

REGULATIONS UNDER THE PLANNING (SCOTLAND) ACT - NOVEMBER 2019

Several sets of regulations have now been laid in the Scottish Parliament under the Planning (Scotland) Act 2019. This note explains what they do, and provides a timeline for action for planning authorities.

The Planning (Scotland) Act 2019 (Commencement No. 1) Regulations 2019

These regulations were laid in Parliament on 7 October and came into force on 8 November. They bring into force the changes in section 2 of the Act to how the **National Planning Framework** is to be prepared, and this work is now under way. They also give the Scottish Ministers powers to make regulations about **development planning**, in sections 3, 5, 7, 10 and 11 of the Act, and about **local place plans** in section 14. As set out in the [work programme](#), those regulations will be developed through engagement and consultation and are expected to be made in 2021.

The Commencement No.1 Regulations also bring into force the **Purpose of Planning** in section 1 of the Act. This will underpin the preparation of the National Planning Framework, and also applies to planning authorities' work on local development plans (and strategic development plans, where relevant).

The purpose of planning is “to manage the development and use of land in the long term public interest”, and anything which contributes to sustainable development or achieves the national outcomes is to be considered as being in the long term public interest. As planning authorities already have duties to have regard to the national outcomes and contribute to sustainable development in carrying out their functions, their development planning activities should already be in line with the purpose.

The Planning (Scotland) Act 2019 (Commencement No. 2, Saving and Transitional Provisions) Regulations 2019

These regulations were laid in Parliament on 8 November and will come into force on 20 December. They bring the following provisions into force:

- Section 23 of the Act amends section 34 of the 1997 Act on giving notice of applications. It requires that the planning authority must **give notice of any application for a major development to each local authority Councillor, MSP and MP** representing the district to which the application relates. This applies to applications for planning permission, for approval required by a development order, for consent, agreement or approval required by a condition on planning permission, or for modification or discharge of a planning obligation.

The regulations commence this provision for all applications received by the authority on or after **1 March 2020**, allowing time for authorities to amend their procedures. It is assumed that notification will be sent by email or other electronic means. Details for MPs and MSPs can be found by the postcode of the development at <https://www.parliament.uk/mps-lords-and-offices/mps/> and <https://www.parliament.scot/msps.aspx> respectively. All MSPs for the relevant region must be notified as well as the constituency MSP.

- Section 25 of the Act inserts new section 41A into the 1997 Act, which relates to applications for planning permission for “**noise-sensitive developments**”, where residents are likely to be affected by significant noise from existing activity in the vicinity. Where this is the case the planning authority must take particular account of whether the new development includes sufficient measures to “mitigate, minimise or manage” the effect of noise between the development and any existing cultural venues or facilities, dwellings or businesses in the vicinity. Cultural venues include in particular live music venues. The authority also may not place conditions on the planning permission that would impose additional costs on any existing “noise source” for acoustic design measures to address noise issues.

The regulations commence this provision for all applications received by the authority on or after **20 December 2019**.

The Chief Planner letter dated 16 February 2018 highlighted the importance of live music venues to Scotland’s culture and economy, and the need to consider the impact on venues when new development is proposed. The letter asked planning authorities to ensure that decisions in such cases reflect the Agent of Change principle. In light of that letter we expect that all planning authorities will be giving consideration to the Agent of Change principle when determining applications. However, the introduction of a specific statutory requirement may lead to some changes in the way this consideration is undertaken and recorded. To avoid potential delays to applications which may be close to decision, the new requirement will only apply to applications received after the commencement date.

- Section 42 of the Act increases the maximum level of **finer** that can be imposed for failing to comply with the requirements of various types of notices issued to enforce planning controls, and provides that the courts should take into account any financial benefit gained from the offence.

The new fines will apply to any offence committed in relation to a notice which is served on or after **20 December 2019**.

The Planning (Scotland) Act 2019 (Commencement No. 3) Regulations 2019

These regulations were laid in Parliament on 15 November and will come into force on 1 December. They bring various parts of the Act into force on two dates, as set out below. Please see the [work programme](#) for information on how we propose to take regulations and other actions forward.

1 December 2019

- Section 18: Changes Ministers’ powers to make regulations about **pre-application consultation**, in particular to allow them to make provision about the content of the report developers must produce following their consultation.
- Section 20: **A technical change** so that provision about the procedure for applications to develop land without compliance with conditions can be made by regulations as well as by development order.

- Section 24: Introduces specific reference to **biodiversity**, and net positive effects on biodiversity, in the power to make regulations on environmental impact assessment.
- Section 26: Brings into force the power to make regulations to amend the requirements for certain large developments to include **Changing Places Toilets**. We will bring forward regulations before the end of the year to align these requirements with those set out in the Building Standards Technical Guidance, and bring the requirements into force in the planning system.
- Section 29: Activates the requirement for Scottish Ministers to lay a statement before the Scottish Parliament setting out the circumstances in which they consider it appropriate to **call-in** an application for their own decision.
- Section 41: Changes the powers to make regulations about **planning fees**, including the ability to introduce more discretionary charging, discounts, and a surcharge for retrospective applications.
- Section 47: Brings into force the power to appoint a **National Planning Improvement Co-ordinator**.
- Section 48: **A technical change** to allow regulations made under the 1997 Act to make different provision for different areas, as well as different purposes.
- Section 49: Activates the requirement for Scottish Ministers to **publish and give reasons for all directions**. Directions can be found on the Scottish Government website <https://www.gov.scot/policies/planning-architecture/ministerial-planning-decisions/#notified-applications>
- Section 51: Activates requirements for the Scottish Ministers to consult with communities before designating a **National Scenic Area**, and to report on the consultation at the end of the year.

This section also amends the requirements on planning authorities to pay special attention to safeguarding or enhancing the character or appearance of a National Scenic Area when exercising planning powers, removing the words “the desirability of”.

- Section 52: Changes the powers to make regulations about giving **notice of applications for listed building consent**, under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. These changes would allow similar notification requirements to be imposed for listed building consent as for planning applications.
- Section 53: Brings into force the requirement for all planning authorities to prepare a **forestry and woodland strategy**. The wording in the Act closely reflects the existing guidance in Scottish Planning Policy (2014, para 201) (SPP), and therefore it is not considered that any change in approach to such strategies is required. Planning authorities may wish to set out their plans for revising existing forestry and woodland strategies (or preparing one, for those few authorities that do not already have a strategy).

Forestry and Woodland Strategies under the current SPP are generally prepared as supplementary guidance relating to the local development plan. As the Act removes the option to prepare statutory guidance, these strategies will become standalone documents. Planning authorities may wish to incorporate elements of them into the local development plan, and they will also stand as material considerations in relation to planning applications.

- Section 62 and paragraph 9 of schedule 2: These are **technical provisions** that determine the Parliamentary procedure for scrutiny of regulations relating to Changing Places Toilets and the Planning Improvement Co-ordinator.

1 March 2020

- Section 27: Removes the requirement that any application which has been subject to a **pre-determination hearing** must be determined by full council.

Section 14(2) of the Planning etc. (Scotland) Act 2006 amended section 56 of the Local Government (Scotland) Act 1973, which deals with the delegation of functions to committees or officers of the local authority. It stated that decisions could not be delegated in relation to classes of development prescribed under section 38A(1) of the 1997 Act (pre-determination hearings). The classes of development prescribed for this purpose by regulation 27 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 are national developments, and major developments which are significantly contrary to the development plan.

Pre-determination hearings are usually held by the Planning Committee of the local authority. Concerns were raised that having the decision made by the full Council meant that some of those making the decision had not heard the evidence given at the hearing, as well as potentially creating delay. Authorities will now need to consider whether they wish decisions following pre-determination hearings to be made by the Planning Committee or by full Council, and to amend their standing orders accordingly.

The change will apply to all applications that fall to be determined on or after 1 March 2020, including those where the pre-determination hearing has been held before that date.

- Section 30: The decision notice on an application must include a **statement as to whether the authority consider the development is in accordance with the development plan**, and their reasons for taking that view.

Section 37(2) of the 1997 Act states that, "In dealing with an application for planning permission, the authority must have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.". The requirement for a statement on accordance with the development plan is inserted as section 37(2A).

Section 43 of the 1997 Act provides that regulations may require a planning authority to give any applicant for planning permission a notice of how their application has been dealt with, and this is contained in regulation 28 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Section 43(1A) of the 1997 Act requires that any such notice must include a statement of the reasons on which the authority based its decision. We expect that those reasons would include reference to relevant parts

of the development plan and any other material considerations taken into account in the decision. Planning authorities may wish to review their templates for decision notices to ensure the statement on accordance with the development plan is clear, alongside any other reasons for the decision.

The change will apply to all decision notices issued on or after 1 March 2020, regardless of when the decision is made.

The Planning (Scotland) Amendment (Ancillary Provision) Regulations 2019

These regulations were laid in Parliament on 8 November. Because they change the text of the Act they are subject to affirmative procedure, meaning that they cannot come into effect until Parliament has passed a motion to approve them, following consideration by Committees. We expect them to come into effect on 20 January 2020.

The regulations make several amendments to the Act to replace or delete references to sections of the 1997 Act that were removed during the Parliamentary process. The most important are those that relate to the publication of the National Planning Framework, now mentioned in section 3CA(7) of the 1997 Act, inserted by section 2(13) of the Act. The date on which the Framework is published will determine when strategic development plans cease to have effect, and whether the Framework or a local development plan will take precedence if there is any incompatibility between them.

The regulations amend these sections but do not bring them into force at this stage.

Timeline for planning authorities

Date	Provisions coming into force	Sections of 2019 and 1997 Acts
1 December 2019:	<ul style="list-style-type: none"> • Requirement to pay special attention to safeguarding or enhancing the character or appearance of a National Scenic Area when exercising planning powers – removal of the words “the desirability of” safeguarding etc. • Requirement to produce Forestry and Woodland Strategy. 	<p>Section 51(2), amends section 263A(2) of the 1997 Act.</p> <p>Section 53, inserts section A159 into the 1997 Act.</p>
20 December 2019	<ul style="list-style-type: none"> • Agent of Change (noise sensitive developments) – requirement to take particular account of measures to mitigate, minimise or manage the effect of noise applies to applications received from this date. • Increase in fines for offences in relation to notices issued from this date. 	<p>Section 25, inserts section 41A into the 1997 Act.</p> <p>Section 42, amends sections 126, 136, 138, 144, 144C, 145 and 186 of the 1997 Act.</p>
1 March 2020	<ul style="list-style-type: none"> • Requirement to notify all Councillors, MSPs and MPs of major applications received from this date. • Removal of requirement for full Council decision on applications requiring a pre-determination hearing, for decisions taken from this date. • Statement on accordance with the development plan to be clearly included in decision notices issued from this date. 	<p>Section 23, amends section 34 of the 1997 Act</p> <p>Section 27, repeals section 14(2) of the Planning etc. (Scotland) Act 2006</p> <p>Section 30, amends section 37 of the 1997 Act</p>