

Local Government, Housing and Planning Committee

13th Meeting, 2023 (Session 6)

Tuesday, 2 May 2023

SSI cover note for: Town and Country Planning (Development Planning) (Scotland) Regulations 2023

SSI 2023/101

Title of Instrument: Town and Country Planning (Development Planning) (Scotland) Regulations 2023

Type of Instrument: Negative

Laid Date: 24 March 2023

Circulated to Members: 2 March 2023

Meeting Date: 18 April 2023

Minister to attend meeting: No (although he did give evidence on the instrument at the Committee's previous meeting).

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? Yes

Reporting deadline: 15 May 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

2. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2023/101/contents/made>
3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note states that the instrument provides detailed provisions relating to the preparation of local development plans under Part 2 of the Town and Country (Scotland) Act 1997 (“the Act”), as amended.
5. The Committee previously took evidence on the instrument from stakeholders and then from the Minister for Local Government Empowerment and Planning at its meetings on 18 and 25 April.
6. Further information on the instrument and on both Committee’s evidence sessions can be accessed in the meeting papers and official reports via the links below—
 - [Local Government, Housing and Planning Committee 11th Meeting, 2023 | Scottish Parliament Website](#)
 - [Local Government, Housing and Planning Committee 12th Meeting, 2023 | Scottish Parliament Website](#)

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 25 April 2023¹ the DPLR Committee considered the instrument and agreed to draw it to the attention to the Parliament under the general reporting ground for—
 - failure to follow proper drafting practice on account of the failure to narrate the consultation requirement in section 16B(15) of the Town and Country Planning (Scotland) Act 1997 in the preamble; and
 - a cross-referencing error whereby Regulation 25 should refer to section 4ZA(3)(b)(ii) instead of section 4ZA(3)(b)(iii).
8. In respect of the first bullet above, the DPLR Committee noted that the Scottish Government had confirmed that the consultation requirement had been fulfilled and acknowledged that this should have been narrated in the preamble of the instrument.

¹ [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 25 April 2023 \(azureedge.net\)](#)

However, the Scottish Government does not consider that any corrective action is required.

9. In respect of the second bullet above, the DPLR Committee notes that the Scottish Government has undertaken to correct the cross-referencing error at the next available opportunity.

Procedure for Negative Instruments

10. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

11. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

These Regulations make provision in connection with the preparation of local development plans under Part 2 of the Town and Country Planning (Scotland) Act 1997 (“the Act”). A local development plan is to be prepared by a planning authority (section 16(1) of the Act). Before preparing a proposed local development plan the planning authority must prepare an evidence report under section 16B of the Act.

Part 2 of the Regulations relates to assessment of an evidence report by a person appointed by the Scottish Ministers under section 16B(8) of the Act. Regulation 4 also specifies the meaning of the term “Gypsies and Travellers” for the purposes of the preparation of an evidence report under section 16B of the Act.

Part 3 relates to the preparation and publication of local development plans. In particular regulation 7 sets out a requirement for the inclusion of map or maps to illustrate and identify the location of proposals contained in a local development plan. Regulation 9 prescribes certain information and considerations additional to those set out in section 16(2) of the Act to which the planning authority must have regard when preparing a local development plan. Regulations 10, 11 and 12 prescribe the manner in which a publication, consultation and notification of a proposed local development plan must be done. Regulation 13 sets out the manner in which the proposed local development plan as modified and submitted for examination under section 19 of the Act is to be published.

Part 4 makes provision in relation to the examination of proposed local development plans and Part 5 makes provision for the publication of recommended-modifications statements and reports on modification. Part 6 contains general provisions, these include the matters to be included in a development plan scheme prepared under section 20B of the Act (regulation 22) and how a planning authority is to publish a delivery programme prepared under section 21 of the Act (regulation 23). Regulation 25 specifies certain bodies as “key agencies” for the purposes of various provisions of the Act. Part 6 and the related schedule 4 also includes provisions revoking the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 and various enactments which amended those Regulations subject to certain saving and transitional arrangements contained in regulation 27.

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT PLANNING) (SCOTLAND) REGULATIONS 2023

SSI 2023/101

The above instrument was made in exercise of the powers conferred by sections 15(3) and (4)(a), 16(2)(b), 16B(13) and (14), 18(1)(a), (d) and (e), 19(5) and (5A), 20A(1A)(a) and (b), 20B(7), 21(3)(b) and (7), 23A(1), 23D and 275 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so.

The instrument is subject to negative procedure.

<p>The instrument provides detailed provisions relating to the preparation of local development plans under Part 2 of the Town and Country (Scotland) Act 1997 (“the Act”), as amended.</p>

Policy Objectives

1. The [Planning \(Scotland\) 2019 Act](#)² (“the 2019 Act”) introduced significant changes to development planning. These Regulations make provision in connection with the preparation of local development plans under Part 2 of the [Town and Country Planning \(Scotland\) Act 1997](#)³, as amended (“the Act”).
2. A local development plan (LDP) is a plan which sets out for land in the part of the district to which it relates a spatial strategy (being a detailed statement of the planning authority’s policies and proposals as to the development and use of land, taking account of matters prescribed) and any other matter which the planning authority consider it appropriate to include. An LDP is prepared by a planning authority or by two or more planning authorities jointly under section 16(5) of the Act.
3. The changes will support implementation of a new approach to preparing LDPs that will result in new style plans that support the management and use of land in the long term public interest.

The Development Planning Regulations

4. The Development Planning (Scotland) Regulations 2023 (“the Regulations”) form part of a wider package of measures to improve development planning, both in terms of what constitutes the statutory development plan and the process to prepare plans. Guidance published by the Scottish Government covers the content of plans and advice on their preparation.
5. The Regulations are laid and made alongside the Planning (Scotland) Act 2019 (Commencement No. 12 and Saving and Transitional Provisions) Regulations 2023.

PART 1 Introductory

6. Part 1 of the Regulations sets out details of citation, commencement and interpretation.

PART 2 Evidence Reports

7. Part 2 of the Regulations covers Evidence Reports. The Act requires (section 16B (1)) that before preparing a proposed LDP the planning authority must prepare an evidence report. Regulation 2 provides interpretation of ‘appointed person’, ‘authority’ and ‘evidence report’.

Notification of appointment of appointed person – assessment of evidence report

8. The Act provides (section 16B(7) that the planning authority are to submit the evidence report to the Scottish Ministers. Section 18B(8) states that on receiving an evidence report the Scottish Ministers are to appoint a person to assess whether the report contains sufficient information to enable the planning authority to prepare a LDP. Regulation 3 provides that the Scottish Ministers must, as soon as practicable after appointing a person to assess an evidence

² [Planning \(Scotland\) Act 2019 \(legislation.gov.uk\) https://www.legislation.gov.uk/asp/2019/13/contents](https://www.legislation.gov.uk/asp/2019/13/contents)

³ [Town and Country Planning \(Scotland\) Act 1997 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1997/8/contents)

<https://www.legislation.gov.uk/ukpga/1997/8/contents>

report under section 16B(8) of the Act, notify the authority that such an appointment has been made and of the name of the appointed person.

Preparation of evidence report

9. Section 16B of the Act indicates the evidence report is to

- set out—
 - a summary of the action taken by the planning authority to meet the accommodation needs of Gypsies and Travellers in the authority's area, and
 - an analysis of the extent to which the action has helped to meet those needs.
- include a statement on—
 - the steps taken by the planning authority in preparing the report to seek the views of the public at large, including in particular the views of Gypsies and Travellers, and
 - the extent to which the views expressed have been taken into account in the report.

10. Regulation 4 provides a definition of “Gypsies and Travellers” for the purpose of section 16B of the Act. This definition provides clarity on whose views should be sought during the evidence report stage, as required by section 16B(14) of the Act.

Procedure in relation to assessment of evidence report

11. Regulation 5(1) sets out that in an assessment of an evidence report (known as the “Gate Check”) the procedure to be followed is at the discretion of the appointed person, subject to requirements in regulations 5(2) to (4).

12. Under regulation 5(2) the planning authority must, to the extent that they have not already done so, make available to the appointed person a copy of any document referred to in the evidence report to the appointed person within 14 days of receiving notification under regulation 3.

13. Regulation 5(3) provides that, where to inform their assessment, the appointed person determines that representations should be made or information should be provided by any person in connection with the assessment of the evidence report, the appointed person may by notice request that person to make such representations or to provide such information. Regulation 5(4) confirms the appointed person may make such a request under regulation 5(3) at any stage of the assessment of the evidence report.

Expenses of assessment under section 16B(8) of the Act

14. Regulation 6 indicates that the general administrative costs, staff costs (including any remuneration due to the appointed person) and overheads (including the costs of provision of a venue) incurred by the Scottish Ministers or the appointed person in relation to an assessment under section 16B(8) of the Act are to be met by the planning authority.

PART 3 Local Development Plans

15. PART 3 of the Regulations relates to the preparation of local development plans.

Maps to be included in local development plan

16. Regulation 7 provides that a LDP is to contain “the Proposals Map”, a map or maps describing the policies and proposals set out in the LDP, so far as practicable to illustrate such policies or proposals spatially. The Proposals Map is to be sufficiently detailed so as to enable the location of proposals for the development and use of land to be identified.

Schedule of land ownership

17. The Act ensures transparency in relation to the LDP and land owned by the planning authority. Section 15(3) requires that where a LDP contains policies or proposals for, or views as to, the occurrence of development on land owned by the planning authority, a schedule is to be appended to the plan, which identifies the land, states that it is so owned and refers to the policies, proposals or views in question. Regulation 8(1) prescribes that the form is to be as set out in Schedule 1 of the Regulations. Schedule 1 provides a template form for the Schedule of land ownership. This table covers the ‘Description of land owned by the planning authority’ and the ‘Reference to policies, proposals or views contained in local development plan which relate to the occurrence of development of the land’.

18. Regulation 8(2) confirms that where a LDP is prepared by a national park authority, the schedule of land ownership is to also include land owned by a local authority.

Information and considerations

19. Regulation 9(1) sets out the information and considerations the planning authority are to have regard to in preparing a LDP. These include

- any regional spatial strategy prepared for, or adjoining the LDP area,
- any LDP prepared for a different purpose for the LDP area,
- any LDP prepared for an area adjoining the LDP area,
- where the LDP area adjoins land in England, any document which forms part of the development plan for the area in which that land is situated,
- prescribed plans and strategies insofar as they relate to the LDP area:
 - the national waste management plan,
 - the national marine plan,
 - any regional marine plan,
 - any river basin management plan,
 - any flood risk management plan,
 - any local flood risk management plan,
 - any regional transport strategy,
 - any local transport strategy,
 - any local housing strategy, - any open space strategy.
- the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment,

- the need in the long term—
- to maintain appropriate safety distances between residential areas, buildings and areas of public use, recreational areas and, as far as possible, major transport routes and—
 - (aa) establishments covered by the Directive, (Directive 96/82/EC of the European Council on the control of major accident hazards involving dangerous substances)
 - (bb) major accident hazard pipelines,
 - to protect areas of particular natural sensitivity or interest in the vicinity of establishments or major accident hazard pipelines, where appropriate through appropriate safety distances or other relevant measures,
 - in the case of existing establishments, to take additional technical measures in accordance with regulation 5 of the Control of Major Accident Hazards Regulations 2015 so as not to increase the risks to human health and the environment
 - the resources available or likely to be available for the carrying out of the policies and proposals set out in the LDP.

Publication of proposed local development plan

20. Section 16B(9) of the Act states that if, having completed their assessment, the appointed person is satisfied that the evidence report contains sufficient information to enable the planning authority to prepare a LDP, the appointed person is to notify the Scottish Ministers and planning authority accordingly. Section 18(1(a)) of the Act sets out after having been notified, the planning authority are, having regard to the evidence report, to prepare and publish a proposed LDP, in such manner as is prescribed. Regulation 10 prescribes the matter of publication of the proposed LDP.

21. Under the terms of Regulation 10, the planning authority must prepare a notice containing the following information:

- i) a statement that the proposed LDP has been prepared and where and at what times it may be inspected, ii) a brief description of the content and purpose of the proposed LDP,
- iii) details of how further information may be obtained regarding the LDP, including that it is to be published on the internet,
- iv) a statement that any person wishing to do so may make representations on the content of the proposed LDP, and
- v) information as to how and to whom any representations should be made and the date by which they should be made.

22. Under Regulation 10(2)(b) the notice is to be published in a local newspaper circulating in the area and on the internet, and sent to (i) the key agencies, (ii) the Scottish Ministers, (iii) the planning authority/authorities for land which adjoins the LDP area, and (iv) any community council any part of whose area is within the LDP area.

23. Regulations 10(2)(c) and (d) require the proposed LDP to be published on the internet, and a copy of it made available for inspection at an office of the planning authority and in every public library in the LDP area.

Consultation on proposed local development plan

24. Regulation 11 requires the planning authority to consult the Scottish Ministers with regard to a proposed LDP.

Notification of publication of proposed local development plan

25. Regulation 12 covers neighbour notification in relation to proposed LDPs. Where the proposed LDP includes a proposal for development relating to a specific site which, if implemented, would be likely to have a significant effect on the use or amenity of that site or of neighbouring land (defined as conterminous with or within 20 metres of the boundary of the site in question), the planning authority are to give notice to the owner, lessee or occupier of any premises situated on that site, or on such neighbouring land, as the case may be.

26. Such notice given under Regulation 12(1) is to be—

- i) in the form set out in Schedule 2 of the Regulations (and completed in accordance with the instructions therein),
- ii) accompanied by a map showing the location of the site in question, and
- iii) sent to the premises situated on the site or neighbouring land, as the case may be, addressed to “the Owner, Lessee or Occupier”.

Publication of proposed local development plan as submitted to the Scottish Ministers

27. Following the period for representations on the proposed LDP, under section 18(4) of the Act the planning authority are to submit the proposed LDP to the Scottish Ministers together with—

- i) a report as to the extent to which the authority's actions with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) the authority's current participation statement,
- ii) a copy of their proposed delivery programme for the plan, and
- iii) if modifications have been made to the proposed plan under subsection, a report setting out—
 - (A) the modifications made, and
 - (B) the reasons for making them.

28. Linked to section 18(4) of the Act, under section 19(1) the planning authority are to request the Scottish Ministers appoint a person to examine the proposed plan.

29. Section 19(5A) of the Act sets out that where such a request is made the planning authority must publish the proposed plan in the prescribed manner. Regulation 13 prescribes the manner of publication for the purposes of section 19(5A).

30. Under Regulation 13, publication is to be by—

- (a) publishing in a local newspaper circulating in the area a notice containing the following information—
 - (i) a statement that a proposed LDP has been submitted to the Scottish Ministers, and
 - (ii) the date of submission of the proposed plan and details of how and at what times it and any modification report may be inspected,
- (b) making a copy of the proposed LDP and any modifications report available for inspection at an office of the planning authority and in every public library in the LDP area, and
- (c) publishing the proposed LDP and any modifications report on the internet.

31. Regulation 13(3) defines ‘modifications report’ as a report required to be published in accordance with section 19(5A)(b) of the Act.

PART 4 ‘Examinations’

32. Part 4 makes provision in relation to the examination of a proposed LDP under section 19(3) or (4) of the Act.

Application and interpretation of Part 4

33. Regulation 14 provides definitions of terms used in Part 4. It defines the terms “appointed person”; “authority”; “plan area” and “unresolved representations”.

Notification of appointment of appointed person – examination

34. Regulation 15 requires the Scottish Ministers, as soon as practicable after appointing a person to examine a proposed LDP under section 19(3) of the Act, to notify the planning authority that such an appointment has been made and of the name of the appointed person.

Summary of unresolved issues

35. Regulation 16 (1) requires that within 14 days of receiving notification under regulation 15 of the appointed person, the planning authority must, to the extent that they have not already done so, send to the appointed person

- (a) a summary of unresolved issues prepared in accordance with regulation 16(2),
- (b) copies of the unresolved representations,
- (c) the environmental report prepared in connection with the proposed plan and copies of opinions expressed in response to the invitations referred to in section 16(1) and (2)(a)(iii) of the 2005 Act,
- (d) the proposed delivery programme prepared for the proposed plan in accordance with section 21 of the Act,
- (e) a copy of the authority’s participation statement current at the time when the proposed plan was published under 18(1)(a) of the Act.

36. The summary of unresolved issues to be submitted (regulation 16(2)) under regulation 16(1)(a) is to—

- (a) specify the number of and list all unresolved representations (including the name of the person who made the representation),
- (b) include, in the form set out in Schedule 3 of the Regulations—
 - i) a summary of each of the various issues raised in the unresolved representations, and
 - ii) a statement of the reasons why the planning authority did not modify the proposed plan in response to the issues raised in the representations, and
- (c) be arranged, so far as practicable, so that such summaries of issues appear in the same order as those parts of the proposed plan to which the issues relate are set out in the plan.

37. Regulation 16 (3) relates to advertising or giving notice of the examination under section 19(6) of the Act, the authority, are to include—
- (a) a statement that the authority has, or is to, provide to the appointed person a summary of the issues it considers should be assessed at the examination, and
 - (b) information as to where it is possible to inspect such summary and other information and documents provided by the authority in connection with the examination.

Scope of the examination

38. Regulation 17 limits the scope of an examination held under section 19(3) of the Act to only assess issues raised in unresolved representations.

Further representations or information – examination

39. Regulation 18 provides that at any stage in the examination the appointed person may determine that further representations or further information should be provided in connection with the examination of the proposed plan. They may request such further representations or information by giving notice (a “procedure notice”) to that effect to— the planning authority, and any other person from whom the appointed person wishes to receive further representations or information.

40. The procedure notice is to—
- (a) set out the matters on which such further representations or information is requested,
 - (b) specify the date by which such further representations or information are to be sent to the appointed person, and
 - (c) state the name and address of any person to whom the procedure notice is given.

41. Regulation 18(4) allows discretion for the appointed person to set the date by which responses to further information request are to be sent by. Any further representations made or information provided in response to the procedure notice (“the procedure notice response”) are to be sent to the appointed person on or before the date specified for that purpose in the procedure notice and a copy of any procedure notice response is to be sent on

or before that date to any other person to whom the procedure notice was given. This provides the opportunity for other relevant parties to see any further information provided to the appointed person.

42. Regulation 18(5) then allows a 14 day period from receipt of a copy of the procedure notice response, within which any person to whom the procedure notice was given may send comments to the appointed person in reply to the procedure notice response, and must, when doing so, send a copy of such comments to any other person to whom the procedure notice was given.

Expenses of examination

43. Similarly to the expenses for the assessment of the evidence report (see paragraph 14 in relation to Regulation 6 above), Regulation 19 requires the general administrative costs, staff costs (including any remuneration due to the appointed person) and overheads (including the costs of provision of a venue for the examination) incurred by the Scottish Ministers or the appointed person in relation to an examination held under section 19(3) or (4) of the Act to be met by the authority.

PART 5 'Publication of recommended-modifications statements and reports on modification'

44. Part 5 makes provision for the publication of recommended-modifications statements and reports on modification.

Publication of recommended-modifications statement

45. Sections 20A(1A)(a) and 20A(1B)(a) of the Act cover circumstances where a person appointed under section 19(3) to examine the proposed LDP recommended a modification to a proposed version of the plan and the modification was not made. In such circumstances the planning authority must, as soon as reasonably practicable after the LDP is constituted, publish a 'recommended-modification statement' in the prescribed manner.

46. Regulation 20 prescribes the publication of a recommended-modification statement is to be by—

- a) publishing in a local newspaper circulating in the area a notice containing the following information—
 - i) a statement that the planning authority has adopted the LDP without making a modification to it as recommended in the report prepared following the examination of the proposed LDP, and
 - ii) how the recommended-modification statement explaining why the modification was not made may be inspected,
- b) making copies of the recommended-modification statement available for inspection at an office of the planning authority and in every public library in the LDP area; and
- c) publishing the recommended-modification statement on the internet.

Publication of report on modification

47. Sections 20A(1A)(b) and 20A(1C) of the Act cover circumstances where the constituted plan differs from the proposed plan published under section 18(1)(a) as a result of modifications made under section 18(3), 19(10) or 19A(5)(b)(i). In such circumstances the planning authority must as soon as reasonably practicable after the LDP is constituted publish a 'report on modifications' in the prescribed manner, as qualified by section 20A(1D).

48. Regulation 21 prescribes the publication of a report on modifications is to be by—

- (a) publishing in a local newspaper circulating in the area a notice containing the following information—
 - i) a statement that the planning authority has adopted the LDP having made modifications to it, and
 - ii) how the report on modifications setting out the modification and the reasons for making them may be inspected,
- (b) making copies of the report on modifications available for inspection at an office of the planning authority and in every public library in the LDP area; and
- (c) publishing the report on modifications on the internet.

PART 6 'General'

49. Part 6 makes general and transitional provisions.

Development plan schemes

50. Section 20B of the Act covers development plan schemes (DPSs). This is a document setting out the authority's programme for preparing and reviewing its LDP (as defined in section 20B(3)).

51. Regulation 22(1) provides that in addition to matters specified in section 20B, a development plan scheme must set out proposed timings for various stages of LDP plan preparation, by specifying the proposed quarter. The stages required to be covered are timings for

- publication by the planning authority of its evidence report,
- publication by the planning authority of its proposed LDP
- submission by the planning authority of its proposed LDP to the Scottish Ministers,
- the anticipated timetable for constitution of the LDP including the quarter in which the planning authority expects to adopt the proposed LDP.

52. Section 20B provides requirements for the review of development plan schemes, planning authorities are required to prepare the scheme within one year of last preparing a scheme, or wherever required to do so by Scottish Ministers. Regulation 22(2) provides that if the timetable included in the DPS differs from the timetable included in the DPS last prepared by the planning authority, the DPS must—

- (a) identify the changes to the timetable, and
- (b) set out the reasons for the changes to the timetable.

53. Regulation 22(3) explains what is meant by 'quarter' as what is widely recognised as quarters of the financial year.

Proposed delivery programmes – publication and consultation

54. Section 21 of the Act covers Delivery Programmes and 21(1) in particular requires a planning authority who prepare a LDP to prepare a delivery programme.

55. In terms of timings, section 21(4) states that the planning authority is to publish a proposed delivery programme when they publish a proposed LDP. Regulation 23(1) sets out how the proposed delivery programme is to be published and mirrors requirements for the LDP. This is to be by-

- (a) publishing in a local newspaper circulating in the area and on the internet a notice containing the following information—
 - i) a statement that the proposed delivery programme has been prepared and where and at what times it may be inspected,
 - ii) a brief description of the content and purpose of the proposed delivery programme,
 - iii) details of how further information may be obtained regarding the proposed delivery programme, including that it is to be published on the internet under regulation 23(1)(d),
 - iv) a statement that any person wishing to do so may make representations on the content of the proposed delivery programme, and
 - v) information as to how and to whom any representations should be made and the date by which they should be made,
- (b) a making a copy of the proposed delivery programme available for inspection at an office of the planning authority and in every public library in the LDP area, and (c) publishing the proposed delivery programme on the internet.

56. Section 21(3) sets out that in preparing a delivery programme an authority are to seek the views of, and have regard to the views expressed by (a) the key agencies and (b) such persons as may be prescribed. Regulation 23(2) prescribes those persons, for the purposes of section 21 (3)(b), as being the Scottish Ministers.

Form and content of delivery programmes

57. Regulation 24 prescribes a delivery programme is to set out the following matters—

- (a) a list of actions required to deliver each of the policies and proposals contained in the LDP and an explanation as to how those actions are to be taken, and (b) the timescale for the conclusion of each such action.
- (c) the expected sequencing of, and timescales for, the delivery of housing on sites allocated by the local development plan.

Key Agencies

58. Regulation 25 defines the 'key agencies' for the purposes of sections 18(1)(b) and (d) and (10) and 21(3)(a) and (5) of the Act, subject to some limitations (as set out in Regulation 24 (3)) which limits their role to their area of expertise or geographic area of interest, as appropriate.

59. The bodies specified as key agencies are:
- (a) Scottish Natural Heritage (NatureScot),
 - (b) the Scottish Environment Protection Agency,
 - (c) Scottish Water,
 - (d) Scottish Enterprise,
 - (e) Highlands and Islands Enterprise,
 - (f) South of Scotland Enterprise,
 - (g) a regional Transport Partnership,
 - (h) the Crofting Commission,
 - (i) a Health Board,
 - (j) Historic Environment Scotland

Revocation and saving provisions

60. Regulation 26 revokes the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

61. It also provides savings and transitional provisions, in relation to those 2008 regulations. It applies to those LDPs that had reached the stage whereby notice of the proposed LDP was published in a local newspaper in accordance with regulation 12(2)(a) of the 2008 Regulations before 12 February 2023, and to supplementary guidance in connection with a LDP.

Consultation

62. Scottish Government convened a Development Planning Working Group to inform the preparation of draft regulations and guidance on local development planning. Three subgroups were established and produced written information and ideas to support the:

- evidence report and gatecheck stages of preparing a new style LDP;
- procedures associated with preparing a new style LDP; and
- scope and content of new style LDPs

63. A [public consultation on Local Development Planning](#)⁴ ran from 17th December 2021 – 31 March 2022. It included the draft regulations and guidance. It included specific questions about the various proposals for regulations, covering the different stages of plan preparation.

64. 87 responses were received, these were from planning authorities, key agencies and the public sector, development, property and land management bodies, the energy sector, the third sector, professional and representative bodies as well as communities and individuals. An [independent report](#)⁵ provides analysis of the responses, both in terms of the main themes emerging and the

⁴ Local development planning - regulations and guidance: consultation - Scottish Government - Citizen Space <https://consult.gov.scot/planning-architecture/local-development-planning/>

⁵ Local development planning regulations and guidance - draft: consultation analysis - gov.scot (www.gov.scot) <https://www.gov.scot/publications/analysis-responses-made-local-development-planning-regulations-guidanceconsultation/>

detailed comments. It includes a full list of those who responded and who agreed to the release of their details.

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

66. A series of comments related to detailed wording, and some calls for additional aspects to be covered in regulations. Key recurring issues included the following:

- Both the new evidence report and gate check stages attracted a significant volume of comments. There were calls for minimum evidence and consultation requirements to be applied to the evidence report. Regulations on the scope of the gate check were sought by respondents, to establish what can be re-visited at the point of examination.
- Local variation was a recurring concern for all sectors. Respondents sought clarity that policies can be varied from NPF4 national planning policies to suit local situations. A legal framework was suggested to provide security alongside additional regulatory provisions to define the circumstances which may require a different policy approach in LDPs, and the process by which planning authorities are to justify any such deviations from the NPF.

67. 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.

Evidence Reports

68. The evidence report is a new, early stage of plan preparation. Opinion was split on proposals for regulations relating to the evidence report. This issue attracted a large amount of discussion and was heavily commented on through the consultation process. A significant number of planning authorities called for the introduction of minimum evidence requirements. In addition, it was suggested that minimum consultation requirements on evidence reports should be prescribed in the regulations. However, the independent analysis also highlights that multiple planning authorities welcomed the provision and supported addressing this in guidance. The consultation analysis also noted that flexibility for the evidence report allows for the evolution and identification of best practice.

69. The suggestion for minimum evidence / data requirements to be prescribed in regulations, has not been taken forward as a statutory requirement. Whilst some respondents sought evidence requirements to be prescribed, there was also a concern raised that prescribing minimum types of evidence could lead to only the minimum content being produced. We consider

the relevant evidence for different aspects of land use can be better addressed in guidance, which provides flexibility for authorities on the appropriate evidence for their area and for the appointed person to make a judgement of the sufficiency of that evidence based on the views of stakeholders. The guidance sets out those types of evidence that have a statutory link to LDPs, those required by other legislation, those types that are linked to national planning policy, and those that are suggested as potential good practice, with more discretion for planning authorities to consider whether necessary for their area. We believe this approach will allow for this new part of the process to evolve and for lessons from practice to inform any amendments to the guidance.

70. With regard to the call for the regulations to prescribe minimum consultation requirements in terms of who must be consulted, section 16B(2) of the Act already sets out those whose views the planning authority are to seek and have regard to in preparing an evidence report. This includes key agencies, children and young people (in particular school pupils, youth councillors and youth parliament representatives), and the public at large. It also requires the evidence report to include a statement on the steps taken by the planning authority to seek the particular views of disabled persons, Gypsies and Travellers and community councils. The Evidence Report and Gate Check Subgroup considered that regulations should specify stakeholders with whom consultation should take place as a minimum. However, it is considered that the Act already sets the minimum consultation requirements. The reference already provided to the 'public at large' is broad and requires views of the general public to be sought and taken into account.

71. Evidence reports are expected to be wide ranging in scope and of relevance to a wide range of groups and individuals with interests in the area and the issues covered. The guidance highlights that planning authorities may wish to carry out their own stakeholder mapping locally and to work with existing groups and forums covering their area. Statutory requirements in primary legislation require Development Plan Schemes to include a Participation Statement, including information on whom the planning authority will consult in preparing the plan. The 2019 Act strengthened this to require that in preparing the development plan scheme, the planning authority seek the views of the public at large as to the content of the participation statement. We expect this will include seeking views on who should be engaged at different stages and on the best approach to involving people. We therefore consider it would be more flexible to address this matter in guidance, enabling planning authorities to tailor their approach to their local situations and so have not prescribed any other persons in regulations.

72. A [separate consultation on the definition of gypsies and travellers](#)⁶ was carried out between December 2022 and February 2023, seeking views on a proposed definition to inform the evidence report. The online consultation

⁶ Local development plan evidence report - defining Gypsies and Travellers: consultation - Scottish Government - Citizen Space <https://consult.gov.scot/planning-architecture/local-development-plan-evidence-report/>

received 41 responses, and we also conducted four in-person consultation engagement events with Travelling community members. Responses were received from members of various Travelling communities, representative bodies and local authorities.

73. Three key issues appeared consistently in consultation responses;
- The need to recognise ethnic Gypsy/Travellers as a separate category to Travelling Showpeople,
 - The acknowledgement that Travellers stop travelling for various reasons that cannot be pinpointed exactly and thus cannot be listed in one definition, and
 - The need to ensure that the definition is not so broad that it includes non-travelling people, as the proposed definition included 'persons who require the provision of land for temporary or permanent living' and this is not restricted to Gypsies and Travellers

74. Scottish Government has taken these points forward in the definition provided in Regulation 4.

Assessment of Evidence Reports (Gate Checks)

75. There were several calls from different sectors for the regulations to set out the scope of the gate check. This is already covered in the primary legislation. Section 16B(8) of the Act sets out that on receiving an evidence report, the Scottish Ministers are to appoint a person to assess whether the report contains sufficient information to enable the planning authority to prepare a LDP.

76. Clarity was sought over what is meant by 'sufficient information to prepare an LDP'. As explained above in relation to minimum evidence requirements, we consider this is more appropriate to cover in guidance.

Form and Content of LDPs

77. There was broad agreement with the proposals for regulations relating to the form and content of LDPs. Planning authorities and a professional representative body were generally supportive with the flexibility provided by the new regulations. However, a significant volume of responses sought detail on the scope for local variation of policies from those in the National Planning Framework (NPF).

78. A small number of planning authorities and professional & representative bodies believed the regulations should provide a legal framework for policies contained in LDPs, particularly those that reflect local circumstances and as a result may differ from NPF4 policy wording or those that provide additional detail not provided by the NPF.

79. The Act already provides for planning authorities to prepare LDPs that include policies and proposals for development and use of land in their area. There is no legal requirement for LDPs to be directly 'compatible' with NPF4, although in preparing LDPs, there will be a statutory requirement under section 16(2)(a)(i) of the Act that planning authorities take the NPF into account.

Preparation and monitoring of LDPs

80. There was also broad agreement with the proposals for regulations relating to the preparation and monitoring of LDPs.

81. The draft regulations set out proposed information and considerations that planning authorities are to have regard to in preparing their LDP. There was broad agreement with the proposals for regulations relating to the additional information and considerations to have regard to when preparing and monitoring LDPs. However, an extensive list of additional considerations was suggested by respondents. Key areas included:

- Climate change related matters were identified by a large number of responses across planning authority and third sector responses.

In response the finalised regulations now also include as considerations: the national marine plan, any regional marine plan, any flood risk management plan, any local flood risk management plan and any open space strategy.

- Economic consideration was noted by the majority of development sector responses.

We have not added economic consideration to this part of the regulations. However, the list of key agencies includes; Scottish Enterprise, Highlands and Islands Enterprise, and South of Scotland Enterprise. Under the Act it is the duty of a key agency to co-operate in the preparation of the authority's proposed LDP. Planning authorities also have a duty to seek the views of and have regard to them as part of the evidence report, and the Regulations (Regulation 10) requires the planning authority to send the key agencies details of the publication of proposed LDPs.

82. The draft regulations included as a consideration "major accident hazard establishments" but not "major accident hazard pipelines". A stakeholder highlighted this as an omission and we agree it is as important for LDPs to take into account and consider the safety implications of locating development near major accident hazard pipelines. Regulation 9(2)(b) now covers such pipelines.

Examinations

83. There was broad agreement with the proposals for regulations relating to the Examination of the LDP. Planning authorities agreed with the necessary administrative amendments.

84. A small number of planning authorities, the development sector and professional & representative bodies sought clarifications on the scope of examinations including what matters can be re-examined and when. Regulation 17 sets out the scope of the examination is 'only to assess issues raised in unresolved representations' – it was considered that further explanation of that scope was not required.

85. Development, property and land management bodies and professional and representative bodies called for the draft regulations to be amended to provide clarity on what happens when the appointed person requests and receives further representations, to give other parties the opportunity to comment on any further information provided. In the interests of natural justice, this has been provided for in new provisions in Regulation 18.

Development Plan Schemes

86. There was broad agreement with the draft regulations on development plan schemes from across sectors including planning authorities, development, property and land management bodies, energy companies and professional and representative bodies.

87. Planning authorities, key agencies, public sector bodies and professional and representative bodies questioned the level of detail required in regards to when an LDP is expected to be adopted. Rather than requiring a month to be set, which was seen as an unreasonable level of accuracy, respondents suggested an amendment to reflect a broader approach. As an alternative to prescribing the month, some suggested using seasons or quarters. Regulation 22 on development plan schemes, now provides for anticipated timescales to refer to financial quarters of years.

Delivery Programmes

88. The 2019 Act renames 'Action Programmes' prepared under section 21 of the Act as 'Delivery Programmes'. This more accurately describes and emphasises the purpose of the document, which is to deliver the plan and achieve its outcomes, rather than its previous focus of monitoring specific actions.

89. There was broad agreement with the proposals for regulations relating to delivery programmes.

90. A number of planning authorities and a professional and representative body felt that placing a named person against each action, as required by existing regulations, is not workable and would not take account of staff changes. Revision has been made to the regulation on delivery programmes to remove the reference to a 'named person' instead the regulation now requires delivery programmes to set out a list of actions required to deliver each of the policies and proposals contained in the LDP and an explanation as to how those actions are to be taken. The reference to 'how those actions are to be taken' could include details of the relevant organisations involved.

91. Some planning authorities interpreted the requirements in relation to delivery programmes to mean that the Council will be responsible for much of the delivery of projects, expressing concern that many factors are outwith their control. This is not the approach promoted in the regulations. Collaboration and partnership working are key to the preparation of the delivery programme. Whilst the planning authority's head of service is responsible for preparing the delivery programme the guidance reflects that the key agencies also have a duty to cooperate. No change has therefore been made to the regulations, but the guidance emphasises the need for collaboration and partnership working with stakeholders.

92. The regulations on the proposed delivery programme have been amended to ensure that when the delivery programme is published alongside the proposed LDP, a notice is published, to allow all parties with an interest in the proposed delivery programme to see it. The regulations provide that the planning authority must include a statement in the notice that any person wishing to do so may make representations on the content of the proposed delivery programme.

93. The regulations include provisions at regulation 24(c) to reflect that in terms of National Planning Framework 4, the Delivery Programme is to include a housing land pipeline, which is explained as the expected sequencing and timing for housing sites in the LDP. The NPF4 clarification was a result of stakeholder feedback regarding lack of clarity on the housing land pipeline. This provides additional clarification that the sequencing over time is to be implemented when Action Programmes for adopted LDPs are reviewed to produce the next iteration, as a Delivery Programme.

Key agencies

94. There was broad agreement with proposed regulations relating to the meaning of 'Key Agency'.

- Some respondents suggested Homes for Scotland be included as a key agency for home building. This has not been added to the regulations, as other industry sectors would not have similar status. There are opportunities for housebuilders to be engaged throughout the plan preparation and delivery stages.

- The regulations also now ensure that the Crofting Commission is treated as a key agency both for its interests in the 'crofting counties' and now also areas designated under section 3A(1)(b) of the Crofters (Scotland) Act 1993 to constitute the land as a croft.
- One third sector response suggested health and social care partnerships; Creative Scotland; Scotland's Centre for Design; and Scottish Council for Voluntary Organisations to be included within the definition of key agencies. However, as these bodies did not themselves seek to be treated as key agencies, the regulations have not been amended to add them, given the additional duties and responsibilities it entails.

Transitional provisions

95. There was broad agreement with these proposals. Further detail on transitionals and savings provisions is also provided in The Planning (Scotland) Act 2019 (Commencement No. 12 and Saving and Transitional Provisions) Regulations 2023. A [letter from the Chief Planner issued on 8 February 2023](#)⁷ also provides details on transitional arrangements.

Impact Assessments

96. The consultation paper contained [Interim Impact Assessments](#)⁸. These included an Interim Business and Regulatory Impact Assessment (BRIA), Partial Equality Impact Assessment (combining Child Rights and Wellbeing Impact Assessment), Partial Island Communities Impact Assessment, Fairer Scotland Duty Assessment plus a Strategic Environmental Assessment – Pre-screening Notification.

Outputs from the Assessments

97. 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, the Scottish Government can confirm that the secondary legislation on LDPs does not constitute a strategic decision and therefore an assessment is not required. The Screening Assessment is available online.

⁷ Chief Planner letter: transitional arrangements for National Planning Framework 4 - February 2023 - gov.scot (www.gov.scot) <https://www.gov.scot/publications/chief-planner-letter-transitional-arrangements-for-nationalplanning-framework-4/>

⁸ Local development planning - regulations and guidance consultation: part D - interim impact assessments - gov.scot (www.gov.scot) <https://www.gov.scot/publications/local-development-planning-regulations-guidanceconsultation-part-d-interim-impact-assessments/>

98. 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](#)⁹.
99. The Equality Impact Assessment (EQIA) and Child Rights and Wellbeing Impact Assessment (CRWIA) both recognised that people wished to be engaged in the planning their areas but that barriers were in place which prevented participation. Improved participation and engagement is an important part of the wider package of planning reform, rather than being specific to these regulations.
100. The EQIA outlines the available evidence and assesses the anticipated impact in relation to each protected characteristic. The EQIA has identified a range of potential positive impacts, including in relation to addressing the accommodation needs for disabled people and for Gypsy and Traveller communities.
101. The CRWIA finds that the Local Development Planning Regulations and Guidance have the potential to have a positive impact on children's rights.
102. Copies of both the EQIA and CRWIA accompany this policy note.
103. In relation to impacts on island communities, the Scottish Government issued a partial Island Communities Impact Assessment (ICIA) with the consultation. Views were sought on the potential impacts on Island communities through the consultation process and we have responded to the responses received accordingly in the finalised ICIA. It notes that the provisions in the regulations and guidance offer flexibility for local circumstances including island communities and are not likely to have an impact that is significantly different from the rest of the country.
104. We do not envisage that the wider changes proposed will have significant, or different effects on island communities.

Financial Effects

105. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The responses to the consultation on the interim BRIA highlighted some concern about the capacity of planning authorities to resource the implementation of the proposal, and possible subsequent negative impacts on businesses who engage with the planning system. Several responses highlighted research produced by RTPI Scotland, which highlights resource

⁹ [Scottish Environment Assessment Gateway - Search \(strategicenvironmentalassessment.gov.scot\)](https://www.strategicenvironmentalassessment.gov.scot/)
<https://www.strategicenvironmentalassessment.gov.scot/> Case numbers 01141 and 01197

challenges in planning authorities. No further information to assist with quantitative costing of the proposal was provided.

106. Some planning authorities raised specific concerns about resourcing the new evidence report and gate check stages, and particularly in relation to the examination of the Proposed Plan. Clarity was sought about the scope of the respective procedures, to try and avoid repetition and the extra cost this would incur. The evidence report and gate check stages are intended to consider key issues for plan making earlier in the process, and therefore reduce examination costs at the end. Prior to the plan being submitted for examination, DPEA will be able to advise in relation to average costs of previous examinations. Once the plan has been submitted for examination DPEA can provide an estimate of costs based on the reporters project plan for the examination. If the time taken is estimated, at any stage of the examination, to be more or less than 5% of the original estimate DPEA can advise the authority of this change and also the reasons for this.
107. With regard to examinations these regulations replace long standing statutory requirements, but also relate to a key change in the act that plans are to be prepared at intervals of no more than 10 years, instead of 5. This means that planning authorities will not be required to cover the cost of examinations as frequently as under the previous system. As the new system is implemented over the coming years it will be possible to monitor the costs of gate checks and examinations and therefore assess to what extent this aim is achieved in practice.
108. It is difficult to gauge with certainty the overall financial effects of the regulations within the information available. However, proportionality has been an important consideration in the finalisation of the regulations, to provide planning authorities and all stakeholders, including business, with a clear statutory framework. Clarity was identified as a priority by business representative bodies during a focused period of engagement which informed the development phase of the proposal.

Scottish Government
Directorate for Local Government and Housing
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