



THE PLANNING (SCOTLAND) ACT 2019

Report by Director Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to update the Committee with regard the reforms to the Planning System resulting from the Planning (Scotland) Act 2019.

2 BACKGROUND

- 2.1 In September 2015, an independent panel was appointed by Scottish Ministers to review the Scottish Planning System with the objective of bringing together ideas to achieve a quicker, more accessible and efficient planning system. The report of the panel “Empowering Planning to Deliver Great Places” was published 31 May 2016.
- 2.2 Scottish Ministers published their response to the report on 11 July 2016 which included a commitment to consult on a White Paper outlining proposed reforms to the Planning System with the ambition of enabling a Planning Bill to be brought forward late in 2017. At its meeting of 28 February 2017, the Committee approved a response to the White Paper on behalf of the Council.
- 2.3 The Planning (Scotland) Bill was introduced to the Scottish Parliament on 4 December 2017. The Planning Bill progressed through three stages of scrutiny and was approved by the Scottish Parliament on 20 June 2019. The Bill received Royal Assent on 25 July 2019 and thereafter becomes the Planning (Scotland) Act 2019, hereafter referred to as the 2019 Act. The 2019 Act amends the primary planning legislation, The Town and Country Planning (Scotland) Act 1997. The 2019 Act sets out the purpose of planning “to manage the development and use of land in the long term public interest”.
- 2.4 The 2019 Act sets out the principal changes to the Planning System and has taken effect immediately. However, the Scottish Government needs to draft secondary legislation/regulations to implement the changes and to set out transitional arrangements. The Scottish Government’s Chief Planner has advised that:
- the programme of secondary legislation/regulations is expected to take approximately 2 years;

- a work programme setting out the timing and priorities is expected to be published in September 2019; and
- interim guidance on transitional arrangements, particularly for development planning, is to be published “in the coming weeks”.

2.5 The Chief Planner has also confirmed that work is progressing on establishing the Scottish Government’s approach to National Planning Framework 4 - more information will be published by the Scottish Government “later in the summer”.

3 SUMMARY OF PROPOSED CHANGES

3.1 A summary of the main changes proposed by the 2019 Act are attached as Appendix A. The main headline changes are as follows:

1. The introduction of a statutory link between development and community planning with communities having the opportunity to draft their own ‘local place plan’ which will form part of the development plan.
2. The removal of strategic development plans (and strategic development planning authorities such as SESplan) and the introduction of regional partnerships to prepare regional spatial strategies.
3. Regional priorities and housing numbers to be set by the Scottish Government at a national level through the National Planning Framework (NPF). The NPF will form part of the development plan.
4. Introduction of an Infrastructure Levy to supplement/amend the existing Planning Obligations developer contributions process.
5. Local Development Plan to be adopted every 10 years rather than 5, but with scope to amend sections of the plan as circumstances change.
6. The replacement of the Main Issues Report with an Evidence Report which will be subject to a ‘gatecheck’ by a Scottish Government Reporter.
7. The introduction of ‘Masterplan Consent Areas’ (MCAs), replacing previous Simplified Planning Zone provisions.
8. Increased financial penalties for breaches in planning control.
9. More decisions to be made locally – with an increased remit for the Local Review Body.
10. New requirements for Councils to produce annual performance reports and the appointment of national planning performance co-ordinator to monitor performance.
11. Requirement for Elected Members to undergo training before being able to vote on planning decisions.
12. A requirement for Councils to identify/appoint a ‘Chief Planning Officer’.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee:
- i) note the contents of the report; and
 - ii) receive further reports on changes to the Planning System when secondary legislation/regulations are published by the Scottish Government.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 16 August 2019
Contact Person: Colin Davidson, Planning Officer
Tel No: 0131 271 3470

Background Papers: The Planning Act 2019

THE PLANNING ACT 2019 MAIN ISSUES/CHANGES:

Development Plans

National Planning Framework

- The National Planning Framework (NPF) will form part of the Development Plan and therefore decisions on planning applications will have to be made in accordance with it, and Local Development Plans (LDP) will have to be consistent with it. Previously, the NPF and Scottish Planning Policy (SPP) have been given significant weight as a material consideration in the determination of planning applications, the change elevates the status of the NPF.
- The NPF, prepared by Scottish Government, will set housing targets. These have previously been prepared regionally as part of the Strategic Development Plan. The NPF will have regard to any adopted Regional Spatial Strategies.
- It is the Scottish Government's intention that the NPF will incorporate Scottish Planning Policy (SPP).
- The Scottish Government will direct planning authorities to collate and provide information to help in the preparation of the NPF.
- The NPF is to be published on a ten year cycle.

Strategic Development Plan

- The 2019 Act removes the requirement to prepare Strategic Development Plans – in effect abolishing them. The section of the 1997 Act giving Scottish Ministers powers to designate Strategic Development Planning Authorities is repealed, although this does not prevent neighbouring planning authorities from co-operating in the interim, until the new pattern of Regional Spatial Strategies (see below) is determined.
- Provisions are introduced to prepare Regional Spatial Strategies. A Regional Spatial Strategy must identify the proposed locations for strategic development (defined as development which is likely to have a significant impact on future development within more than one planning authority). Scottish Ministers may direct an authority to prepare such a strategy on their own, or work jointly with other authorities.
- A Regional Spatial Strategy is not a development plan, and on the important issue of housing land the overall targets are to be set in the NPF. The NPF and LDPs have to take account of the Regional Spatial Strategy, however its role is presently not clear.

Local Development Plans (LDPs)

- Plans may be prepared at intervals not exceeding ten years, rather than every 5 years as at present. A planning authority may at any time amend an LDP for their district – although given the 10 year cycle of NPF and its new role as part of the development plan there may be limited reasons for a planning authority to review their plans more frequently. The reasoning

for this was set out in the previous White Paper: to give more time for implementation and to allow for greater consideration of the plans effectiveness before starting on a new one.

- The 2019 Act is more prescriptive about the form and content of LDPs. Matters to be taken into account include the health needs of population, their housing needs (including for older/disabled people and those in education, and land for development of renewable energy. LDPs are required to set out the authority's policies and proposals on the provision of public conveniences and water refill locations.
- In order to bring about a closer alignment between land use planning and community planning, LDPs are to take into account Local Outcomes Improvement Plans (within the meaning of Community Empowerment Act 2015), prepared by the Community Planning Partnership.
- The requirement to prepare a Main Issues Report (MIR) is replaced by the provision to prepare an Evidence Report (EvR). An EvR is to set out an authority's view on prescribed matters including specific reference to actions taken to meet the needs of older and disabled people and support the needs of gypsies and travellers. In preparing an EvR the planning authority must also assess the sufficiency of opportunities for play.
- An EvR is to contain information on steps taken to involve the public in the development plan process and to what extent views have been taken into account.
- An EvR is subject to a 'gatecheck' procedure - Scottish Ministers are to appoint a person to assess whether the report contains sufficient information to enable the planning authority to prepare a LDP. If the appointed person is not satisfied then an assessment report is to be prepared with recommendations for improving the evidence report. This does not replace the need for examination of the plan itself, but through early consideration of the evidence base for the plan the potential for failure at later stages is reduced.
- There is more scope to make modifications to the Proposed Plan in response to representations received. The procedure introduced in 2006 made it difficult to modify the plan; requiring either delay while a new proposed plan was written or for the authority to proceed with an unmodified plan, which could be unnecessarily adversarial approach.

Supplementary Guidance

- Provisions relating to supplementary guidance are repealed, so that it will no longer be possible to prepare SG that forms part of the development plan.
- Continuing scope to prepare non-statutory planning guidance which would be a material consideration in determining a planning application.

Local Place Plans

- A Local Place Plan (LPP) is a proposal as to the development or use of land. A community council or community controlled body (as defined in

Community Empowerment Scotland Act 2015) may prepare an LPP. In preparing a LPP a community body must have regard to the LDP for the area, the NPF and any other requirements to be prescribed by Scottish Ministers.

- Before preparing an LDP, the planning authority are to publish an invitation to local communities to prepare Local Place Plans, including information on the manner and date by which they are to be prepared and the assistance available to local communities to prepare them. When preparing an LDP planning authorities are to take into account any registered LPP for the area to which the LDP relates.

Delivery Programmes

- The 2006 Act introduced a requirement to prepare Action Programmes within 3 months of adopting a LDP, with reviews every 2 years: these programmes set out actions required to deliver the plan and identify the parties responsible for each action. They are to be renamed Delivery Programmes.
- To help ensure greater commitment and involvement across local authorities, it becomes the duty of the head of the Council's paid service (the Chief Executive) to prepare the Action Programme.

Engaging with the community

- The 2019 Act introduces new requirements to engage with children and young people (including schoolchildren, youth councillors and MSYPs), disabled people, and gypsies and travellers.

Examination and adoption.

- The appointed person examining the plan may issue notice to prepare another proposed LDP where that person considers that insufficient housing land is provided.
- The period where the proposed plan is on deposit and is subject to representations is extended from 6 to 12 weeks.

Other matters related to Development Plans

- There will be a duty on planning authorities to maintain and publish a list of persons who have registered an interest with the authority setting out their intention of acquiring land within an authority's area for self-build housing.
- Development Plan Schemes will be subject to consultation and have regard to views expressed about the participation statement.
- Planning authorities are required to prepare and publish an open space strategy setting out; development proposals, maintenance and use of green infrastructure within a district and an audit of existing provision and assessment of current/ future needs.
- There is a requirement to produce a forestry and woodland strategy identifying woodlands of high nature conservation value and setting out

policies with regard to their development, protection and enhancement, resilience to climate change, and expansion.

Masterplan Consent Areas

- Provision made for making and altering Masterplan Consent Area (MCA) Schemes, replaces previous provisions in respect of Simplified Planning Zones.
- A MCA scheme acts as a grant of authorisation for development that is specified in the scheme. Any proposed development that falls within the definitions specified in the scheme does not require an application for planning permission. Authorisation (i.e. planning permission) is granted subject to any limitations or conditions specified in the scheme. An MCA scheme may also confirm authorisation in respect of Roads Construction Consent, Listed Building Consent and Conservation Area works.
- Scottish Ministers have the power to intervene and direct the implementation of a MCA.

Development Management/Planning Applications

Councillor Training

- The 2019 Act introduces new provisions so that an elected member of a planning authority who has not fulfilled training requirements (to be specified by Scottish Ministers under regulations) is prohibited from exercising functions on the authorities Planning Committee or other body (such as the Local Review Body).

Short-term lets – new powers

- The 2019 Act introduces short-term let control areas, where a planning authority may designate an area where the use of a dwellinghouse for the purpose of providing short term lets will require a planning application. This change reflects concerns regarding 'Airbnb' type uses.

Noisy and noise sensitive development

- New development near a noise generating source can give rise to problems for the established noisy use (this might lead to action being taken under Environmental Health legislation). The 2019 Act seeks to ensure that more up-front consideration is given to the consequences of approving noise sensitive development in such locations.
- When considering whether to grant noise sensitive development the planning authority must consider whether the development includes sufficient measures to mitigate noise from cultural venues, live music venues or businesses.

Enforcement

- Planning authorities are required under existing legislation to have an Enforcement Charter setting out; its enforcement policies, guidance on reporting breaches of planning control and procedures for complaints. There is a new requirement for the Enforcement Charter to contain a statement regarding the monitoring of major applications ensuring compliance with planning conditions.
- Provision is made to increase the scale of fines for breaches of planning control.
- The courts are required to consider any benefit accrued from a breach of planning control when setting a fine.
- Provision is made for 'charging orders' to recoup costs incurred in respect of entering land and remedying breaches of planning control.

Fees

- Changes in the fees regulations to enable local authorities to exempt certain types of development from the need to pay a planning application fee or to seek a reduced rate.

Changes to scheme of delegation

- Changes to scheme of delegation to ensure that certain applications, such as Certificates of Lawful Use are delegated.
- Expansion in the remit of the Local Review Body.

Other development management matters

- A requirement to notify Councillors, Members of the Scottish Parliament, and Members of Parliament of major applications.
- Requirement to ensure minimum provision of public toilets within certain specified large developments.
- Clarification to be provided regarding procedures on the duration of planning applications.
- A requirement to publicise planning agreements (Section 75 Agreements).
- New notification requirements for Listed Building Consent applications are introduced by the 2019 Act, with the effect of making amendments to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Infrastructure Levy

- The 2019 Act allows Scottish Ministers to establish an infrastructure levy. This is a part of the legislation where much of the detail is still unclear, and will require to be set out in regulations, including guidance on how we are to discharge this function and how the levy income is to be spent.
- It is understood that it is hard to define and secure developer contributions for provision of infrastructure/services which benefit development across a

wide area. The infrastructure levy is intended to bridge this gap by capturing a proportion of land uplift value for the benefit of the community.

- The levy would sit alongside the present legal agreement process under Section 75 of the 1997 Act. Regulations may make provision to grant relief from liability to pay the levy where a planning obligation has been entered into, or the planning authority considers that the levy would represent duplication of contribution.
- Funds raised by the Levy would be payable to a local authority, in respect of development within the authority's area.
- Income used to fund infrastructure projects: defined as communications, transport, drainage, sewerage, flood defence, energy and water supply, green and blue infrastructure, educational and medical facilities and other places for recreation.

Other Matters

- Councils must designate a Chief Planning Officer. The Scottish Government will issue regulations on the appropriate qualifications and experience for a Chief Planning Officer.
- The 2019 Act allows Ministers to introduce measures to promote the use of mediation in respect of preparation of LDPs, pre-application consultation, and planning applications.
- There is a requirement on Councils to produce an annual report at end of financial year on the performance of planning functions. The Council already produces an annual Planning Performance Framework report, which this change puts on a statutory footing.
- A National Planning Improvement Co-ordinator role is to be created, to monitor the performance of planning authorities and provide advice as appropriate.