

Local Government, Housing and Planning Committee
Tuesday 29 October 2024
28th Meeting, 2024 (Session 6)

Subordinate Legislation: Planning SSIs

Introduction

1. The purpose of this paper is to provide information to help inform the Committee's consideration of the following planning-related Scottish Statutory Instruments (SSIs)—

Affirmative instruments

- [Town and Country Planning \(Amendment of National Planning Framework\) \(Scotland\) Regulations 2024 \[draft\]](#)
- [Masterplan Consent Area Scheme \(Environmental Impact Assessment\) \(Scotland\) Regulations 2024 \[draft\]](#)

Negative instruments

- [Town and Country Planning \(Amendment of Local Development Plan\) \(Scotland\) Regulations 2024 \(SSI 2024/250\)](#)
- [Town and Country Planning \(Masterplan Consent Areas\) \(Scotland\) Regulations 2024 \(SSI 2024/253\)](#)

2. Given that these SSIs represent a package of proposed changes relating to the National Planning Framework (NPF4), the Minister for Public Finance and his accompanying officials will provide oral evidence to the Committee on all four sets of regulations at this meeting.

3. The Minister will then move the following motions:

S6M-14644: That the Local Government, Housing and Planning Committee recommends that the Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 [draft] be approved.

S6M-14815: That the Local Government, Housing and Planning Committee recommends that the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 [draft] be approved.

4. The Delegated Powers and Law Reform Committee considered the instruments on 1 October and agreed not to draw them to the attention of the Parliament on any grounds within its remit. The DPLR Committee welcomed that the Town and Country Planning (Amendment of Local Development Plan) (Scotland) Regulations 2024 fulfils a previous commitment by the Scottish Government to correct a cross-referencing error in regulation 25 of the Town and Country

Planning (Development Planning) (Scotland) Regulations 2023 (SSI 2023/101).

Background

5. The Scottish planning system is described as ‘plan-led’, with development plans guiding the future use of land in our cities, towns, and rural areas. Planning authorities, and Scottish Ministers, are required to make decisions on applications for planning permission in accordance with the development plan unless there are compelling reasons, known as material considerations, which indicate that the decision should be otherwise.
6. A material consideration is any issue that can be legitimately considered by a planning authority in reaching a decision on a planning application. In practice, any proposed development that meets the requirements of the development plan will normally be approved, unless there are material considerations which indicate that permission should be refused.
7. Local development plans (LDPs) are drafted and adopted by each of Scotland’s 34 planning authorities (32 local authorities and two national park authorities). From 13 February 2023, [National Planning Framework 4](#) (NPF4) became a formal part of every development plan in Scotland.
8. LDPs cover the whole of Scotland; they identify sites for new developments and set out policies that guide decision making on planning applications. Each planning authority (i.e. local authority or national park authority) is required to publish and then update local development plan(s) covering their area at least once every 10 years.
9. The Planning (Scotland) Act 2019 increased the timescale for the review of LDPs from at least every five years to at least every 10 years. Given this increase in timescale, the Act allows Minister to establish for a process for planning authorities to amend a LDP between reviews. This process is set out in these Regulations.

The Regulations

10. All four sets of regulations were laid under powers conferred by the Town and Country Planning (Scotland) Act 1997. Both the Amendment of National Planning Framework and the Amendment of Local Development Plan Regulations were also laid under section 59 of the Planning (Scotland) Act 2019. The Environmental Impact Assessment Regulations were also laid under section 1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

11. All four sets of regulations were subject to a public consultation on proposals for regulations to set forth the amendment procedure for both the NPF and Local Development Plans (LDPs) which ran from 28 February 2024 to 22 May 2024. Several impact assessment documents were also published alongside each set of regulations. A summary of issues raised in consultation responses along with the Scottish Government's responses to them, and a summary of outputs arising from the impact assessments is included in each individual Policy Note.

12. The stated policy objectives of each instrument are summarised below.

Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 [draft]

13. The [Policy Note](#) states that the purpose of this instrument is to —

“...set out further detailed provisions around procedures for amending the National Planning Framework, following on from the commencement in full of various provisions in the Planning (Scotland) Act 2019 (“the 2019 Act”), which amended the provisions of the Town and Country Planning (Scotland) Act 1997 (“the Act”) relating to amendment of the National Planning Framework.”

14. The Policy Note then sets out individual requirements that Ministers must adhere to when seeking to make changes to the NPF, including in respect of—

- Relevant policies and strategies that Scottish Ministers must have regard to, where relevant, when considering amendments to the NPF;
- Specific publication, notification and consultation requirements that any proposed amendment must adhere to;
- The need for parliamentary approval of any proposed amendments, including laying requirements for accompanying documents;
- Publication requirements for any amendment following adoption; and
- The circumstances in which an amendment to the NPF would result in a significant change such that would necessitate a review of the NPF as a whole.

Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 [draft]

15. The [Policy Note](#) states that the purpose of this instrument is to —

“Ensure the planning authority granting development consent for a particular project within a Masterplan Consent Area (MCA) scheme makes its decision in full knowledge of any likely significant effects on the environment.”

16. The Policy Note then sets out the Environmental Impact Assessment (EIA) requirements which are relevant when preparing an MCA scheme, including in relation to—

- Determining whether an EIA is required;
- Specific requirements relating to screening opinions¹ or to Scottish Ministers making a screening direction; and
- Specific requirements relating to the preparation of EIA reports along with consultation, publication and notification requirements for environmental impact assessments.

Town and Country Planning (Amendment of Local Development Plan) (Scotland) Regulations 2024 (SSI 2024/250)

17. The [Policy Note](#) states that the purpose of the instrument is to—

“Set out further detailed provisions around procedures for amending Local Development Plans, supporting the commencement in full of various provisions in the Planning (Scotland) Act 2019, which amended the provisions of the Town and Country Planning (Scotland) Act 1997 relating to amendment of National Planning Framework and Local Development Plans.

18. The Policy Note further explains that the NPF and the LDP for each planning authority comprise the “development plan”. Decisions on planning applications are legally required to be made in accordance with the development plan unless there are material considerations that indicate otherwise.

19. The Policy Note then sets out in detail the individual requirements that Ministers must adhere to when seeking to make changes to an LDP, including in respect of—

- information and considerations to which the planning authority is to have regard to when preparing an amendment to an LDP;
- Specific requirements relating to effective community engagement and consultation on proposed amendments to an LDP;
- Requirements relating to the notification of publication of draft proposed amendments and the modification of proposed amendments and submission to the Scottish Ministers; and
- Procedures relating to the examination and adoption of amendments to an LDP.

Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 (SSI 2024/253)

¹ A screening decision, also known as a screening opinion, is a technical process that determines if a proposed development requires an environmental impact assessment (EIA) as part of a planning application. It's usually done early in the design phase of a project, but it can also be done after a planning application or appeal.

20. The [Policy Note](#) explains that the instrument “provides detailed provisions relating to the preparation of MCA Schemes under Part 3 of the Town and Country (Scotland) Act 1997 (“the Act”), as amended.”
21. The Policy Note further explains that The Planning (Scotland) 2019 Act introduced Masterplan Consent Areas (MCAs) as a new upfront consenting mechanism for development proposals. Planning authorities will be able to prepare an MCA “Scheme” setting out the detail of what they are giving consent for, through the MCA scheme. MCA schemes can give several types of consent, including planning permission, roads construction consent, listed building consent and conservation area consent, where provided for in the particular MCA scheme. The MCA scheme can include conditions, limitations and exceptions which may cover aspects such as development parameters, design and environmental matters.
22. The Policy Note then explains that within adopted MCA areas, development could be brought forward without the need for an application as long as it is in line with the agreed scheme.
23. The Policy Note then sets out individual requirements that apply when making proposals or possible proposals for an MCA scheme including in relation to—
- Consultation;
 - The consideration of representations from interested parties to planning authorities;
 - Information to be included in an MCA scheme;
 - The publication of an MCA scheme and notification of decision;
 - The alteration of an MCA scheme; and
 - Excluded development which is likely to have an adverse effect on a European site in Great Britain or a European offshore marine site.

Procedure

Affirmative procedure

24. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
25. Once laid, the instrument is referred to:
- the DPLR Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
26. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40

days of the instrument being laid. The reporting deadline for both affirmatives is 17 November.

27. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:

- an evidence session with the Minister and officials, followed by
- a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

28. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only Committee members may vote. If the motion is agreed to, it is for the Parliament to decide at a later date whether to approve the instrument.

Negative procedure

29. At the time of writing, no motion recommending annulment of either negative instrument had been lodged. Members are invited to consider both negative instruments and decide whether there are any points they wish to raise.

30. If members have no points to raise, the Committee should note the instruments (that is, agree that it has no recommendations to make). However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instruments again. The 40-day deadline for both negative instruments is 17 November.

Conclusion

31. The Committee is invited to consider the above information in its consideration of all four sets of planning regulations.

**Committee clerks,
October 2024**