POLICY NOTE

THE TOWN AND COUNTRY PLANNING (MASTERPLAN CONSENT AREA) (SCOTLAND) REGULATIONS 2024

SSI 2024/253

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 36 and 54A of, and paragraphs 1(3), 8(1)(a) and (2), 9(2), 11(1), 19 and 22 of schedule 5A of the Town and Country Planning (Scotland) Act 1997[1] and all other powers enabling them to do so.

The instrument is subject to negative procedure.

The instrument provides detailed provisions relating to the preparation of Masterplan Consent Area Schemes under Part 3 of the Town and Country (Scotland) Act 1997 ("the Act"), as amended.

Policy Objectives

1. The Planning (Scotland) 2019 Act[2] ("the 2019 Act") which made changes to the Town and Country Planning (Scotland) Act 1997[3], as amended ("the Act"), introduces Masterplan Consent Areas (MCAs) as a new upfront consenting mechanism for development proposals. Part 2 of the 2019 Act (Section 15) covers MCAs, it will be commenced in full by The Planning (Scotland) Act 2019 (Commencement No. 14) Regulations 2024. Section 15 of the 2019 Act amends the 1997 Act to insert new sections 54A-F and new schedule 5A, which relate to MCAs.

2. MCAs are similar to Simplified Planning Zones (SPZs), provided for in sections 49 to 54 and schedule 5 of the 1997 Act (as amended), but refreshed and rebranded with expanded powers. MCAs will be broader in scope, being able to give other types of authorisations than just planning permission, and the procedures for preparing a scheme have been modernised.

3. The 1997 Act provides that planning authorities will be able to prepare a MCA 'Scheme' setting out the detail of what they are giving consent for, through the MCA scheme. MCA schemes can give several types of consent, including planning permission, plus roads construction consent, listed building consent and conservation area consent – where provided for in the particular MCA scheme. The MCA scheme can include conditions, limitations and exceptions which may cover aspects such as development parameters, design and environmental matters.

4. Within adopted MCA areas, development could be brought forward without the need for an application as long as it is in line with the agreed scheme.

5. New section 54A introduces new schedule 5A which provides more detail on the process for making and altering MCA schemes and gives the Scottish Ministers powers in

[1] Sections 54A to 54F and schedule 5A were inserted by section 15 of the Planning (Scotland) Act 2019 (asp 13).
[2] https://www.legislation.gov.uk/asp/2019/13/contents
[3] https://www.legislation.gov.uk/ukpga/1997/8/contents

connection with such schemes, including regulation making powers to allow the Scottish Ministers to provide further detailed requirements, and direction making powers.

6. While MCAs will not be part of the development plan, they will be a delivery mechanism which can support the spatial strategy and policies and proposals in the development plan.

7. Section 16 of the 2019 Act amends the 1997 Act to provide for a bar to creation of new simplified planning zones (SPZs). This part of the Act was commenced by The Planning (Scotland) Act 2019 (Commencement No. 13 and Saving Provisions) Regulations 2024[4] came into force on 1 April 2024 and signalled the move towards MCAs rather than SPZs.

The Masterplan Consent Areas Regulations

8. The Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 ("the Regulations") form part of wider work on planning reform and implementation of the 2019 Act. The Regulations provide additional procedural detail around the requirements set out in the 2019 Act for preparing MCA schemes across Scotland. The Regulations provide an aligned approach for the different consents that can be authorised in a MCA scheme.

9. The Regulations are laid and made alongside The Planning (Scotland) Act 2019 (Commencement No. 14) Regulations 2024 and The Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024, and all are due to come into force on the same day, 5 December 2024.

10. Guidance to be published by the Scottish Government, to support the regulations coming into force, will cover the further details to assist with the preparation of MCAs.

Citation and commencement

11. Regulation 1 sets out details of citation and commencement.

Interpretation

12. Regulation 2 defines "the Act", "community council", "neighbouring land", "period for representations" and "road" to aide interpretation of the regulations.

Consultation on possible proposals for a masterplan consent area scheme

13. Regulation 3(1) to (5) sets out the consultation requirements for possible proposals for a MCA scheme, for the purposes of paragraph 8(1)(a) of schedule 5A of the Act. Regulation 3(6) provides that certain requirements only apply where the planning authority considers that development proposals it is considering including in a MCA scheme belong to the categories of national developments or major developments.

14. Regulation 3(2) sets out where the planning authority considers that development proposals it is considering including in a MCA scheme belong to the categories of national developments or major developments, the planning authority must hold at least two public events where members of the public may make comments to the planning

[4] https://www.legislation.gov.uk/ssi/2024/79/contents/made

authority in respect of proposals to make the MCA scheme. Regulation 3(7) and (8) indicate timings and further requirements for the final public event, including a requirement for feedback to members of the public on comments received.

15. Regulation 3(3) requires that the planning authority must publish on the internet a map showing the area the planning authority are considering making a MCA scheme, along with a notice containing the information set out in Regulation 3(5), which covers descriptions of the area/ location and development being considered, how representations may be made and details of the date and place of the public events. Regulation 3(4) provides that the planning authority must send this information to the community council for the area being considered for the MCA scheme.

16. Regulation 3(9) prescribes the requirements for a representation submitted to be treated as valid.

Consultation on proposals for a masterplan consent area scheme

17. Regulation 4 and the schedule set out the requirements for publicising and inviting representations to proposals for making a MCA scheme, for the purposes of paragraph 9(1)(a) of schedule 5A of the Act.

18. Regulation 4(2) requires that the planning authority must publish on the internet a copy of the proposed MCA scheme and a notice containing the information specified in paragraph Regulation 4(4).

19. Regulation 4(3) requires that the planning authority send a notice containing that information to (a) any person (other than the planning authority) who is an owner of land to which the proposed MCA scheme relates, (b) where there are premises situated on neighbouring land to which the notice can be sent, to the owner, lessee or occupier of those premises, and (c) to persons, authorities and bodies in accordance with the Schedule. The Schedule details persons, authorities and bodies and the circumstances in which they are to be notified. It also defines various terms used within the Schedule.

20. Regulation 4(4) lists the information which must be included in the notice published on the internet.

21. Regulation 4(5) stipulates a 30 day period for representations, and when it begins.

22. Regulation 4(6) sets out how to address a notice required to be sent to the owner, lessee or occupier of premises under Regulation 4(3).

Consideration of representations: hearings

23. Regulation 5(1) sets out the circumstances in which a planning authority must hold a hearing under paragraph 11(1) of schedule 5A of the Act for a proposed MCA scheme. This is to be where the proposed masterplan consent area scheme would authorise development belonging to the category of national developments.

24. Regulation 5(2) sets out that any person who is an interested party must be given an opportunity to appear before and be heard by a committee of the planning authority at a hearing.

25. Regulation 5(3) defines what "interested party" means – a person from whom the planning authority received representations before the end of the period for representations (and which were not subsequently withdrawn) in response to a notice published or sent in accordance with regulation 4.

Information to be included in a masterplan consent area scheme

26. Regulation 6 requires reasons for any condition, limitation or exception specified in the MCA scheme to be set out.

Publication of masterplan consent area scheme and notification of decision

27. Regulation 7(1) requires that where a MCA scheme is made by a planning authority, the planning authority must (a) publish on the internet a copy of the MCA scheme and a notice of the decision to make the scheme containing the information specified in Regulation 7(2) and (b) give notice of the making of the scheme in accordance with Regulation 7(3).

28. Regulation 7(2) specifies the information to be included in the notice of the decision, to be published online, as follows:

- a statement that the masterplan consent area scheme has been made and how it may be inspected,
    - (a) the main reasons and considerations on which the decision is based including reasons for any conditions, limitations or exceptions,
    - (b) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures,
- information regarding the right to challenge the validity of the decision and the procedures for doing so.

29. Regulation 7(3) provides that notification of the making of the scheme is to be by publishing in a local newspaper circulating in the area and on the internet a notice containing (a) a statement that the MCA scheme has been made (b) information as to how the scheme and the decision notice may be inspected.

30. Regulation 7(4) requires the planning authority to make a copy of the MCA scheme available for inspection at an office of the planning authority.

Alteration of a masterplan consent area scheme

31. Regulation 8 provides for the procedures to be followed by the planning authority when seeking to alter an existing MCA scheme. Regulation 8(1) applies Regulations 2 to 4 and 6 and 7 to the alteration of a MCA scheme by a planning authority, with specific modifications included in Regulation 8(2) to (4) – including where certain specified procedures can be omitted, and identifying how references to MCA schemes should be treated when altering a MCA scheme.

Excluded development

32. Regulation 9 provides that no MCA scheme can grant authorisation for development which is likely to have an adverse effect on a European site in Great Britain or a European offshore marine site, either alone or in combination with other plans or projects and is not directly connected with or necessary to the management of the site. It also defines both those types of sites.

Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

33. Regulation 10 provides for the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 to be amended, to insert a new paragraph 5A, in schedule 2 those Regulations, to update the requirements in relation to the planning register. This would provide that for every MCA scheme made or proposed to be made there be a copy on the register of the proposed MCA scheme or alteration, the decision notice and of the MCA scheme made, or as altered.

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

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

35. 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 (Masterplan Consent Areas) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

37. A public consultation on Draft MCA regulations[5] ran from 28 February 2024 – 22 May 2024. It included the draft regulations and specific questions about the various proposals for regulations, covering the different stages of MCA preparation process.

38. 62 responses were received, from planning authorities, key agencies and other public sector bodies, development, property and land management bodies and agents, the third sector, professional and representative bodies as well as communities and individuals. A Summary of Responses report[6] provides a summary of common themes submitted to this consultation and some key points raised. It includes a list of those who responded and

[5] https://consult.gov.scot/local-government-and-housing/masterplan-consent-areas-regulations-consultation/
[6] https://www.gov.scot/ISBN/9781836016809

who agreed to the release of their details. The full responses have been published online[7] for all those organisations and individuals who gave permission to do so.

39. In addition to the public consultation, further engagement has been undertaken with business including renewables developers and representative bodies (and their members) including the Planning Infrastructure and Place Advisory Group (PIPAG), Prosper, the Royal Town Planning Institute (RTPI) and the Scottish Property Federation (SPF). The consultation was also discussed with local authority planners via the Heads of Planning Scotland (HOPS) network.

40. Respondents were generally supportive of the proposed Regulations. There was broad agreement that regulations should be kept to the minimum necessary.

41. Given varying views, the Scottish Government has not included all the suggestions put forward in the responses in the regulations. It is considered some of the matters are more appropriately covered in guidance, rather than regulations.

Excluding Types of Development within MCAs

42. The 1997 Act, section 54B provides that a MCA scheme can grant authorisation for development specified or of a description specified in the scheme, and that authorisation means planning permission and additionally, if the scheme provides, roads construction consent, listed building consent and conservation area consent only.

43. The consultation proposed to not exclude any form of development from having potential to be within a MCA - there was broad agreement with this, with a few suggested exclusions.

44. It is not considered necessary to exclude any type of development from having potential to be within a MCA. There are other ways to control development, such as by attaching conditions to individual schemes to control impacts. There is also the scope for Ministerial scrutiny of MCAs through the notification route/call-in process.

45. Some respondents suggested that MCAs should be able to grant other types of authorisations including advertisement consent, marine consents and consent under section 36 of the Electricity Act 1989. However, this goes beyond the scope of these regulations, as the types of authorisations that can be granted is set in the primary legislation.

Places that cannot be included in a scheme

46. The consultation sought views on the designations listed in schedule 5A (paragraph 3(4)) of the Act. There was also broad agreement with the proposed approach not to add further exclusions within regulations.

47. There were some calls for the designations listed on Schedule 5A to also include local biodiversity networks, Local Wildlife Sites, areas notified to the planning authority by the

[7] https://consult.gov.scot/local-government-and-housing/masterplan-consent-areas-regulations-consultation/

Health and Safety Executive, conservation areas, listed buildings, battlefields, National Nature Reserves and proposed European sites. Others suggested the list should not include European Sites or World Heritage Sites.

48. The list of designations in schedule 5A was subject to consultation with the Key Agencies Group and considered and agreed by the Scottish Parliament during the passage of the 2019 Act. No change has been made through the regulations, in respect of the designations listed in schedule 5A (paragraph 3(4)) of the Act.

49. However following the consultation, Regulation 9 has been added to provide clarity and ensure that no MCA scheme can grant authorisation for development which is likely to have an adverse effect on a European site in Great Britain or a European offshore marine site which is not directly connected with or necessary to the management of the site. This approach aligns with the procedure for planning permission.

Duty to periodically consider making a scheme statement

50. The consultation sought views on whether to regulate the requirement placed on planning authorities by Schedule 5A Paragraph 5 of the 2019 Act, to publish a statement on how they have considered making a MCA for a part of their area at least once every five years. There was also broad agreement that this should be addressed in guidance to provide more flexibility to planning authorities.

51. Some responses considered that the principle of the statement was onerous and there was a risk of uncertainty and varying approaches across planning authorities. Some considered details should be set out in regulations in order to enforce standards.

52. The regulations do not set out the detailed content of statements, how they are to be published and who they are to be sent to. This will be addressed in guidance.

Consultation on possible proposals for a MCA scheme

53. The consultation proposed that planning authorities must consult with community councils before determining the content of any MCA proposals which may be publicised. There was a very high level of agreement with these proposals for regulations.

54. There were some suggestions that additional groups or bodies that should be consulted at this stage including Local Place Plan groups, community and interest groups, development trusts, neighbouring community councils and owners and occupiers. Guidance will provide more advice on consultation on possible proposals for a MCA scheme.

55. The consultation paper set out how consultation for possible proposals for a MCA scheme is to be undertaken. There was a very high level of agreement with these proposals, with some suggestions on requirements for events and advertising.

56. Regulation 3(6) applies where the planning authority considers that its proposals for a MCA scheme may include national or major developments. In such circumstances the planning authority must hold two public events. This is an equivalent requirement to pre-application consultation (PAC) which applies to applications for planning permission for

national and major developments. Regulation 3 is in some respects similar to the PAC requirements set out in Regulation 7 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Guidance will highlight that planning authorities may wish to consider using additional consultation and engagement techniques where appropriate.

MCA scheme conditions

57. The consultation sought views on the proposed requirement for reasons for conditions to be set out in MCA schemes. There was a very high level of agreement with this.

58. Some respondents suggested that there should not be excessive use of conditions and that conditions should follow the tests within Planning Circular 4/1998: the use of conditions in planning permissions. Guidance will highlight considerations for planning authorities when drafting conditions to be included in MCA schemes.

Other aspects to include within MCA schemes

59. The consultation sought views on any further aspects that should be required to be included in a MCA scheme. There was broad agreement with the proposed form and content of MCA schemes set out in regulations.

60. Respondents wished a number of additional topics considered within MCA schemes including biodiversity, ecology and the nature and climate crisis, infrastructure and placemaking. Advice on the majority of these topics is provided through other Scottish Government policies, advice and tools.

61. The majority of other suggestions related to points which can be addressed in guidance. This will to provide clarity on a number of the requests made.

Consultation on proposals for a MCA scheme

62. The consultation proposed who the planning authorities must consult with regarding MCA proposals. There was a high level of agreement with these proposals for regulations.

63. Some additional consultees that were suggested. These included electricity network operators/generators, utility companies, private sector representative bodies, landowners, development trusts and community bodies who have prepared a Local Place Plan. The Schedule within the MCA Regulations reflects Schedule 5 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Additional consultees may not be relevant to every proposed MCA scheme. Guidance will provide more advice in regards to consultation on proposals for a MCA scheme.

64. The consultation proposed how consultation is to be undertaken regarding MCA proposals. There was a high level of agreement with these proposals.

65. A requirement for planning authorities to produce hard copies of MCA scheme proposals for inspection was raised by two respondents. Online publication is considered sufficient and less of a financial cost for planning authorities.

66. The consultation proposed a 30 day period for representations to be received to the MCA scheme consultation and there was a high level of support for this by the majority of respondents. Some made suggestions for longer periods or asked for discretion to extend the period. Others sought clarity on how requests for extensions would be handled.

Hearings

67. The consultation sought views on the proposed circumstances in which a hearing would be required. There was broad agreement with these proposals for regulations by the majority of respondents. Some respondents had varying views, including that there should not be an automatic hearing for national developments, or that all schemes should be subject to a hearing.

68. The consultation sought views of those who must be given an opportunity to appear before and be heard by a committee of the planning authority at a hearing. There was broad agreement with the proposed approach.

69. Planning authorities currently have discretion over their hearing procedures for planning applications, and they will be able to adopt the same approach for MCA schemes.

Requirement to notify the Scottish Ministers of certain proposals

70. The consultation proposed certain circumstances where a MCA scheme would be notified to Scottish Ministers. There was a high level of agreement with these proposals for regulations.

71. There were some suggestions of additional circumstances for inclusion in notification requirements.

72. Scottish Ministers intend to issue a Direction, under paragraph 12 of Schedule 5A of the Act that requires that MCA schemes should be notified to Ministers in line with The Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and other existing specific Directions issued. This will ensure consistency with scrutiny of planning applications.

Publication of MCA Scheme and Decision Notice

73. The consultation sought views on the proposed requirements in relation to the publication of MCA schemes and the decision notice - there was broad agreement with the proposals.

74. Some respondents suggested a publication notice excluding points (b) and (c) of the Draft Regulation 7, would be a more proportionate approach. Regulation 7 has been updated to reflect this. It also provides that a copy of the MCA scheme should be published on the planning authority website.

Planning Register

75. The consultation proposed updates to The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, to ensure that information in

relation to MCA schemes is made available on the planning register. There was broad agreement with these proposals for regulations.

Alteration of a MCA Scheme

76. The consultation sought views on the proposed procedures to be followed when a MCA scheme is to be altered.

77. The consultation proposed there would not be a requirement for Pre-Application Consultation (PAC) style events for alterations to MCA scheme. A number of respondents disagreed with this approach with some suggestions that PAC style events should be required when significant changes are proposed to a 'made' MCA scheme. The approach of not requiring PAC style events is considered to be appropriate and proportionate when altering MCA schemes and in line with the wider streamlining approach of MCAs.

Prescribed Forms

78. The consultation proposed not to prescribe forms of notices within the regulations, and sought views on this approach. The consultation paper proposed that the Scottish Government could offer suggestions on forms in future guidance to assist planning authorities in the making of a MCA scheme.

79. Responses were divided on this proposal. A number of respondents disagreed with this approach, their comments reflected their view that including prescribed forms within regulations would be beneficial for ensuring consistency and avoiding potential omissions. However various responses stated that templates or examples of forms should be included within guidance.

Impact Assessments

80. The consultation paper contained Impact Assessments[8]. The following impact assessments or relevant screening were undertaken:

- Business Regulatory Impact Assessment (BRIA) – partial
- Child Rights and Wellbeing Impact Assessment (CRWIA) - screening
- Data Protection Impact Assessment (DPIA) – consultation only
- Equalities Impact Assessment (EQIA) - screening
- Fairer Scotland Duty (FSD)
- Islands Communities Impact Assessment (ICIA) - screening
- Strategic Environmental Assessment (SEA)

Outputs from the Assessments

81. The regulations provide additional procedural detail for preparing MCAs supporting requirements already set out in the Planning (Scotland) Act 2019. Given the regulations

[8] https://www.gov.scot/publications/impact-assessments-town-country-planning-masterplan-consent-areas-scotland-regulations-2024-masterplan-consent-area-scheme-environmental-impact-assessment-scotland-regulations-2024/

will be procedural, and because the impacts of the wider documents and policies have been considered through previous assessments for the 2019 Planning Act, most of the impact assessments have been screened out.

Financial Effects

82. A Business and Regulatory Impact Assessment (BRIA) has been completed. Some of the consultation responses to the partial BRIA highlighted concern about the capacity of planning authorities and key agencies to resource the implementation of MCA schemes. It was also noted that without the ability for planning authorities to recoup costs it may be difficult for planning authorities to financially justify establishing an MCA within their area. No further information to assist with quantitative costing of the regulations was provided.

83. The BRIA notes that that the Scottish Government is considering the scope for discretionary charging, allowing planning authorities to choose if they wish to recoup some of their costs of preparing a MCA scheme. A parallel consultation has sought views on scope for discretionary charging by planning authorities to support MCAs.

84. The BRIA highlights that the Scottish Government also intends to promote a collaborative approach to the production of MCA schemes, with planning authorities working in partnership with those who will benefit from the certainty of the MCA scheme (including developers, investors and business interests). The regulations and future guidance will strike a balance between the need for clarity to support implementation, and flexibility to allow for best practice to evolve as MCA schemes are made.

Scottish Government
Directorate for Local Government and Housing
September 2024