

Transforming Planning in Practice – Post-Bill Work Programme

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Introduction

The recent Planning Bill, now the Planning (Scotland) Act 2019, forms an important part of our wider planning reforms, based on the independent review of the planning system which reported in May 2016. The key drivers for the review were:

- deliver more good quality homes
- improve the experience and influence of communities
- effective development planning leading positive change
- more proactive management of development
- strong leadership coupled with management of skills, resources and performance.

Our 2019-20 Programme for Government ‘Protecting Scotland’s Future’ highlights the key role planning has to play in addressing climate change and helping to radically accelerate reduction of emissions, and in ensuring we can sustain and support communities, including support for dynamic rural economies, in resisting the most detrimental impacts of Brexit.

The Bill has been a major focus of the Scottish Government’s Planning and Architecture Division, and of organisations across Scotland with an interest in planning, for the past 2 years. Now that the Act has passed, this paper sets out how we propose to move forward with implementing the legislation, and with other aspects of our reform of Scotland’s planning.

We expect to implement most of the Act by early 2021, except where there are specific reasons for a later timescale. We know people want to see the new legislation put into practice, but we also recognise that the volume of work to be done in a short time will have an impact on resources, not only within the Scottish Government but also for other organisations, communities and individuals who have an interest in planning. We want to take forward these reforms in a collaborative way and it is vital that people are able and have the capacity to participate in the reshaping of their planning system.

We have sought to plan our implementation of the Act and other work, including the fourth National Planning Framework, to a reasonable timetable that allows for wide engagement and meaningful collaboration; while prioritising work that pursues planning’s contribution to tackling the global climate emergency. We would welcome any comments on our approach and scheduling in this intended work programme. Comments can be sent to PlanningBill@gov.scot.

Bringing the Act into force

The Bill became an Act when it received Royal Assent on 25 July 2019. Each section will be brought into force on a specified date by commencement regulations which are laid in the Scottish Parliament.

Many parts of the Act will be implemented by the Scottish Ministers making regulations, or issuing guidance. Where this is the case we will engage with stakeholders to develop proposals first, and then consult on drafts before completing and publishing the guidance or laying regulations before the Scottish Parliament; and we will ensure there is an appropriate lead-in time where needed. Commencement of the relevant sections of the Act will be co-ordinated with the regulations or guidance, so that those affected are fully prepared when the legislation comes into force.

Many sections of the Act will initially be commenced only for the purpose of allowing Ministers to make regulations or issue guidance. Further regulations at a later date will bring them into effect fully.

The work programme

Our intended work programme towards the full implementation of the Act is summarised in the Annex. The following paragraphs explain our intended scheduling, including the reasons for the phasing we propose to adopt.

Timing in this paper is expressed in quarters of the calendar year: Q1 = January – March, Q2 = April – June, Q3 = July – September, Q4 = October – December. Activity will necessarily be limited in Q2 2021, due to the Scottish Parliament elections that May: nothing can be laid in Parliament and nothing significant can be published during the pre-election period, although a consultation published earlier can continue during that time.

Development Planning

National Planning Framework

Early work has already begun on preparing the fourth National Planning Framework (NPF4), the long-term spatial strategy for Scotland to 2050. As a result of the Act, the next NPF will incorporate Scottish Planning Policy and will have enhanced status as part of the statutory development plan.

Section 2 of the Act, making amendments to the content and procedures for preparing the National Planning Framework, will come into force on 8 November, along with the Purpose of Planning (section 1), which applies to the preparation of the Framework and local development plans.

We plan to publish a draft of NPF4 for public consultation in Q3 2020, following a period of extensive engagement earlier in the year. Under the new procedures, the draft will be laid in Parliament for a period of up to 120 days to allow representations to be made, which will take until early 2021 to conclude. Taking account of representations made, the draft will be revised and must then be laid again for the

Scottish Parliament's approval before it can be adopted. Due to the Scottish Parliament elections in May 2021 we expect the final version of NPF4 to be laid in Q3 2021, and anticipate approval in Q4 2021.

Regional Spatial Strategies

The Act will remove the requirement for strategic development plans in the four largest city regions, and introduce a requirement for all authorities, working together as they see fit, to prepare regional spatial strategies setting out strategic development priorities. Both the National Planning Framework and local development plans will be required to have regard to regional spatial strategies when they are formally adopted by authorities. Recognising that this will take some time and their preparation will likely run beyond the NPF4 timescale, in the meantime we will work with planning authorities and other stakeholders, during the preparation of NPF4, to explore and develop approaches to regional spatial strategies, and use this work to inform statutory guidance by Q4 2021 at the latest.

Local Development Plans

The Act makes significant changes to the approach to preparing local development plans (LDPs), with the aim of making them more effective, with greater community involvement and more focus on delivery. It introduces a requirement to produce evidence reports, along with an early "gatecheck" to ensure the evidence is sufficient; new requirements for participation and engagement of communities and particular groups; and a range of issues which must be considered in the plan. The Act also removes the provisions relating to main issues reports and statutory supplementary guidance and moves LDPs onto a 10-year cycle from the current 5-year period.

Whilst the development planning system will change significantly as a result of the Act and this is therefore a key part of the reforms, we want to ensure that these changes are managed in a way which minimises disruption to the work of planning authorities. We want to work collaboratively in developing the regulations and guidance, and take the time required to get the detailed working of the new system right. It is also important that the new-style plans emerge within the context of NPF4 and its wider coverage of planning policies.

According to current schemes, the majority of planning authorities have LDPs in preparation that will be adopted by 2022. Following wider discussion and further piloting of new elements of the system we propose to lay regulations and publish guidance relating to LDPs in Q4 2021, to allow time to reflect any late changes made to NPF4, although drafts will be under discussion at an earlier stage. We will announce transitional arrangements shortly to manage the changeover from current to new-style LDPs, to minimise any repetition of work and to help inform authorities' decisions regarding the preparation of plans.

Regulations on play sufficiency assessments and open space strategies will be co-ordinated with the work on local development plans. Guidance on maintaining lists of persons seeking land for self-build housing will flow on from the current pilots and is expected to be published by Q4 2020.

Amendments

Regulations on future amendment of the NPF and LDPs will be considered later, once the initial versions are in place.

Housing for older people and disabled people

The Act includes a number of requirements in relation to planning for housing for older people and disabled people, including this being one of the outcomes that the National Planning Framework must contribute to. The Act also requires the Scottish Ministers to report every 2 years on how the planning system is operating to help ensure that the housing needs of these groups are met. In preparing NPF4 we will consider these issues, including engaging with relevant representative groups, and will design the policy approach with the reporting requirements in mind. We will then bring the reporting requirement into force with the adoption of NPF4, and report 2 years later on what effect it is having. We consider this will be more helpful than reporting in 2021, before the Act has been fully implemented and before NPF4 has been able to have its influence.

Community Engagement

Improving community involvement in the planning system has been a key aim of the reforms from the outset. It is vital that people have the opportunity to engage meaningfully and have a positive influence in the future planning of development in their areas.

There are several linked aspects of the Act which focus particularly on the role of communities and the interests of local people in the planning system:

- Regulations and guidance on Local Place Plans: regulations on the form and content of a plan and steps to be taken before it is submitted, and on the register which local authorities are to keep, and guidance for both community bodies and planning authorities on preparing, supporting and registering plans
- Guidance on effective community engagement in LDPs
- Guidance on the promotion and use of mediation in planning
- Changes to pre-application consultation with local communities in relation to major developments.

We will take these forward as a package, so that we can ensure approaches to local engagement can be consistent and complementary, while also avoiding repeated engagement with community groups on similar issues. Given the importance of this part of the legislation and our aim of achieving early progress, we aim to complete the package by Q1 2021.

Masterplan Consent Areas

Masterplan Consent Areas will be a useful, proactive tool to promote and incentivise investment in development, including new housing, by providing consent in advance for specified types of development, in carefully defined circumstances, in a particular area. In effect, they will grant up-front consents for planned development, so adding certainty and removing much of the risk for potential investors. A number of pilots are underway, using the existing Simplified Planning Zone mechanism, to explore how this approach can be used in a variety of contexts ranging from town centre

living to supporting rural communities. We will wait until those pilots are completed and draw on their experience to design the regulations setting out detailed procedures for Masterplan Consent Areas. We expect these to be in place by Q4 2021. Advertisement consent regulations will be updated to make provision for Masterplan Consent Areas at the same time.

Short term lets

The Act will allow local authorities to designate short term let control areas, within which the use of a dwellinghouse for short term letting is deemed to involve a material change of use, and therefore always needs planning permission. Ministers have powers to make regulations about what constitutes a short term let and any exemptions, and about the procedures for designating a control area. We will take this forward immediately, drawing on the responses to the recent Scottish Government consultation on the regulation of short term letting, and aim to have regulations in place by Q4 2020.

Development management

The following issues require regulations or guidance in relation to changes to development management provisions. These will be put in place by Q1 2021:

- Duration of planning permission and completion notices – the Act changes the arrangements for setting the duration of planning permission and for challenging a notice requiring development to be completed. We intend to issue guidance on how to consider appropriate duration
- Guidance on the meaning of “similar application” and “significant change” in relation to declining to determine ‘repeat’ applications, and extending the time period in which authorities can decline to determine an application from 2 years to 5
- Requirement to publish planning obligations, and an annual report
- Changes to arrangements for modifying or discharging planning obligations.

In the same timeframe we will also consider whether there should be a statutory requirement to consult a representative body in relation to planning applications affecting music venues, and whether any changes to neighbour notification would be appropriate in relation to listed building consent.

The Act requires Scottish Ministers to make regulations about the assessment of the health effects of national and major developments, before planning permission is granted. Impacts on human health are already considered as part of Environmental Impact Assessment (EIA), however the criteria for requiring EIA do not align exactly with the definition of national and major developments. We will carry out a health assessment of all national developments as part of the preparation of NPF4, using this as a test-bed to develop a methodology which can subsequently be put into regulations. Those regulations will be taken forward alongside the development planning regulations, to be completed by Q4 2021.

The Act makes changes to provisions relating to the delegation of decisions to planning officers, and local reviews. We will consider whether any changes are needed to the existing regulations, aiming to lay these in Q3 2021.

The following provisions will be commenced in Q4 2019, and need no further action:

- All Ministerial directions to be published and include reasons (this is already done in practice)
- Regulations on environmental assessment may include assessment of effects on biodiversity, including net positive effects on biodiversity. The current (2017) regulations already require the consideration of impacts on biodiversity; we have no immediate plans to update these regulations.
- Ministers to lay a statement in the Scottish Parliament setting out the circumstances in which they consider it would be appropriate to call-in planning applications
- Planning authorities must prepare forestry and woodland strategies (this is already done, in line with existing guidance)
- Ministers must consult local residents and community bodies before designating a National Scenic Area, and report on consultation.

Three further provisions will be brought into force in Q1 2020, to allow planning authorities time to amend their procedures and standing orders:

- Decision notices must include a statement on whether the authority considers the development is in accordance with the development plan
- Planning authorities must notify all Councillors, MSPs and MPs of applications for major developments
- Removing the requirement for full Council to make decisions on applications where there has been a pre-determination hearing.

Agent of change principle

The Act requires planning authorities, when considering an application for a “noise-sensitive” development, to take particular account of whether sufficient measures are included to “mitigate, minimise or manage” the effect of noise from existing cultural venues, particularly live music venues, dwellings or businesses. They also may not place conditions on the development that would impose costs on a noise source to address noise issues. These requirements reflect the advice given in the Chief Planner letter issued on 16 February 2018, and will be brought into force in Q4 2019. As we have previously committed, NPF4 will also include explicit policy guidance on the Agent of Change principle, recognising the need to support live music venues and their contribution to Scottish culture and society.

Changing Places toilets

The Act requires that a planning authority may only grant permission for certain types of development if they include a Changing Places toilet, suitable for adults with complex care needs. Ministers have powers to make regulations to adjust the types of development covered and the specification for the toilet facility. We will bring forward regulations in Q4 2019 to align the requirements in the Planning Act with the Building Regulations technical guidance which was published on 12 July 2019.

Compensation

The Act provides for Ministers to make regulations about the payment of compensation where planning permission granted by a development order is withdrawn, and an application subsequently made for permission that would have been granted by that order is refused. This is a complex area and we will start work on this now, with the aim to put regulations in place by Q1 2021.

Fees

While it is for local authorities to make decisions on how their total resources are allocated, we believe it is important that the planning system is properly supported if it is to deliver effectively on the reforms we are bringing forward. We have consistently stated our intention to increase planning authorities' fee income towards full cost recovery following the Bill process. Fee increases must also be closely related to performance, and we consider that the new provisions relating to performance will help to support and demonstrate improvements.

The Act expands the powers to make regulations about fees. In particular, it allows for discretionary charging and discounts, extends the range of services for which fees can be charged, allows for a surcharge to be imposed for retrospective applications, and makes it possible for authorities to charge a higher fee for a premium service.

We will now move quickly to bring forward proposals for substantial changes to the fees structure, with the aim of having early clarity around costs and resources, and the new fee arrangements in place in Q2 of 2020. This will require careful assessment of the impacts on both planning authorities and applicants, to ensure that there are no unforeseen consequences from the combination of changes.

Performance

Ensuring a good quality service and good quality outcomes are important to all users of the planning service, and to all who benefit from what planning does for our communities. Planning must reposition itself to be seen as a broad enabling service, rather than a regulator, with its focus on supporting the creation of great places with opportunities for all. Good planning performance is about much more than procedural efficiency.

We intend to appoint a National Planning Improvement Co-ordinator by Q2 2020, using an open and transparent appointment process. The role of the co-ordinator is to monitor planning authorities' performance of their functions, and provide advice to planning authorities and others on improving their performance. We do not intend to make any regulations to expand on the appointment and functions of the co-ordinator at this time.

We will continue to work with the High Level Group on Planning Performance to define how performance should be measured, with a view to making regulations on the annual reporting of performance by Q4 2020. The Improvement Co-ordinator will become a member of the High Level Group.

Detailed requirements for training for elected members of planning authorities, before they can take part in planning functions, need to be informed by decisions on what good performance looks like, and reflect the changes made to the planning system by the Act. We will begin working on regulations in Q1 2021, and they will be in place before the Scottish local government elections in May 2022.

The appointment of Chief Planning Officers in all authorities will support improved performance and enhance the ability of planning to support outcomes across the authority. We propose to issue guidance on the role of Chief Planning Officers by Q4 2020; we will consider with representatives of the planning profession and COSLA whether guidance on their qualifications and experience is needed.

Enforcement

Increased fines for failing to comply with an enforcement order will be brought into effect in Q4 2019, together with requirements for courts to consider the financial benefit gained from the breach of planning control when setting the level of fines.

The Act introduces provision for charging orders, allowing planning authorities to place a charge on the property to recover the costs of taking direct action to implement the requirements of an enforcement notice. Regulations are required to set out the forms for registering and discharging charging orders. These will be provided by Q4 2020, together with guidance for local authorities on the new powers.

The requirement for planning authorities' enforcement charters to include a statement on the authority's monitoring of compliance with planning permission for major developments will be brought into force by Q1 2021, together with guidance on such monitoring.

Other workstreams

In addition to the implementation of the Planning (Scotland) Act 2019, we are taking forward a number of other strands of work under the wider planning reform programme.

Permitted development rights

The Scottish Government is undertaking a substantial review of permitted development rights that are granted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended). A Sustainability Appraisal of options for 16 development types has been carried out while the Bill has been progressing. This will be published shortly, together with a detailed programme for reviewing and delivering changes to the Order, and views will be invited.

Early elements of that programme will include priority consideration of:

- any changes in relation to hill tracks (private ways)
- changes which help to address climate change (such as, for example, micro-renewable technologies)
- measures to support digital connectivity, and
- measures to support the delivery of affordable homes in rural areas.

Land value uplift capture

We remain very interested in the concept of capturing land value uplift, and using that to fund infrastructure. Following the report by the Scottish Land Commission, published in May 2019, we will continue to explore how we can more effectively capture land value uplift for public benefit. This will include taking stock of the effectiveness of existing mechanisms, such as planning obligations, before exploring new approaches such as the infrastructure levy or changes to compulsory purchase rules. We intend to bring forward a package of proposals that addresses how authorities can effectively assemble land, tackle problem properties and capture land value uplifts ready for the next administration to consider. We do not expect to legislate on these issues in this Parliament, but we will now engage with local authorities, the Scottish Land Commission, the Scottish Futures Trust, and industry representatives, to properly explore all options and make sure we get this right.

Peat

Scottish peatlands provide an important carbon store, and it is essential that we protect and restore them where possible. We will review the existing guidance for planning authorities on the Review of Old Mineral Permissions, and will discuss with individual authorities any particular issues in their areas. This will be completed by Q4 2020.

Digital planning

Our work on digital planning will continue to progress. This will transform the system and support the changes we are making across all aspects of the planning system, including the shift to a place-based approach. We will make planning more accessible, easier to understand and engaging for everyone. We are working collaboratively across the sectors to deliver this long term aim, focusing on where technology can add high value improvements to create a digital planning service that is flexible, responsive and ready to embrace future change. We are engaging with key stakeholder groups to prioritise the commitments which will be taken forward as part of the digital transformation programme. We will set out these priorities in a Digital Strategy for Planning to deliver this transformation.

Place

Ultimately, the reforms of the planning system must ensure we are creating great places for all. So we will broaden our programme on the promotion of place by implementing the Place Principle and providing on-going support for the Place Standard tool. Our focus will be on creating sustainable places and transforming outcomes for communities, particularly in areas of disadvantage and inequality.

PLACES, PEOPLE AND PLANNING: TRANSFORMING PLANNING IN PRACTICE – POST-BILL WORK PROGRAMME

| | 2019 Q4 | 2020 Q1 | 2020 Q2 | 2020 Q3 | 2020 Q4 | 2021 Q1 | 2021 Q2 | 2021 Q3 | 2021 Q4 | 2022 Q1 | |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|---|
| NPF4 | | | | | | | | | | | |
| Development Planning – regional spatial strategies and local development plans | | | | | | | | | | | |
| Amendment of NPF and LDP | | | | | | | | | | | → |
| Report on housing for older people and disabled people – commencement | | | | | | | | | | | |
| Community engagement , including local place plans, mediation and pre-application consultation | | | | | | | | | | | |
| Masterplan consent areas | | | | | | | | | | | |
| Short-term lets control areas | | | | | | | | | | | |
| Development Management: | | | | | | | | | | | |
| Duration of planning permission and completion notices | | | | | | | | | | | |
| Repeat applications | | | | | | | | | | | |
| Planning obligations – publication, and arrangements for modification or discharge | | | | | | | | | | | |
| Development management regulations – music venues, listed building consent | | | | | | | | | | | |
| Health assessments: national and major development | | | | | | | | | | | |
| Schemes of delegation / local reviews | | | | | | | | | | | |
| Commencement of issues relating to the Scottish Ministers, & forestry strategies | | | | | | | | | | | |
| Commencement of issues affecting planning authorities | | | | | | | | | | | |

| | 2019 Q4 | 2020 Q1 | 2020 Q2 | 2020 Q3 | 2020 Q4 | 2021 Q1 | 2021 Q2 | 2021 Q3 | 2021 Q4 | 2022 Q1 | |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|--|
| Agent of change principle | | | | | | | | | | | |
| Changing places toilets | | | | | | | | | | | |
| Compensation on revocation of development orders - regulations | | | | | | | | | | | |
| Fees | | | | | | | | | | | |
| Performance: | | | | | | | | | | | |
| Planning Improvement co-ordinator – regulations & appointment | | | | | | | | | | | |
| Performance: reporting regulations | | | | | | | | | | | |
| Elected member training | | | | | | | | | | | |
| Chief planning officer: guidance on role and qualifications | | | | | | | | | | | |
| Enforcement: | | | | | | | | | | | |
| Increased fines | | | | | | | | | | | |
| Charging orders | | | | | | | | | | | |
| Enforcement charters to include statement on compliance monitoring | | | | | | | | | | | |



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