (2) specifies matters that may be provided for in regulations. These include the circumstances in which compensation is payable, what compensation is to be payable in respect of, and how the amount of compensation is to be calculated and a claim for compensation is to be made to be valid. The regulations may also apply or disapply any provisions of Part IV of the 1997 Act, with or without modification.
65. The negative procedure applies to the power in new section 77A(1) of the 1997 Act.

Committee consideration

66. The Committee noted the significance of these provisions. Specifically, that careful consideration would be needed to ensure that the scheme of compensation made in the regulations under the power in new section 77A complies with A1P1 rights. These provisions may also apply or disapply provisions of primary legislation.
67. The Committee asked the Government whether the affirmative procedure would be more appropriate in light of the significance of these provisions. It also asked whether provision should be made on the face of the Bill to require Ministers to consult planning authorities and others who may be affected before making

regulations under this power. Full details of the questions raised by the Committee are set out at paragraphs 144 to 146 of Annex A.

68. The Committee noted that the Government had not yet reached a settled view on new section 20B of the Bill. However, the Committee considered that the provisions of the Bill as amended at Stage 2 read in conjunction with the information contained in the SDPM was sufficient for it to reach a view on this delegated power.
69. The Committee considered that the affirmative procedure would be more appropriate to afford the opportunity for enhanced scrutiny of any regulations made under the power in new section 77A of the 1997 Act in light of the significance (referred to in paragraph 66 above) of the provision that could be made.
70. For similar reasons, the Committee also concluded that a requirement should be set out on the face of the Bill to consult planning authorities and others who may be affected before making regulations under this power.

Recommendations

71. **The Committee calls on the Government to bring forward an amendment to the Bill at Stage 3 to apply the affirmative procedure to regulations made under the power in new section 77A into the 1997 Act, inserted by section 20B of the Bill.**
72. **Furthermore, the Committee calls on the Government to bring forward an amendment at Stage 3 to include a requirement on the face of the Bill to consult planning authorities and others who may be affected before making the regulations under this power.**

Other matters

Section 21(1A), inserting section 252(1)(aa) into the 1997 Act – Fees for planning applications etc.

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: Revised**

Provisions

73. Section 21(1A) is a non-government amendment made at Stage 2 which inserts section 252(1)(aa) into the 1997 Act.
74. Section 252(1) currently provides that the Scottish Ministers may by regulations make provision for the payment of a charge or fee to a planning authority in respect of certain specified matters. These include the performance by the planning

authority of the authority's functions (section 252(1)(a)) and anything done by the authority which is calculated to facilitate, or is conducive or incidental to, the performance of any such function (section 252(1)(b)).

75. New section 252(1)(aa) of the 1997 Act adds to the list of specified matters anything done by the authority for the purpose of monitoring compliance with conditions imposed on the grant of, or obligations entered into in relation to, planning permission.
76. Regulations under section 252 are already subject to negative procedure and no change to this is proposed.

Committee consideration

77. Full details of the questions raised by the Committee are set out at paragraphs 147 to 150 of Annex A.
78. The Scottish Government agreed with the Committee's initial assessment that the provision made in new section 252(1)(aa) appears to be unnecessary. This is because existing regulations (e.g., the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017) are already made under the existing powers in section 252(1) to make the type of provision which new section 252(1)(aa) would more explicitly permit. Full details of the Government's response are set out at paragraph 187 of Annex B.
79. The Committee concluded that it is unnecessary to add further provision to the statute book through amendments that do not appear to have any practical effect.

Recommendation

80. **The Committee calls on the Government to bring forward an amendment at Stage 3 to remove section 21(1A) of the Bill, inserting section 252(1)(aa) into the 1997 Act.**

Final provisions

Section 32(4) – Requirement to consult before making infrastructure-levy regulations under section 27

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Affirmative**
- **Revised or new power: Revised**

Provisions

81. The Bill was amended at Stage 2 to provide at section 32(4) that before making infrastructure-levy regulations under section 27 the Scottish Ministers must consult

any local authority that may be affected by the regulations and any other persons the Ministers consider appropriate.

82. As was the case at Stage 1, section 32 of the Bill provides that infrastructure-levy regulations made under section 27 are subject to the affirmative procedure.
83. New section 30A was also agreed at Stage 2. It provides that the regulation-making power conferred by section 27 ceases to be exercisable if no regulations have been made under it within the period of 10 years beginning with the day that the Bill receives Royal Assent.

Committee consideration

84. The Committee recommended in its Stage 1 report that it would be appropriate for a form of super-affirmative procedure to be applied to the power to make infrastructure-levy regulations (paragraph 74 of the Committee's [11th Report, 2018 \(Session 5\)](#)).
85. Following Stage 2 the Committee raised various issues in relation to the powers in this section aimed at ensuring that they are framed more clearly and are no more than is necessary and proportionate. Full details of the questions raised by the Committee are set out at paragraphs 154 to 158 of Annex A.
86. In particular, the Committee was concerned with:
 - (a) powers to make provision in regulations for criminal penalties, which could be set at the maximum permissible amounts;
 - (b) powers to modify certain planning legislation, which were linked to the effectiveness of the infrastructure-levy as a means to raise revenue to fund infrastructure projects – the Committee considered that this did not meaningfully limit their scope; and
 - (c) the relationship between the infrastructure-levy and other funding mechanisms such as agreements made under section 75 of the 1997 Act – the Committee considered that the Government's policy on the relationship between those powers should be developed first and set out on the face of the Bill.
87. No amendments were lodged at Stage 2 to address these specific concerns. More particularly, the Committee indicated that the consultation requirements inserted by amendments to section 32(4) of the Bill are insufficient to address its specific concerns and its more general concern about the wide powers in schedule 1 to make substantial policy in the infrastructure-levy regulations.
88. The Committee noted that the Government did not agree that a super-affirmative procedure was necessary and that a non-government amendment to attach a super-affirmative procedure was not moved at Stage 2. Full details of the Government's response are set out in paragraphs 189 and 190 of Annex B.
89. As the Committee noted in its Stage 1 report, this is an example of a Bill being introduced with framework powers where significant policy matters have not been developed and further consultation is necessary. The Committee's view was that such an approach undermines the Parliament's ability to scrutinise policy on a line by line basis on the face of the Bill.

90. The Committee also highlighted at paragraph 73 of its Stage 1 Report that previous powers to provide in regulations for a levy have been subject to a form of super-affirmative procedure (see section 14 and 15 of the Alcohol etc. (Scotland) Act 2010).
91. The Committee therefore remains of the view that a form of super-affirmative procedure would provide a more appropriate level of scrutiny for the power to make infrastructure-levy regulations in section 27 of the Bill.
92. Furthermore, the Committee considers that it would be appropriate to reconsider the period of the sunset provision in section 30A(2) of the Bill.
93. Currently, as amended at Stage 2, the power to make infrastructure-levy regulations in section 27 of the Bill expires if no regulations have been made under that power within 10 years from Royal Assent. The Committee notes that the Minister for Local Government, Housing and Planning recognised in the Stage 2 debate that “10 years is perhaps a touch generous”.^{viii} The Committee considers that a period of no more than five years would be more appropriate.

Recommendation

94. **While acknowledging the Government’s position, the Committee reiterates its view that a super-affirmative procedure should apply to the power to make infrastructure-levy regulations in section 27(1) of the Bill as enacted.**
95. **The Committee also calls on the Scottish Government to bring forward an amendment to section 30A(1) of the Bill at Stage 3 to reduce from 10 years to no more than five years the sunset period for the power to make infrastructure-levy regulations under section 27 of the Bill as enacted.**

^{viii} *Official Report*, 14 November 2018, Local Government and Communities Committee, col. 41.

Section 2: substantive delegated powers in respect of which the Government has committed to lodging amendments at stage 3

96. The Committee welcomed the Government's commitment to bring forward amendments to the Bill at Stage 3 in relation to the following provisions.

Development planning

Section 7(2), inserting new section 3CA(2A) into the 1997 Act – Amendment of National Planning Framework

Provisions

97. The Bill as introduced included section 7(2), which inserts section 3CA into the 1997 Act. Section 3CA(1) provides the Scottish Ministers with the power to amend the National Planning Framework at any time. This is in the context of section 1 of the Bill, which amends the timescales in the 1997 Act for revising the National Planning Framework from within five years to within 10 years.
98. Section 3CA(3) of the 1997 Act (as inserted by section 7(2) of the Bill) allows the Scottish Ministers to make further provision in regulations about amendments to the National Planning Framework. Such regulations may in particular make provision about procedures to be followed, consultation on proposed amendments, when the amendments take effect, publication of the amended framework, and laying the amended framework before the Scottish Parliament. Regulations under the new section 3CA(3) are subject to the negative procedure.
99. New subsection (2A) was inserted into section 3CA of the 1997 Act at Stage 2. It requires the Scottish Ministers to make regulations setting out the circumstances in which they consider that an amendment to the National Planning Framework would result in a significant change to the policies and proposals for the development and use of land such that would require that the National Planning Framework should be revised under section 3A. Accordingly, these regulations would define when an amendment to the National Planning Framework would be considered so significant that a fuller revision of the National Planning Framework is required, which in turn would apply the full scrutiny procedures set out in the Bill as amended.

Committee consideration

100. The Committee sought an explanation from the Government in relation to the definition of what constitutes "a significant change to the policies and proposals for the development and use of land in the most recent National Planning Framework". Full details of the questions raised by the Committee are set out in paragraphs 127 to 129 of Annex A.

101. The Committee was content with the Government's explanation that defining significant changes to the National Planning Framework on the face of the Bill could be unduly restrictive, given the need for flexibility to respond to changing circumstances. Full details of the Government's response are set out in paragraphs 170 to 173 of Annex B.
102. The Committee also asked whether it would be more appropriate that the affirmative procedure attached to the regulations made under new section 3CA(2A) of the 1997 Act. This was on the basis that subordinate legislation made by Scottish Ministers would determine what level of parliamentary scrutiny will apply to an amendment to the National Planning Framework.
103. The Government agreed that it would be more appropriate for these regulations to be subject to the affirmative procedure and stated that it will bring forward an amendment at Stage 3 to achieve this.

Recommendation

104. **The Committee welcomes the Government's commitment to bring forward an amendment to the Bill at Stage 3 to apply the affirmative procedure to regulations made under section 3CA(2A) of the 1997 Act, as inserted by section 7(2) of the Bill.**

Masterplan Consent Areas

Section 10(3), inserting paragraph 6(1A) of schedule 5A into the 1997 Act - Duty to seek to make or alter a scheme when directed to do so

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Direction**
- **Parliamentary procedure: None**
- **Revised or new power: Revised**

Provisions

105. Paragraph 6(1) of schedule 5A of the 1997 Act (as inserted by section 10(3) of the Bill) confers power on the Scottish Ministers to direct a planning authority to make or alter a Masterplan Consent Area scheme.
106. New paragraph 6(1A), inserted by amendment at Stage 2, requires that any such direction must be in writing and be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is given. It remains the case that the power is not subject to any parliamentary scrutiny.
107. Among other things, the Committee's Stage 1 report recommended that there should be a requirement on the face of the Bill to publish all directions made under the provisions in the Bill and to give reasons for making those directions.

108. Paragraph 6 of schedule 5A of the 1997 Act as amended at Stage 2 now includes a requirement to publish a direction that is given under the power. There is no specific requirement to give reasons in paragraph 6(1A) of schedule 5A. However, it will be subject to the overarching requirement to publish reasons with any direction issued under the 1997 Act (with limited exceptions) as provided for by new section 275B of the 1997 Act, inserted by section 26B of the Bill as amended at Stage 2.

Committee consideration

109. The Committee drew the Government's attention to the overarching requirement in new section 275B of the 1997 Act (inserted by section 26B of the Bill) to publish any direction made under the 1997 Act together with reasons for making the direction (subject to limited exceptions). The Government acknowledged that this supersedes the specific requirement in paragraph 6(1A) of schedule 5A of the 1997 Act (inserted by section 10(3) of the Bill) to publish a direction to a planning authority to make or alter a Masterplan Consent Area scheme. It committed to bringing forward an amendment at Stage 3 to remove the relevant wording.

Recommendation

110. **The Committee welcomes the Government's commitment to bring forward an amendment at Stage 3 to remove the requirement in paragraph 6(1A) of schedule 5A of the 1997 Act to publish a direction made under paragraph 6(1) of that schedule.**

Section 3: delegated powers with redundant and/or empty cross-references in respect of which the Government has committed to lodging amendments at stage 3

111. The following three provisions in the Bill as amended are redundant and/or empty as a result of a combination of amendments that were successful and unsuccessful at Stage 2.

Section 1(6), inserting new section 3ZAA into the 1997 Act – Guidance in relation to “section 3A()”

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Guidance**
- **Parliamentary procedure: None**
- **Revised or new power: New**

AND

Section 3(2)(ca), inserting new section 15(6) into the 1997 Act Cross-reference to regulations made under non-existent delegated power

AND

Schedule 2 – Minor and consequential amendments and repeals, Part 4 – Regulations, paragraph 10(2) of the Bill, inserting section 275(7BD) into the 1997 Act

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Application of the affirmative procedure**
- **Revised or new power: Revised**

112. Section 1(6) of the Bill as amended at Stage 2 inserts new section 3ZAA into the 1997 Act. It requires the Scottish Ministers to issue guidance to local authorities dealing with the matters to be addressed under section “3A()”.

113. Furthermore, section 3(2)(ca) of the Bill as amended at Stage 2 inserts new section 15(6) into the 1997 Act. It provides that the terms “rural areas” and “substantial decline” used in section 15(5)(cf) of the Bill as amended at Stage 2 “*are to be construed in accordance with any regulations made under section []*”.^{ix}

114. Finally, paragraph 10(2) of schedule 2 of the Bill (minor and consequential amendments and repeals) inserts new subsection (7BD) into section 275 of the 1997 Act. Section 275 of the 1997 Act sets out the parliamentary procedure that applies to the various delegated powers provisions in the 1997 Act. New section 275(7BD) of the 1997 Act applies the affirmative procedure to regulations made under the powers in “sections [] and 251B(3)(a) and paragraph 3 of schedule 5A.” In addition to the blank reference, section 26 of the Bill was removed by amendment at Stage 2 and so the application of the affirmative procedure to regulations made by section 251B(3)(a) of the 1997 Act is therefore now redundant.

Committee consideration

115. The Committee noted that the guidance-making requirement in section 1(6) (inserting section 3ZAA into the 1997 Act), the empty cross reference in section 3(2)(ca) (inserting section 15(6) into the 1997 Act), and the empty and redundant references in paragraph 10(2) of schedule 2 (inserting section 275(7BD) into the 1997 Act) that appear in the Bill each cross-refer to provisions contained in amendments that were not agreed at Stage 2.
116. The Government has indicated that it intends to lodge the necessary amendments at Stage 3 to rectify these redundant and empty provisions.

Recommendations

117. **The Committee welcomes the Government’s commitment to bring forward amendments to:**
- (a) rectify the redundant cross-references in new section 3ZAA of the 1997 Act inserted by section 1(6) of the Bill;**
 - (b) rectify the redundant cross-reference in section 3(2)(ca) of the Bill, inserting new section 15(6) into the 1997 Act, and**
 - (c) rectify the empty and redundant cross-references identified by the Committee in section 275(7BD) of the 1997 Act as inserted by paragraph 10(2) of schedule 2 of the Bill.**

ix Section 15(5) of the 1997 Act as amended by the Bill at Stage 2 sets out the matters about which a spatial strategy that forms part of a local development plan is to take account.

Section 4: delegated powers not drawn to the attention of the Parliament

118. The Committee agreed that it did not need to draw the Parliament's attention to the remaining delegated powers in the Bill as amended at Stage 2, which are as follows:

Part 1: Development planning

- Section 1(6), inserting section 3AA into the 1997 Act – Provision of information to assist preparation of National Planning Framework
- Section 1A, inserting new section 3G into the 1997 Act – Open space strategy
- Section 2A, inserting new section 8A(2)(d) and (11) into the 1997 Act – Evidence report for preparation of strategic development plans
- Section 3(4), inserting new section 16B(1) into the 1997 Act – Effective Community Engagement: Guidance
- Section 3(4), inserting new section 16C into the 1997 Act – Play sufficiency assessment
- Section 3(8), inserting new section 20A(1A) into the 1997 Act – Publication of and publicity for local development plan
- Section 9(4), inserting new paragraphs 2(1)(aa), 2A(5) and 2B of schedule 19 of the 1997 Act – Local Place Plans

Part 2: Masterplan consent areas

- Section 10(3), inserting schedule 5A, paragraph 3(6) into the 1997 Act - Places that cannot be included in a scheme

Part 2A: Culturally significant zones

- Section 11A(4), inserting new section 56B(5) into the 1997 Act – Designation of culturally significant zones; supplementary provisions

Part 3: Development management

- Section 12A(2), inserting new section 40A into the 1997 Act – Assessment of health effects
- Section 14G, inserting new section 41B(4) into the 1997 Act - Conditional grant of planning permission: provision of toilet facilities within certain large developments
- Section 16A, inserting new section 46A into the 1997 Act – Call-in of applications by Scottish Ministers: further provision

- Section 16D, inserting a definition of “material considerations” into section 277(1) (interpretation) of the 1997 Act
- Section 20A, inserting new section 39A into the 1997 Act – Declining to determine an application: further provision

Part 4: Other matters

- Section 21(5A) and (6A), repealing section 252(1A)(da), (1AA) and (1AB) of the 1997 Act – Fees for planning applications etc.
- Section 21(6), replacing section 252(1A)(e) and (ea) of the 1997 Act, and section 26(7), inserting new section 252(1E) and (1F) into the 1997 Act – Fees for planning applications etc.
- Section 21(7), inserting section 252(1D) into the 1997 Act – Fees for planning applications etc.
- Section 23(3), inserting new section 158E(2) into the 1997 Act – Liability for expenses under enforcement notice
- Section 26A, amending section 275(2A) of the 1997 Act – Regulations
- Section 26B, inserting new section 275B into the 1997 Act – Ministerial directions
- Section 26C, inserting new section 1A into the 1997 Act – Chief planning officers
- Section 26E, inserting subsections (3A) to (3F) into section 9 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 – Notice by planning authority of applications for listed building consent

Part 5: Infrastructure levy

- Section 30 – Power to change meaning of “infrastructure”
- Section 30A(2) – Lapsing of power to provide for levy

Part 6: Final provisions

- Section 31A – Power to replace descriptions with actual dates
- Schedule 2 – Minor and consequential amendments and repeals, Part 2 Masterplan Consent Areas, Masterplan consent area schemes, paragraph 6(6A) of the Bill, amending section 183(1) of the 1997 Act

Annex A

Correspondence from the Delegated Powers and Law Reform Committee to the Scottish Government

Letter dated 20 February from the Committee to the Government

Planning (Scotland) Bill as amended at Stage 2

119. The Delegated Powers and Law Reform Committee considered the above Bill on 19 February 2019 and seeks an explanation of the following matters:

Development planning

Section 1(6), inserting new section 3ZAA into the 1997 Act – Guidance in relation to “section 3A()”

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Guidance**
- **Parliamentary procedure: None**
- **Revised or new power: New**

120. Section 1(6), as amended at Stage 2, inserts new section 3ZAA into the 1997 Act. It requires the Scottish Ministers to issue guidance to local authorities dealing with the matters to be addressed under section 3A().

121. Reference (as it appeared in amendment 187) to section 3A(3A) changed to 3A(). Amendment 187 was referencing provisions in amendment 83 which was not agreed to, therefore the reference is empty.

122. Given that the guidance-making requirement is redundant, does the Scottish Government propose to amend the Bill to remove new section 3ZAA of the 1997 Act, inserted by section 1(6) of the Bill as amended at Stage 2?

Section 3(2)(ca), inserting new section 15(6) into the 1997 Act Cross-reference to regulations made under non-existent delegated power

123. Section 3(2)(ca) of the Bill as amended at Stage 2 inserts new section 15(6) into the 1997 Act. It provides that the terms “rural areas” and “substantial decline” used in section 15(5)(cf) of the Bill as amended at Stage 2 “*are to be construed in accordance with any regulations made under section []*”.

124. Reference (as it appeared in amendment 192) to section 3AG(4) of the 1997 Act has been removed. Amendment 192 was referencing provisions in amendment 116 which was not agreed to, therefore the reference is empty.

125. Given that the cross-reference to “*regulations made under section []*” is redundant, does the Scottish Government propose to amend the Bill to remove new section 15(6) of the 1997 Act, inserted by section 3(2)(ca) of the Bill as amended at Stage 2?

Section 3(4), inserting new section 16A(1A)(b) and (10) into the 1997 Act – Evidence report for preparation of local development plan

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

126. New section 16A(10) of the 1997 Act, inserted by section 3(4) of the Bill as amended at Stage 2, provides that “Gypsies and Travellers” has the meaning specified in regulations made by the Scottish Ministers.

(a) Does the Scottish Government intend to keep this new power, and, if it does, does it intend to widen the scope of the power to include reference to other groups such as the Roma community?

(b) Please reconsider whether the affirmative procedure would provide a more appropriate level of scrutiny for a power to define a term that has not been defined in any detail on the face of the Bill or indeed at all in Scots law previously.

(c) Does the Scottish Government consider that it would be appropriate to amend the power to include a requirement to consult before the regulations under new section 16A(10) of the 1997 Act are made?

Section 7(2), inserting new section 3CA(2A) into the 1997 Act – Amendment of National Planning Framework

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

127. Section 7(2) of the Bill, inserting section 3CA into the 1997 Act, has been amended at Stage 2 to include new subsection (2A).

128. In its Stage 1 report, the Committee called on the Scottish Government to amend the Bill to require that significant amendments to the National Planning Framework (“NPF”) resulting in a change to the overall policy become subject to specific public and parliamentary consultation requirements set out on the face of the Bill.

129. In the event that the Scottish Government were not willing to set the threshold on the face of the Bill, the Committee considered that the Scottish Government should apply the affirmative procedure to the scrutiny of regulations setting the scrutiny procedures. The Committee nevertheless considered this secondary option to be unsatisfactory as it should not be for Ministers in regulations to decide the form of parliamentary scrutiny that will apply to the NPF.

(a) Please explain why the definition of what are significant changes to the policies and proposals for the development and use of land of the most recent NPF are not set out on the face of the Bill.

(b) Please also reconsider whether the affirmative procedure would be more appropriate for the scrutiny of regulations made under new section 3CA(2A) of the 1997 Act insofar as those regulations determine what level of parliamentary scrutiny will apply to amendments to the NPF.

Masterplan Consent Areas

Section 10(2), inserting new section 54CA into the 1997 Act – Masterplan consent area schemes may make provision for land value capture by compulsory purchase of land

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Affirmative**
- **Revised or new power: New**

130. Section 10(2) as amended at Stage 2 introduces new section 54CA (“Scheme may also make provision for land value capture by compulsory purchase of land”) into the 1997 Act. This provides that a Masterplan Consent Area scheme, if it so provides, has the effect of permitting a local authority to purchase land within the zone to which the scheme relates.

131. The Scottish Ministers would be required under subsection (2) to make regulations containing further provision about land that may be purchased in a Masterplan Consent Area and the process the local authority must follow in the purchase of such land. The regulations must also make provision for the compensation that is payable in respect of land that is purchased under new section 54CA and disapply, or apply with such modifications as the Scottish Ministers consider appropriate, any provisions of the Land Compensation (Scotland) Act 1963.

(a) Is it sufficiently clear that new section 54CA of the 1997 Act permits compulsory purchases of land, or is it limited to voluntary purchases of land?

(b) Assuming that the provision authorises a compulsory purchase of land under a Masterplan Consent Area Scheme, if it so provides, does it enable an adequate level of compensation to be paid in all circumstances in compliance with article 1 of protocol 1 of the European Convention on Human Rights (“A1P1”)?

(c) In principle, is compulsory purchase a proportionate means of achieving the policy objective of creating a land value capture mechanism under A1P1? Are there other less intrusive means of achieving the same objective?

(d) In the Scottish Government’s view, is a power to disapply, or apply with such modifications as the Scottish Ministers consider appropriate, any

provisions of the Land Compensation (Scotland) Act 1963 a potentially wide power that would be better suited to being set out in full in primary legislation?

(e) Powers of compulsory purchase are significant insofar as they relate to the rights of property holders. Would the Scottish Government intend to amend new section 54CA of the 1997 Act at Stage 3 to remove the regulation-making power? Would it instead set out details on the face of the Bill about the matters that are covered by the regulation-making power?

Section 10(3), inserting paragraph 6(1A) of schedule 5A into the 1997 Act - Duty to seek to make or alter a scheme when directed to do so

- **Power conferred on: Scottish Ministers**
 - **Power exercisable by: Direction**
 - **Parliamentary procedure: None**
 - **Revised or new power: Revised**
132. Paragraph 6(1) of schedule 5A of the 1997 Act, as inserted by section 10(3) of the Bill, confers power on the Scottish Ministers to direct a planning authority to make or alter a Masterplan Consent Area scheme.
133. New paragraph 6(1A), inserted by non-government amendment at Stage 2 of the Bill, requires that any such direction must be in writing and be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is given.
134. However, section 26B of the Bill, inserting new section 275B into the 1997 Act, now requires any direction made under the 1997 Act to be published and for reasons to be provided with the published direction. Accordingly, does the Scottish Government propose to amend the Bill at Stage 3 to remove that part of section 10(3) of the Bill that inserts paragraph 6(1A) of schedule 5A into the 1997 Act?

Culturally significant zones

Section 11A(4), inserting new section 56A into the 1997 Act – Designation of culturally significant zones; request to designate

- **Power conferred on: Scottish Ministers**
 - **Power exercisable by: Regulations made by SSI**
 - **Parliamentary procedure: Negative**
 - **Revised or new power: New**
135. Section 11A(4) of the Bill inserts new section 56A into the 1997 Act. This requires a planning authority to designate a Culturally Significant Zone if a valid request to do so has been received.
136. Section 56A(5) provides that a request is valid if the requirements prescribed in regulations made by the Scottish Ministers have been met in relation to the request.

Such regulations may include requirements as to how a request is to be made and the steps that must be taken before a request may be made.

(a) The power conferred by section 56A(5) appears to be capable of allowing the Scottish Ministers to tightly define the requirements that must be met for a request to designate a culturally significant zone to be valid.

Accordingly, please consider whether it would be more appropriate that the affirmative procedure applied to the power in new section 56A(5) to afford the Parliament the opportunity to conduct enhanced scrutiny of such provision.

(b) The Supplementary DPM states that the requirements and steps to be followed will be subject to consultation. However, there is no requirement to do so on the face of the Bill.

Please consider whether it would be more appropriate to insert such a consultation requirement on the face of the Bill.

Section 11A(4), inserting new section 56A(7) into the 1997 Act – Designation of culturally significant zones; discharge of functions and meaning of “culturally significant zone”

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

137. Section 11A(4) of the Bill as amended at Stage 2 introduces section 56A(7) into the 1997 Act. This confers power on the Scottish Ministers by regulations to make further provision on how planning authorities are to discharge their functions and on the meaning of “culturally significant zone” for the purposes of section 56A.

(a) Currently, the negative procedure applies to regulations making such provision. However, there is a lack of detail on the face of the Bill on the significant matter of how planning authorities are to discharge their functions. Furthermore, such regulations would allow Ministers to make further provision about the meaning of a key term contained in primary legislation; i.e. on the meaning of “culturally significant zone”.

Accordingly, please consider whether it would be more appropriate that the affirmative procedure applied to the power in new section 56A(7) to afford the Parliament the opportunity to conduct enhanced scrutiny of such significant provision.

(b) The Supplementary DPM indicates that the Scottish Government intends to consult before regulations made under new section 56A(7) are made. However, in the absence of any requirement to consult on the face of the Bill, please consider whether such a requirement should be included.

Section 11B(2), inserting new section 26(8) into the 1997 Act - Meaning of “development”: use of dwellinghouse for short term holiday let - guidance

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Guidance**
- **Parliamentary procedure: No procedure**
- **Revised or new power: New**

138. Section 11B(2) amends section 26 of the 1997 Act (meaning of “development”) to provide that the use of a dwellinghouse for the purpose of providing short-term holiday lets involves a material change in the use of the building. New section 26(8) allows the Scottish Ministers to issue guidance on the interpretation of “providing short-term holiday lets.”
139. The interpretation of this important concept, which will involve various policy considerations, does not appear to be appropriate for guidance. For example, it is not clear what duration of let would amount to a “short-term” holiday let.
140. Does the Scottish Government agree that it would be more appropriate that the meaning of “providing short-term holiday lets” is set out on the face of the Bill, or in regulations subject to the affirmative procedure?

Section 12A(2), inserting new section 40A into the 1997 Act – Assessment of health effects

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations**
- **Parliamentary procedure: Affirmative**
- **Revised or new power: New**

141. Section 12A of the Bill introduces new section 40A into the 1997 Act. It requires the Scottish Ministers to make provision in regulations about the consideration to be given to the likely health effects of a proposed national development or major development before planning permission can be granted.
142. The Supplementary DPM acknowledges that there are a potentially very wide range of considerations that may fall under the heading of health. Does the Scottish Government consider that it would be more appropriate that the scope of this power is further defined on the face of the Bill?

Section 14E, inserting new section 38(1A) into the 1997 Act – Consultation in connection with the determination of applications

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations or development order**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

143. New section 14E of the Bill, as amended at Stage 2, inserts section 38(1A) into the 1997 Act. This requires that regulations or a development order are to prescribe that, before determining an application for planning permission where the development involves any land on which there is a music venue, the planning authority must consult the Music Venues Trust (registered charity number 1159846).

(a) Would it be more appropriate that this requirement should include a power to prescribe the manner and timescales within which such consultation is to take place?

(b) Would it be appropriate to include a power to modify the identity of the Music Venues Trust to account for circumstances where that charity changes its name and to allow an equivalent body to be designated in the event the charity ceases to exist?

(c) Does the Scottish Government know whether the Music Venues Trust is content for there to be a requirement on a planning authority to consult it on an application for planning permission where the development involves any land on which there is a music venue?

Section 20B, inserting new section 77A into the 1997 Act – Withdrawal of planning permission granted by development order

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: New**

144. New section 20B of the Bill introduced at Stage 2 inserts new section 77A into the 1997 Act and repeals existing section 77 of the 1997 Act. In broad terms, new section 77A confers a regulation-making power on the Scottish Ministers to make the provision currently made in section 77 of the 1997 Act, read together with the detailed compensation provisions in section 76 of that Act.

145. Careful consideration will need to be given to ensuring that the scheme of compensation made in the regulations under the power in new section 77A of the 1997 Act complies with A1P1 rights.

146. The regulations may also apply or disapply any provisions of primary legislation, namely Part IV of the 1997 Act, with or without modification.

(a) Given the significance of these provisions, does the Scottish Government agree that the affirmative procedure would be more appropriate to the scrutiny of regulations made under new section 77A of the 1997 Act?

(b) In light of the significance of these provisions, does the Scottish Government also agree that provision should be made on the face of the Bill to require that Ministers consult planning authorities and others who may be affected before making regulations under this power.

Section 21(1A), inserting section 252(1)(aa) into the 1997 Act – Fees for planning applications etc.

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Negative**
- **Revised or new power: Revised**

147. Section 21(1A) of the Bill inserts section 252(1)(aa) into the 1997 Act.
148. Section 252(1) currently provides that the Scottish Ministers may by regulations make provision for the payment of a charge or fee to a planning authority in respect of certain specified matters. This already includes, among other things, the performance by the planning authority of any of the authority's functions (section 252(1)(a)) and anything done by the authority which is calculated to facilitate, or is conducive or incidental to, the performance of any such function (section 252(1)(b)).
149. The Bill as amended at Stage 2 now inserts section 252(1)(aa) into the 1997 Act, which adds to the list of specified matters anything done by the authority for the purpose of monitoring compliance with conditions imposed on the grant of, or obligations entered into in relation to, planning permission.
150. Is the provision made in new section 252(1)(aa) necessary? What does it add to the provision made in existing section 252(1) of the 1997 Act?

Section 26C, inserting new section 1A into the 1997 Act – Chief planning officers

- **Power conferred on: Scottish Ministers**
 - **Power exercisable by: Guidance**
 - **Parliamentary procedure: No procedure**
 - **Revised or new power: New**
151. Section 26C introduces section 1A into the 1997 Act. Section 1A(4) requires planning authorities to have regard to guidance issued by the Scottish Ministers on what constitutes appropriate qualifications and experience for the role of chief planning officer.
152. The Supplementary DPM states that consultation would be utilised in deciding whether there is a need for guidance. It identifies professional bodies (Royal Town Planning Institute Scotland), Heads of Planning Scotland, CoSLA and others as bodies that could be consulted.
153. There is no requirement on the face of the Bill to consult. Please consider whether it would be more appropriate for new section 1A of the 1997 Act to include a requirement to consult on the face of the Bill before guidance is made on appropriate qualifications and guidance, along the lines identified in the Supplementary DPM.

Section 32(4) – Requirement to consult before making regulations under section 27

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Affirmative**
- **Revised or new power: Revised**

154. Section 32(4) of the Bill as amended at Stage 2 requires that before making infrastructure-levy regulations under section 27 of the Bill as enacted, the Scottish Ministers must consult any local authority that may be affected by the regulations and any other persons they consider appropriate.
155. In its Stage 1 Report on the delegated powers in the Bill, the Committee recommended that a form of super-affirmative procedure would be appropriate to guarantee a requirement to consult publicly and to ensure that the Parliament can control the exercise of the wide powers in schedule 1 to make infrastructure-levy regulations. However, as was the case at Stage 1, section 32 of the Bill provides that the infrastructure regulations under section 27 are subject to the affirmative procedure.
156. The Committee also called on the Scottish Government to reconsider certain powers (listed at paragraphs 72(a) to (c) of its report) with a view to ensuring that they are framed more clearly and are no more than are necessary and proportionate. No amendments have been forthcoming to those powers.
157. The Committee considers that the consultation requirements inserted by amendments to section 32(4) of the Bill are insufficient to address the Committee's specific concerns and its more general concern about the wide powers in schedule 1 to make substantial policy in the infrastructure-levy regulations.
158. The Committee suggests that the Scottish Government considers again whether infrastructure-levy regulations under section 27 of the Bill should be subject to a super-affirmative procedure.

Schedule 2 – Minor and consequential amendments and repeals, Part 4 – Regulations, paragraph 10(2) of the Bill, inserting section 275(7BD) into the 1997 Act

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations made by SSI**
- **Parliamentary procedure: Affirmative procedure**
- **Revised or new power: Revised**

159. Paragraph 10(2) of schedule 2 of the Bill (minor and consequential amendments and repeals) inserts new subsection (7BD) into section 275 of the 1997 Act.
160. New section 275(7BD) of the 1997 Act applies the affirmative procedure to regulations made under the powers in "*sections [] and 251B(3)(a) and paragraph 3 of schedule 5A*" of the 1997 Act.

161. Reference (as it appeared in amendment 157) to section 3AB(2) changed to section “[]”. Amendment 157 was referencing provisions in amendment 116 which was not agreed to, therefore the reference is empty.
162. Furthermore, section 26 of the Bill was removed at Stage 2. The application of the affirmative procedure to regulations made by section 251B(3)(a) of the 1997 Act is therefore now redundant.
163. In light of the above, does the Scottish Government propose to amend paragraph 10(2) of schedule 2 of the Bill to remove reference in new section 275(7BD) of the 1997 Act to sections “[]” and 251B(3)(a)?

Annex B

Correspondence from the Scottish Government: Response dated 5 March 2019 to the Delegated Powers and Law Reform Committee's questions on the new and revised delegated powers provisions in the Planning (Scotland) Bill as amended at stage 2 (Committee's questions are in bold and the Government's response in numbered paragraphs)

164. Thank you for your letter of 20 February, addressed to James Hynd, Head of Cabinet, Parliament and Governance Division, seeking a written explanation of a number of issues relating to delegated powers in the amended Planning Bill. This has been passed to the Planning Bill team to reply. Responses to the Committee's questions are set out below.

Development planning

Section 1(6), inserting new section 3ZAA into the 1997 Act – Guidance in relation to “section 3A()”

Given that the guidance-making requirement is redundant, does the Scottish Government propose to amend the Bill to remove new section 3ZAA of the 1997 Act, inserted by section 1(6) of the Bill as amended at Stage 2?

Section 3(2)(ca), inserting new section 15(6) into the 1997 Act Cross-reference to regulations made under non-existent delegated power

Given that the cross-reference to “regulations made under section []” is redundant, does the Scottish Government propose to amend the Bill to remove new section 15(6) of the 1997 Act, inserted by section 3(2)(ca) of the Bill as amended at Stage 2?

165. I can confirm that the Scottish Government intends to bring forward amendments that would remove these redundant provisions.

Section 3(4), inserting new section 16A(1A)(b) and (10) into the 1997 Act – Evidence report for preparation of local development plan

New section 16A(10) of the 1997 Act, inserted by section 3(4) of the Bill as amended at Stage 2, provides that “Gypsies and Travellers” has the meaning specified in regulations made by the Scottish Ministers.

(a) Does the Scottish Government intend to keep this new power, and, if it does, does it intend to widen the scope of the power to include reference to other groups such as the Roma community?

166. The Scottish Government promoted the amendment that introduced section 16A(2A)(a)(i) of the 1997 Act, requiring the evidence report to include a statement on the steps taken to seek the views of Gypsies and Travellers, and the power in section 16A(10) to specify the meaning of the term “Gypsies and Travellers” in regulations. This was in response to specific evidence that more needs to be done to engage this group in the planning system. I can therefore confirm that is our intention to retain these provisions.

167. The definition of “Gypsies and Travellers” specified in regulations could potentially include the Roma community, subject to consultation with the community. However, the power only allows that term to be defined. We have no plans at present to add other groups to the requirement in section 16A(2A) of the 1997 Act. The Scottish Ministers may prescribe “other persons” whose views must be sought under section 16A(1A)(b), if this appears to be desirable.

(b) Please reconsider whether the affirmative procedure would provide a more appropriate level of scrutiny for a power to define a term that has not been defined in any detail on the face of the Bill or indeed at all in Scots law previously.

168. The Scottish Government considers that the negative procedure is appropriate for matters of detail such as a power to define terms. Terms relating to the community are already used in Scots law without definition, and are widely understood, but the power will allow regulations to clarify the boundaries of the term.

(c) Does the Scottish Government consider that it would be appropriate to amend the power to include a requirement to consult before the regulations under new section 16A(10) of the 1997 Act are made?

169. The Minister for Local Government, Housing and Planning confirmed in the debate on this amendment on 26 September 2018 that it is the Scottish Government’s intention to consult with the community on the definition. In terms of making this a statutory requirement, we thank the Committee for the suggestion and will consider whether to bring forward an amendment at stage 3.

Section 7(2), inserting new section 3CA(2A) into the 1997 Act – Amendment of National Planning Framework

Section 7(2) of the Bill, inserting section 3CA into the 1997 Act, has been amended at Stage 2 to include new subsection (2A).

In its Stage 1 report, the Committee called on the Scottish Government to amend the Bill to require that significant amendments to the National Planning Framework (“NPF”) resulting in a change to the overall policy become subject to specific public and parliamentary consultation requirements set out on the face of the Bill.

In the event that the Scottish Government were not willing to set the threshold on the face of the Bill, the Committee considered that the Scottish Government should apply the affirmative procedure to the scrutiny of regulations setting the scrutiny procedures. The Committee nevertheless considered this secondary option to be unsatisfactory as it should not be for Ministers in regulations to decide the form of parliamentary scrutiny that will apply to the NPF.

(a) Please explain why the definition of what are significant changes to the policies and proposals for the development and use of land of the most recent NPF are not set out on the face of the Bill.

(b) Please also reconsider whether the affirmative procedure would be more appropriate for the scrutiny of regulations made under new section 3CA(2A) of the 1997 Act insofar as those regulations determine what level of parliamentary scrutiny will apply to amendments to the NPF.

170. Section 3CA sets out that the Scottish Ministers may amend the National Planning Framework and may by regulations make further provision about the procedures for such amendments. Subsection (2A) added at stage 2 adds a requirement for the Scottish Ministers to make regulations that set out the circumstances in which they consider that an amendment would result in a significant change to the National Planning Framework to the extent that the full process for reviewing and revising the National Planning Framework should be followed.
171. The Scottish Government proposed amendment 116 at stage 2, which would have provided that all amendments to the National Planning Framework were subject to the full scrutiny procedures, except those specified or of a kind described in regulations. Those regulations were to be subject to the affirmative procedure. However, the Local Government and Communities Committee did not agree amendment 116, and preferred the amendment that inserted section 3CA(2A), with regulations subject to the negative procedure.
172. With regard to (a) above, we do not believe it is appropriate to set out the definition of significant changes to the NPF in primary legislation. A wide range of circumstances could arise in the future that may lead to significant changes to the policies and proposals in the NPF. These circumstances could change over time and may mean that regulations need to be adjusted in the future, for example where planning is required to respond to new types of developments or technologies that emerge over time and had not previously been anticipated.
173. With regard to (b), the Scottish Government agrees that it would be more appropriate for these regulations to be subject to the affirmative procedure, and we will bring forward an amendment accordingly.

Masterplan Consent Areas

Section 10(2), inserting new section 54CA into the 1997 Act – Masterplan consent area schemes may make provision for land value capture by compulsory purchase of land

(a) Is it sufficiently clear that new section 54CA of the 1997 Act permits compulsory purchases of land, or is it limited to voluntary purchases of land?

174. The Scottish Government's initial assessment is that this section (as it stands) does not permit compulsory purchase but operates only to regulate purchase of land by agreement.

(b) Assuming that the provision authorises a compulsory purchase of land under a Masterplan Consent Area Scheme, if it so provides, does it enable an adequate level of compensation to be paid in all circumstances in compliance with article 1 of protocol 1 of the European Convention on Human Rights (“A1P1”)?

175. As stated by the Minister for Local Government, Housing and Planning at Stage 2, we have concerns that the provision may not provide for adequate levels of compensation to be paid in all circumstances to comply with ECHR requirements.

(c) In principle, is compulsory purchase a proportionate means of achieving the policy objective of creating a land value capture mechanism under A1P1? Are there other less intrusive means of achieving the same objective?

176. Land value capture is a broad concept and there are a range of possible ways of achieving the same objective. The Infrastructure Levy provided for in Part 5 of the Bill is one mechanism, and the Scottish Government has asked the Scottish Land Commission to investigate options for effective land value capture in Scotland. The Commission are due to report on this issue by the end of March, following which we will consider what further action (including legislative changes) may be appropriate.

(d) In the Scottish Government's view, is a power to disapply, or apply with such modifications as the Scottish Ministers consider appropriate, any provisions of the Land Compensation (Scotland) Act 1963 a potentially wide power that would be better suited to being set out in full in primary legislation?

177. It has traditionally been the case that provisions related to the expropriation of private property rights have been set out in primary legislation to provide as full an opportunity as possible for Parliamentary scrutiny. While it is sometimes necessary for regulations to be able to disapply or modify the application of primary legislation, this does appear to be a particularly wide use of that approach.

(e) Powers of compulsory purchase are significant insofar as they relate to the rights of property holders. Would the Scottish Government intend to amend new section 54CA of the 1997 Act at Stage 3 to remove the regulation-making power? Would it instead set out details on the face of the Bill about the matters that are covered by the regulation-making power?

178. The Scottish Government is still considering its approach to this issue in advance of stage 3.

Section 10(3), inserting paragraph 6(1A) of schedule 5A into the 1997 Act - Duty to seek to make or alter a scheme when directed to do so

Paragraph 6(1) of schedule 5A of the 1997 Act, as inserted by section 10(3) of the Bill, confers power on the Scottish Ministers to direct a planning authority to make or alter a Masterplan Consent Area scheme.

New paragraph 6(1A), inserted by non-government amendment at Stage 2 of the Bill, requires that any such direction must be in writing and be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is given.

However, section 26B of the Bill, inserting new section 275B into the 1997 Act, now requires any direction made under the 1997 Act to be published and for reasons to be provided with the published direction. Accordingly, does the Scottish Government propose to amend the Bill at Stage 3 to remove that part of section 10(3) of the Bill that inserts paragraph 6(1A) of schedule 5A into the 1997 Act?

179. The Scottish Government is grateful to the Committee for highlighting this duplication, and we will bring forward an amendment to remove the relevant wording.

Culturally significant zones

Section 11A(4), inserting new section 56A into the 1997 Act – Designation of culturally significant zones; request to designate

Section 11A(4), inserting new section 56A(7) into the 1997 Act – Designation of culturally significant zones; discharge of functions and meaning of “culturally significant zone”

180. The Committee asks the Scottish Government to consider points in relation to Parliamentary procedure and consultation on regulations made under these powers.
181. The Scottish Government did not support the introduction of Culturally Significant Zones at stage 2, and is considering its approach to section 11A and related sections in advance of stage 3.

Section 11B(2), inserting new section 26(8) into the 1997 Act - Meaning of “development”: use of dwellinghouse for short term holiday let - guidance

Section 11B(2) amends section 26 of the 1997 Act (meaning of “development”) to provide that the use of a dwellinghouse for the purpose of providing short-term holiday lets involves a material change in the use of the building. New section 26(8) allows the Scottish Ministers to issue guidance on the interpretation of “providing short-term holiday lets.”

The interpretation of this important concept, which will involve various policy considerations, does not appear to be appropriate for guidance. For example, it is not clear what duration of let would amount to a “short-term” holiday let.

Does the Scottish Government agree that it would be more appropriate that the meaning of “providing short-term holiday lets” is set out on the face of the Bill, or in regulations subject to the affirmative procedure?

182. The Scottish Government agrees that the definition of “providing short term holiday lets” in this provision is critical. We are considering our approach to section 11B in advance of stage 3.

Section 12A(2), inserting new section 40A into the 1997 Act – Assessment of health effects

Section 12A of the Bill introduces new section 40A into the 1997 Act. It requires the Scottish Ministers to make provision in regulations about the consideration to be given to the likely health effects of a proposed national development or major development before planning permission can be granted.

The Supplementary DPM acknowledges that there are a potentially very wide range of considerations that may fall under the heading of health. Does the Scottish Government consider that it would be more appropriate that the scope of this power is further defined on the face of the Bill?

183. The Scottish Government did not support the amendment that inserted this provision into the Bill, on the basis that planning authorities are already required to consider health when determining a planning application where it is a material consideration. The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 also include requirements to consider significant environmental impacts on, among other things, population and human health. However, the Local Government and Communities Committee agreed the amendment. Given the range of issues that may be included under health effects,

the Scottish Government considers that it is helpful that this requirement is broadly drawn.

Section 14E, inserting new section 38(1A) into the 1997 Act – Consultation in connection with the determination of applications

New section 14E of the Bill, as amended at Stage 2, inserts section 38(1A) into the 1997 Act. This requires that regulations or a development order are to prescribe that, before determining an application for planning permission where the development involves any land on which there is a music venue, the planning authority must consult the Music Venues Trust (registered charity number 1159846).

(a) Would it be more appropriate that this requirement should include a power to prescribe the manner and timescales within which such consultation is to take place?

(b) Would it be appropriate to include a power to modify the identity of the Music Venues Trust to account for circumstances where that charity changes its name and to allow an equivalent body to be designated in the event the charity ceases to exist?

184. The Scottish Government is still considering its approach to this section in advance of Stage 3. However, all other requirements requiring planning authorities to consult particular bodies before determining an application for planning permission are set out in secondary legislation: regulation 25 and schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. This allows for the manner and timescales for consultations to be specified, and also allows for the bodies listed to be modified or replaced in case they change their name or cease to exist.

(c) Does the Scottish Government know whether the Music Venues Trust is content for there to be a requirement on a planning authority to consult it on an application for planning permission where the development involves any land on which there is a music venue?

185. We understand that the Music Venues Trust was not consulted prior to the amendment being lodged, and that the Trust has some concerns around the level of resources that would be required in order to fulfil the role.

Section 20B, inserting new section 77A into the 1997 Act – Withdrawal of planning permission granted by development order

(a) Given the significance of these provisions, does the Scottish Government agree that the affirmative procedure would be more appropriate to the scrutiny of regulations made under new section 77A of the 1997 Act?

(b) In light of the significance of these provisions, does the Scottish Government also agree that provision should be made on the face of the Bill to require that Ministers consult planning authorities and others who may be affected before making regulations under this power.

186. The Scottish Government thanks the Committee for these suggestions and will consider them in our preparations for stage 3.

Section 21(1A), inserting section 252(1)(aa) into the 1997 Act – Fees for planning applications etc.

Is the provision made in new section 252(1)(aa) necessary? What does it add to the provision made in existing section 252(1) of the 1997 Act?

187. The Minister for Local Government, Housing and Planning made clear during the debate on this provision that it is not necessary, and in fact the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 already provide for fees to be charged for site visits to monitor whether planning controls are being complied with. Nonetheless, the Local Government and Communities Committee voted to agree the amendment.

Section 26C, inserting new section 1A into the 1997 Act – Chief planning officers

Section 26C introduces section 1A into the 1997 Act. Section 1A(4) requires planning authorities to have regard to guidance issued by the Scottish Ministers on what constitutes appropriate qualifications and experience for the role of chief planning officer.

The Supplementary DPM states that consultation would be utilised in deciding whether there is a need for guidance. It identifies professional bodies (Royal Town Planning Institute Scotland), Heads of Planning Scotland, CoSLA and others as bodies that could be consulted.

There is no requirement on the face of the Bill to consult. Please consider whether it would be more appropriate for new section 1A of the 1997 Act to include a requirement to consult on the face of the Bill before guidance is made on appropriate qualifications and guidance, along the lines identified in the Supplementary DPM.

188. The Scottish Government does not agree that there should be a statutory requirement to consult on this guidance. In practice, we have already stated that consultation with key bodies in defining the qualifications and experience that would be appropriate for the role of the chief planning officer would be beneficial. This guidance would be relatively narrow and technical, and of very limited interest and relevance, other than to a small number of relevant professional bodies and local authorities. However, if the consultation requirement was drafted to specifically relate to only to those limited interested parties it may lack flexibility to accommodate any further relevant professional or representative organisations that may emerge over time. For this reason we consider that a statutory requirement for consultation would not be helpful.

Section 32(4) – Requirement to consult before making regulations under section 27

Section 32(4) of the Bill as amended at Stage 2 requires that before making infrastructure-levy regulations under section 27 of the Bill as enacted, the Scottish Ministers must consult any local authority that may be affected by the regulations and any other persons they consider appropriate.

In its Stage 1 Report on the delegated powers in the Bill, the Committee recommended that a form of super-affirmative procedure would be appropriate to guarantee a requirement to consult publicly and to ensure that the Parliament can control the exercise of the wide powers in schedule 1 to make infrastructure-levy

regulations. However, as was the case at Stage 1, section 32 of the Bill provides that the infrastructure regulations under section 27 are subject to the affirmative procedure.

The Committee also called on the Scottish Government to reconsider certain powers (listed at paragraphs 72(a) to (c) of its report) with a view to ensuring that they are framed more clearly and are no more than are necessary and proportionate. No amendments have been forthcoming to those powers.

The Committee considers that the consultation requirements inserted by amendments to section 32(4) of the Bill are insufficient to address the Committee's specific concerns and its more general concern about the wide powers in schedule 1 to make substantial policy in the infrastructure-levy regulations.

The Committee suggests that the Scottish Government considers again whether infrastructure-levy regulations under section 27 of the Bill should be subject to a super-affirmative procedure.

189. As indicated in response to the Committee's stage 1 report, the Scottish Government does not agree that super-affirmative procedure would be appropriate in this situation. In line with our comments in that response, an amendment to require consultation was brought forward at Stage 2, and this was agreed by the Local Government and Communities Committee. An amendment was lodged (by Andy Wightman MSP) to introduce a form of super-affirmative procedure, but following the debate on amendments to Part 5, this amendment was not moved.
190. In relation to the powers listed at paragraphs 72(a) to (c) of the Committee's report, again the Scottish Government maintains its view that the provisions included in the Bill as introduced are appropriate. We note that, despite the Committee's recommendation, no non-Government amendments were lodged on this point at stage 2.

Schedule 2 – Minor and consequential amendments and repeals, Part 4 – Regulations, paragraph 10(2) of the Bill, inserting section 275(7BD) into the 1997 Act

Paragraph 10(2) of schedule 2 of the Bill (minor and consequential amendments and repeals) inserts new subsection (7BD) into section 275 of the 1997 Act.

New section 275(7BD) of the 1997 Act applies the affirmative procedure to regulations made under the powers in “sections [] and 251B(3)(a) and paragraph 3 of schedule 5A” of the 1997 Act.

Reference (as it appeared in amendment 157) to section 3AB(2) changed to section “[]”. Amendment 157 was referencing provisions in amendment 116 which was not agreed to, therefore the reference is empty.

Furthermore, section 26 of the Bill was removed at Stage 2. The application of the affirmative procedure to regulations made by section 251B(3)(a) of the 1997 Act is therefore now redundant. In light of the above, does the Scottish Government propose to amend paragraph 10(2) of schedule 2 of the Bill to remove reference in new section 275(7BD) of the 1997 Act to sections “[]” and 251B(3)(a)?

191. The Scottish Government is aware of the issues highlighted and is considering the best manner in which to resolve them. It is not the Government's intention to leave empty or erroneous references.

