POLICY NOTE

THE TOWN AND COUNTRY PLANNING (AMENDMENT OF LOCAL DEVELOPMENT PLAN) (SCOTLAND) REGULATIONS 2024

SSI 2024/250

The above instrument was made in exercise of the powers conferred by sections 20AA(4)(b) and (5) and 275 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 negative procedure.

The instrument provides detailed provisions relating to the process for making amendments to Local Development Plans under sections 20AA (4)(b) and (5) and 275 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 Local Development Plans, supporting 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 National Planning Framework and Local Development Plans.

The National Planning Framework (NPF) and the Local Development Plan (LDP) for each planning authority compromise the 'development plan'. 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 Act, as amended by the 2019 Act, together with The Town and Country Planning (Development Planning) (Scotland) Regulations 2023 set out the procedures for preparing a LDP.

The Act also allows for a LDP to be amended, and for regulations to provide more detail about the amendment process and that is the purpose of this instrument.

Amendments to Local Development Plans

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

The regulations are laid and made alongside The Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 and The Planning (Scotland) Act 2019 (Commencement No. 14) Regulations 2024, and all are due to come into force on 05 December 2024.

PART 1 Introductory

Citation commencement and interpretation

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

Regulation 1(2) defines “the 2023 Regulations”, “the Act”, “the period of representations” and “local development plan area” to aide interpretation of the regulations.

PART 2

Information and considerations

Regulation 2(1-2) sets out information and considerations to which the planning authority are to have regard to in preparing an amendment to a local development plan. This includes an extensive list within Regulation 2(2)(a)-(h) which specifies information and considerations which a planning authority are to have regard to when preparing amendments to the local development plan.

Regulation 2(3) relates to interpretation for terms used in this regulation .

Effective community engagement: guidance

Regulation 3 applies section 16C of the Act with modifications to the preparation of amendments so as to provide that the Scottish Ministers may issue guidance about undertaking effective community engagement in relation to proposed amendments to a local development plan.

Regulation 3(1) relates to effective community engagement and clarifies that Section 16C of the Act applies to proposed amendments to a local development plan, subject to modifications.

Regulation 3(2) specifies what those modifications are with relation to the various parts of Section 16C of the Act.

Consultation on draft proposed amendments to the local development plan

Regulation 4(1) sets out the steps a planning authority must take if proposing an amendment to its local development plan, with regards to publication and notification requirements. This includes regulation 4(1)(c) which specifies that a notice containing that information must be sent to the Scottish Ministers, the key agencies, any planning authority which adjoins the local development plan area and every community council whose area is within the local development plan area.

Regulation 4(2) specifies what information should be contained within the statement that accompanies a proposed amendment, including the description, purpose and instructions on how and by when representations can be made regarding the proposed amendment.

Regulation 4(3) defines the period for representations and provides that this must be a minimum 6 week period..

Notification of publication of draft proposed amendments

Regulation 5 sets out the requirements with regards to notification the planning authority are to give to the owner, lessee or occupier of any premises of a site, when the proposal includes development relating to a specific site, where if implemented is likely to have a significant effect on the use or amenity of that site or of neighbouring land. It sets out the notice to be given, alongside the definition of "neighbouring land".

Modification of proposed amendments and submission to the Scottish Ministers

Regulation 6 provides for modification of the proposed amendments and submission of the proposed amendments to the Scottish Ministers along with, where modifications have been made, a modifications report setting out the changes and the reasons for making them.

Regulation 6(1) and 6(2) provides for how the proposed amendments mayo be modified by a planning authority following the period of representation to take account of representations, responses to consultation or minor drafting or technical changes.

Regulation 6(3) sets out the process which a planning authority must follow should they wish to proceed to amend their local development plan. This sets out the requirements to submit the proposed amendments to the Scottish Ministers and to give notice of this. It also sets out information this notice must contain, the requirements to publish any final proposed amendment alongside a modification report, and publication and notification requirements for this.

Regulation 6(4) defines "modifications report" to aid in the interpretation of the regulation.

PART 3 Examinations

Examination of amendments

Regulation 7(1) and (2) applies section 19 (**a**) of the Act with modifications in respect of the examination of proposed amendments to the local development plan.

Regulation 7(3) prescribes four grounds on which a planning authority may decline to make modifications to proposed amendments to a local development plan as recommended in an examination report. These grounds include where the modification, if made, would not be consistent with the National Planning Framework or the National Park Plan or would not be compatible with the requirements of Part IVA of the Conservation (Natural Habitats, &c.) Regulations 1994. The final ground is where the modification is based on conclusions that could not reasonably have been reached based on the evidence considered in the course of the examination.

Examinations: procedure

Regulation 8(1) applies the provision of the Town and Country (Development Planning) (Scotland) Regulations 2023 with modifications to the procedure for examinations of proposed amendments to the local development plan,

Regulation 8(2) states the modifications which this is subject to, including that references to a proposed local development plan and to the proposed plan are to be treated as references to the final proposed amendments and where there are to be omissions from requirements in the 2023 Regulations.

PART 4 Adoption of amendments

Adoption of amendments

Regulation 9 provides that amendments to the local development plan take effect on their adoption by the planning authority and contains provisions regulating adoption of amendments in line the those contained in section 20 of the Act in respect of the adoption of the local development plan itself.

Regulation 9(3) sets out the publication requirements for the adopted amendment. Regulation 9(4) provides that where a provision of a local development plan is amended under section 20AA of the Act, the date of that provision for the purposes of section 24(3) the Act to ascertain whether it prevails over an earlier but incompatible provision of the National Planning Framework is date on which the amendment of the provision takes effect.

Publication of amendment of local development plan

Regulation 10 sets out the manner of the publication of the amendment of the local development plan following adoption of any proposed amendments. This procedure is to be similar to that for publication of a local development plan, and Regulation 10 applies section 20A of the Act subject to some modifications, to provide for publication of amendments and the local development plan as amended and information about modifications made or which were recommended by the examination report but not made. This includes the manner of publication, the requirements to publicise in a local newspaper and make the recommended-modification statement available.

Amendment of the Town and Country Planning (Development Planning) (Scotland) Regulations 2023

Regulation 11 (1-2) corrects a cross-reference in Regulation 25 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2023(**1**) in fulfilment of an undertaking given to Parliament. Regulation 25 should refer to section 4ZA(3)(b)(ii) instead of section 4ZA(3)(b)(iii).

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 Local Development Plan) (Scotland)

(**1**) S.S.I. 2023/101.

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 proposed content of regulations to amend LDPs.

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).

<u>Outputs from the Assessments</u>

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 each 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 previously undertaken to support the Planning (Scotland) Bill which addressed the impact on children's rights, summarising the potential for positive impact. Impact assessments were also carried out when considering the impacts of the development planning regulations which came into force in May 2023, which set out the procedures for a full review of a LDP. No negative impact was found for any area of rights or any group of children and young people. The CRWIA for these regulations concluded that, as the proposed regulations to amend a LDP are technical procedural regulations, they 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, 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 when considering the impacts of the development planning regulations which came into force in May 2023, which set out the procedures for a full review of a LDP. This provided the evidence base for societal impacts, including potential impacts on island communities. We consider that the implementation of amendment regulations for LDPs 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 Government's 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 an LDP will fall on planning authorities 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 their LDP, and associated time and resourcing impacts on the Scottish Government, 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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