



The Scottish Parliament  
Pàrlamaid na h-Alba

## Local Government and Communities Committee

### Agenda

#### 26th Meeting, 2020 (Session 5)

#### Wednesday 28 October 2020

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Planning (Scotland) Act 2019 (Commencement No. 5 and Saving, Transitional and Consequential Provisions) Regulations 2020 (SSI 2020/294 (C.25).

3. **Period Products (Free Provision) (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).
4. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will consider its witnesses for Stage 1 of the Bill.
5. **Pre-Budget Scrutiny:** The Committee will consider a draft letter to the Scottish Government on Pre-Budget Scrutiny.

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The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk

LGC/S5/20/26/1

**Agenda item 4**

PRIVATE PAPER

LGC/S5/20/26/2  
(P)

**Agenda item 5**

PRIVATE PAPER

LGC/S5/20/26/3  
(P)

## Local Government and Communities Committee

26<sup>th</sup> Meeting, 2020 (Session 5), Wednesday 28 October 2020

### Subordinate Legislation

#### Overview of instrument

1. The following instrument, subject to negative procedure, is being considered at today's meeting:
  - Planning (Scotland) Act 2019 (Commencement No. 5 and Saving, Transitional and Consequential Provisions) Regulations 2020 (SSI 2020/294 (C.25))

#### Background

2. These Regulations bring sections 34 and 37 of the Planning (Scotland) Act 2019 ("the Act") into force on 18 November 2020 subject to the saving and transitional provision in regulation 3. Regulation 4 makes a consequential amendment to the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 following changes made to section 43(4) of the Town and Country Planning (Scotland) Act 1997 by section 37(3) of the Act.
3. Further detail and the policy objectives of the Regulations are set out in the policy note attached at **Annexe A**.
4. The instrument was laid before the parliament on 24 September 2020 and comes into force on 18 November 2020. It is subject to the negative procedure.
5. An electronic copy of the instrument is available at:  
<https://www.legislation.gov.uk/ssi/2020/294/contents/made>
6. No motion to annul this instrument has been lodged.

#### Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument [at its meeting on 6 October 2020](#) and [determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit](#).

#### Committee Consideration

8. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on (SSI 2020/294 (C.25)) is 16 November 2020.

#### Procedure

9. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
10. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
11. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
12. Each negative instrument appears on the Local Government and Communities Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
13. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## POLICY NOTE

**THE PLANNING (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 5 AND  
SAVING, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS)  
REGULATIONS 2020**

**SSI 2020/294 (C. 25)**

The above instrument was made in exercise of the powers conferred by sections 59 and 63(2) and (3) of the Planning (Scotland) Act 2019. The instrument is subject to negative procedure.

The instrument brings sections 34 and 37 of the Planning (Scotland) Act 2019 into force. Respectively, the effect of these provisions is to:

- Clarify the scope of planning obligations entered into section 75 of the Town and Country Planning (Scotland) Act 2019;
- Amend the procedures by which planning obligations may be modified or discharged under sections 75A and 75B of the Town and Country Planning (Scotland) Act 1997.

### **Policy Objectives**

Regulation 2(2)(a) brings into force section 34 of the Planning (Scotland) Act 2019 (“the 2019 Act”), which clarifies that planning obligations under section 75 of the Town and Country Planning (Scotland) Act 1997 Act (“the 1997 Act”) may comprise either (or both) obligations which restrict or regulate the development or use of land or which require financial payments, either of a specified amount or periodical sums.

Regulation 2(2)(b) brings into force section 37 of the 2019 Act, which amends the procedures for modifying or discharging planning obligations under sections 75A and 75B of the 1997 Act. The amendments made by section 37 of the 2019 Act are intended to provide planning authorities and developers with greater flexibility as to the modification or discharge of planning obligations previously entered into.

Regulation 3(1) provides that the amendments made by section 34 of the 2019 Act do not affect the validity of an existing planning obligation – i.e. a planning obligation entered into before the date of commencement specified in regulation 2(1). Regulation 3(2) provides that existing planning obligations (and not just those entered into after the date of commencement specified in regulation 2(1)) may be modified or discharged under the amended procedures.

Regulation 4 makes a consequential amendment to the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 following changes made to section 43(4) of the 1997 Act by section 37(3) of the 2019 Act.

## **Consultation**

As these regulations only bring into force provisions of the 2019 Act (and make saving, transition and consequential provision), no specific consultation has been carried out in relation to this instrument.

## **Impact Assessments**

As these regulations only bring into force provisions of the 2019 Act (and make saving, transition and consequential provision), no impact assessments have been carried out in relation to this instrument.

## **Financial Effects**

The Minister for Local Government, Housing and Planning confirms that no BRIA is necessary: these regulations bring into force two sections of the 2019 Act and make saving, transition and consequential provision. The instrument itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Directorate for Local Government and Communities  
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