POLICY NOTE

THE TOWN AND COUNTRY PLANNING (AMENDMENT OF NATIONAL PLANNING FRAMEWORK) (SCOTLAND) REGULATIONS 2024

SSI 2024/XXX

The above instrument is to be made in exercise of the powers conferred by section 3CC(3) and (4) of the Town and Country Planning (Scotland) Act 1997(**a**), section 59 of the Planning (Scotland) Act 2019 and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

The instrument provides detailed provisions relating to the process for making amendments to the National Planning Framework under section 3CC of the Town and Country (Scotland) Act 1997 ("the Act") as amended.

Policy Objectives

The purpose of this instrument is to set out further detailed provisions around procedures for amending the National Planning Framework, following on from the commencement in full of various provisions in the Planning (Scotland) Act 2019 ("the 2019 Act"), which amended the provisions of the Town and Country Planning (Scotland) Act 1997 ("the Act") relating to amendment of the National Planning Framework.

The National Planning Framework (NPF) and the Local Development Plan (LDP) for each planning authority compromise the 'development plan'. The NPF is a long-term plan for Scotland, that sets out the Scottish Ministers' policies and proposals for the development and use of land. It guides spatial development, sets out national planning policies, designates national developments and highlights regional spatial priorities. The current NPF, NPF4 which looks to Scotland in 2045, was adopted by Scottish Ministers in February 2023 following approval by the Scottish Parliament.

Decisions on planning applications are legally required to be made in accordance with the 'development plan' unless there are material considerations that indicate otherwise. The 1997 Act, as amended by the 2019 Act, sets out the procedures for preparing the NPF.

It also allows for the NPF to be amended, and for regulations to provide more detail about the amendment process and that is the purpose of this instrument.

Amendments to the National Planning Framework

The Amendment of National Planning Framework (Scotland) Regulations 2024 ("the regulations") form part of the Scottish Government's wider work on planning reform and implementation of the Planning (Scotland) Act 2019 (the 2019 Act), which made changes to the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).

The regulations are laid and made alongside The Town and Country Planning (Amendment of Local Development Plan) (Scotland) Regulations 2024.

Citation and commencement

Regulation 1 of the regulations sets out details of citation and commencement.

Interpretation

Regulation 2 of the regulations defines "the Act" and "key agencies" to aide in the interpretation of these regulations,

Amendment of the National Planning Framework: Considerations

Regulation 3(1) of the Regulations sets out a series of relevant policies and strategies that Scottish Ministers must have regard to, where relevant, when considering an amendment proposal to the NPF. The purpose of this is to align the considerations with those set out in section 3AB(3)(a) of the Act, which stipulates the issues that Ministers must consider when carrying out a full review of the NPF.

Regulation 3(2) also aligns with sections 3AB(3)(b) of the Act and sets out further issues, alongside specific requirements in relation to national developments, that Scottish Ministers must take account of when considering an amendment proposal to the NPF.

Publication and consultation

Regulation 4(1) and 4(2) of the Regulations sets out the publication procedure and information requirements that must be followed when the Scottish Ministers are proposing an amendment to the NPF. This includes the specific publication and notification requirements, alongside the information that any proposed amendment must be accompanied by. Regulation 4(2) sets out the information that must be included in the statement accompanying any proposed amendment, including a description of the purpose of the proposed amendments.

Regulation 4(3) and (4) sets out the minimum period of consultation which must be adhered to for representations to be made, and requires that Scottish Ministers must have to regard to all representations made within the relevant period, using these to formulate any final proposed amendment.

Adoption of amendments

Regulation 5(1) and (2) sets out the requirements for adoption that Scottish Ministers must follow in order to fully adopt any proposed amendments, including the laying requirements for the Scottish Parliament, including a requirement for an explanatory document to be laid alongside the proposed amendment, and that amendments could not be adopted before they have been approved by a resolution of the Scottish Parliament.

Publication of National Planning Framework as amended

Regulation 6(1) relates to the publication requirements of any amendment following adoption by the Scottish Ministers, while Regulation 6(2) sets out when the amendments take effect.

Regulation 6(3) sets out the effect an amendment has for the purposes of section 24(3) of the Act, in respect of when the provision that is amended would prevail over an earlier provision of a local development plan with which the amended provisions is incompatible.

Review of National Planning Framework: circumstances

Regulation 7 sets out the circumstances in which the Scottish Ministers consider that an amendment to the NPF would result in a significant change such that would require a review of the NPF.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

A public consultation on proposals for regulations to set forth the amendment procedure for both the NPF and LDPs ran from 28 February 2024 – 22 May 2024. It included specific questions about the various proposals for forthcoming regulations and was split into two sections. The first section covered the proposed content of regulations on procedures to amend the NPF, while the second section covered the proposed content of regulations to amend LDP.

In total, 50 responses were received from planning authorities, key agencies and agents, representatives from the development, property and land management sector, the third sector and professional and representative bodies, as well as communities and individuals. A summary of responses report has been published, providing an analysis of the responses, both in terms of the main themes emerging and the detailed comments. It includes a full list of those who responded and who agreed to the release of their details.

Respondents were generally supportive of the proposed regulations. There was general agreement with the proportionate nature of the proposed regulations, and the intention of creating a more responsive and streamlined version of the full review process.

The Scottish Government has not included all the suggestions put forward in the responses in the regulations. It was considered some of the matters are better covered in guidance, rather

than regulations. While maintaining a proportionate approach to regulations, associated guidance can provide a clear information as to the policy intention whilst still allowing scope to build on good practice as it emerges.

Impact Assessments

The consultation paper contained consideration of the following impact assessments or relevant screening for them; Equalities Impact Assessment (EQIA), Child Rights and Wellbeing Impact Assessment (CRWIA), Fairer Scotland Duty (FSD), Islands Communities Impact Assessment (ICIA), Partial Business and Regulatory Impact Assessment (BRIA), Strategic Environmental Assessment (SEA) and a Data Protection Impact Assessment (DPIA).

Outputs from the Assessments

The screening for both an Equality Impact Assessment (EQIA) and Child Rights and Wellbeing Impact Assessment (CRWIA) both recognised that people wished to be engaged in the planning of their areas, however established that improved participation and engagement is an important part of the wider package of planning reform, rather than being specific to these regulations.

The screening for the EQIA outlined the work previously undertaken to support the Planning (Scotland) Bill (which introduced changes to the planning system, including making the National Planning Framework a part of the statutory development plan), and considered if any further considerations were required for these regulations. Given the range of benefits identified and risks mitigated within that work, it was considered that a further EQIA is not required for these regulations.

Similarly, a CRWIA was previously undertaken to support the Planning (Scotland) Bill and within the range of impact assessments conducted to inform the drafting of NPF4, and gave consideration to the impact on children's rights, summarising the potential for positive impact. The CRWIA for these regulations concluded that, as the proposed regulations to amend the NPF are technical procedural regulations, it is considered that the provisions of the Regulations would be compatible with the UNCRC requirements and this will not directly impact children and young people.

Copies of the screening document for the EQIA and the completed CRWIA accompany this policy note.

The Scottish Government screened out the requirement to undertake a Fairer Scotland Duty Assessment. The Fairer Scotland Duty applies to 'decisions of a strategic nature' – these are the key, high-level choices or plans that the Scottish Government makes. Having considered the Fairer Scotland Duty Interim Guidance, and the existing FSDs completed to support the Planning (Scotland) Act 2019 and in the drafting process for NPF4, it was concluded that these regulations do not constitute a strategic decision and therefore an assessment is not required. The Screening Assessment is available online.

Requirements under the Environmental Assessment (Scotland) Act 2005 have been met, via a pre-screening notification, which can be viewed on the Strategic Environmental Assessment Database.

In relation to impacts on island communities, the Scottish Government has not undertaken a further Island Communities Impact Assessment (ICIA). Previous consultation and engagement on the Planning Bill included an island proofing exercise and informed the ICIA which accompanied the bill and which was updated following Stage 2 of the Planning (Scotland) Bill. Additionally, Integrated Impact Assessments were undertaken in the preparation and development of NPF4, providing the evidence base for societal impacts, including potential impacts on island communities. We consider that the implementation of amendment regulations for NPF are technical and procedural in nature, and therefore will not have a significantly different effect on island communities. As such, we believe that any impacts are adequately addressed through previous ICIAs and do not believe that a full ICIA is required for these regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The responses to the consultation on these amendment proposals, which included the Scottish Governments partial BRIA, highlighted some concerns about resourcing within the planning system, possible subsequent impacts on planning authorities and implications on businesses who engage with the planning system. However, no further information to assist with quantitative costing of the proposal was provided and responses were generally supportive of the approach taken by the Scottish Government in relation to the partial BRIA.

The BRIA considers that the majority of costs of amending the NPF will fall on the Scottish Government and the cost will vary depending on the scale and nature of any amendment(s) being considered. This is considered to be a lower cost than would be anticipated for a full review of the NPF, and associated time and resourcing impacts on planning authorities and stakeholders engaging the with the process would be similarly affected.

While it is difficult to gauge with certainty the overall financial effects of the regulations within the information available, proportionality has been an important consideration in the finalisation of the regulations. These regulations will provide clarity on the procedure to amend any part of the development plan, whilst ensuring relevant sectors and interested parties are consulted as part of any proposed amendments. Clarity has previously been identified as a priority by business representative bodies during a focused period of engagement which informed this stage of the wider planning reform.

Scottish Government
Directorate for Local Government and Housing
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