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Graham Simpson
Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament
Edinburgh
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Dear Graham,

Thank you for the Committee's report on the Planning (Scotland) Bill at stage 2, published on 3 May 2019. I welcome the Committee's further consideration of the delegated powers contained in the Bill as amended at stage 2, and I am glad the Committee has welcomed the commitments which the Scottish Government has given to bring forward amendments on a number of points. I attach the Scottish Government's response to the Committee's remaining recommendations.

Yours aye,
Kevin

KEVIN STEWART



Delegated Powers and Law Reform Committee – Planning (Scotland) Bill at Stage 2 – Scottish Government Response

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

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

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.**

The Scottish Government maintains its view that the negative procedure is appropriate for matters of detail such as a power to define terms.

The Minister for Local Government, Housing and Planning has made clear that it is the Scottish Government's intention to consult with the community on the definition of "Gypsies and Travellers". Where legislation is to set out the boundaries of who is or is not included in the statutory definition of a community, it is essential that the members of the community are at the heart of those decisions. We therefore consider that, in this case, it is appropriate to include a statutory requirement for consultation before making regulations, and have lodged an amendment to this effect (amendment 96).

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

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.**

We note that Graham Simpson MSP has lodged an amendment to remove the provisions of section 10(2) of the Bill that insert section 54CA into the 1997 Act (amendment 112).

Culturally significant zones

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”

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.

The Scottish Government did not support the introduction of culturally significant zones at stage 2. Planning authorities can already set policies, through their development plans, in relation to areas or properties they want to see protected for their cultural significance. The stringent requirements associated with culturally significant zones would add process and cost and risk discouraging the mix of uses that are needed to create vibrant town centres. Accordingly the Scottish Government has lodged an amendment to remove the whole of part 11A from the Bill (amendment 127).

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

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.

The Scottish Government agrees that the definition of "providing short-term holiday lets" in this provision is critical, and that guidance is not a sufficient mechanism to provide such a definition. We note that Rachael Hamilton MSP has lodged amendments (amendments 157 and 159) to section 11B and schedule 2 of the Bill that would provide for the Scottish Ministers to make regulations, subject to affirmative procedure, on "what constitutes providing a short-term let for the purposes of this section", and Andy Wightman MSP has also lodged an amendment (amendment 156) to define short term lets on the face of the Bill. As these meet the recommendations of the Committee, the Scottish Government does not intend to lodge any amendments to this section of the Bill.

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

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.**

The Scottish Government understands that the Music Venue Trust was not consulted prior to this provision being inserted into the Bill, and that the Trust has some concerns about the level of resources that would be required in order to fulfil the role. There are also other relevant organisations that may feel they should have a role in this regard.

We welcome the Committee's recognition of the provisions in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the "2013 Regulations") to require planning authorities to consult particular bodies before determining applications for planning permission in specified circumstances. The Scottish Government has lodged an amendment (amendment 131) to remove section 14E from the Bill. We will consult on changes to the 2013 Regulations following the Bill, and will include in that consideration of whether there should be a requirement to consult specified organisations in relation to development proposals that affect music venues, and if so what organisation or organisations should be consulted.

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

Recommendation

- 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.**

The Scottish Government recognises that this regulation-making power is significant, in that it could affect A1P1 rights in terms of the compensation to be paid, and that it could apply or disapply provisions of primary legislation. Accordingly we have lodged an amendment (amendment 155) to provide that these regulations should be subject to the affirmative procedure.

The Scottish Government is committed to consulting openly on all proposals for legislation. We do not consider in this case that there is a need for this to be a statutory duty.

Other matters

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

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.**

The Scottish Government has lodged an amendment (amendment 147) to remove this unnecessary provision.

Final provisions

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

Recommendations

- 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.**

As noted in our letter of 5 March, the Local Government and Communities Committee had the opportunity at stage 2 to introduce a form of super-affirmative procedure for the infrastructure-levy regulations, and chose not to do so. The Scottish Government does not consider it would be appropriate to put such an amendment forward again at stage 3.

The Scottish Government has lodged an amendment to reduce the sunset period for the power to make infrastructure-levy regulations from 10 years to 7 (amendment 149). Having developed an indicative work programme we consider that this is a more realistic time frame than 5 years.

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