

THE PLANNING (SCOTLAND) ACT 2019

DEVELOPMENT PLANNING – TRANSITIONAL GUIDANCE

NOVEMBER 2020

BACKGROUND

The Planning (Scotland) Act 2019 (“the 2019 Act”) received Royal Assent on 25 July 2019 (<http://www.legislation.gov.uk/asp/2019/13/enacted>). When brought into force, the 2019 Act will amend the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) to introduce a number of significant changes to the development planning system in Scotland and the way local development plans are prepared. Work is now progressing on regulations and guidance for the transition to the new system.

Planning authorities across Scotland are at various different stages in the development plan process. Transitional arrangements for introducing the new processes are intended to allow for a smooth changeover, ensuring as far as possible that planning authorities will not need to revisit work already done and to minimise abortive work.

This guidance provides advice to stakeholders regarding the current intention for the transitional arrangements. This is also intended to help inform planning authorities in respect of the likely timing of changes to the existing legislation to be made by the 2019 Act. Updates will be provided should there be any change to the intentions set out within this guidance.

NATIONAL PLANNING FRAMEWORK 4

Work is well underway on National Planning Framework 4 (NPF4) which will incorporate Scottish Planning Policy (SPP). An analysis of the evidence received through the early engagement period for NPF4 is available at [transformingplanning](#).

A [Chief Planner Letter](#) (29 May 2020) highlighted the changing timescales for the preparation of NPF4, which is now expected to be laid before the Scottish Parliament in draft (for scrutiny and consultation) in September 2021. Subject to Parliamentary timetabling, we anticipate this resulting in the Scottish Ministers adopting NPF4 in spring / summer of 2022.

The preparation of development planning regulations and guidance (which includes the transitional arrangements), associated with the Planning (Scotland) Act 2019 is intended to also work to this revised timescale.

Any given version of the NPF becomes the “current” version when it is published, after being approved by Parliament and then adopted by Ministers. When published, NPF4 will set out the national policy position for land use planning and be part of the Development Plan.

The changes made by the 2019 Act provide that in the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail.

CONSTITUTION OF THE DEVELOPMENT PLAN: KEY CHANGES

The amendments made by the 2019 Act provide that the content of the statutory development plan will change as follows:

- NPF4 will become part of the development plan and upon its publication all strategic development plans and any supplementary guidance issued in connection with them cease to have effect;
- Upon the adoption of a local development plan any supplementary guidance issued in connection with a previous local development plan for that area ceases to have effect.

Also, in terms of both existing and amended provisions, any 'local plan' in force, which relates to the area to which the local development plan relates, ceases to have effect.

Table 1 sets out the transition from the current statutory development plan to the new arrangements:

Table 1		
Meaning of Development Plan		
Current system	Transitional - After the publication of NPF4, where a LDP prepared under the current provisions remains in place	New system - After the publication of NPF4 and constitution of a LDP under the 2019 Act
Approved Strategic Development Plan and associated Supplementary Guidance	National Planning Framework 4	National Planning Framework 4
Adopted Local Development Plan and associated Supplementary Guidance	Adopted Local Development Plan and associated Supplementary Guidance	Adopted Local Development Plan*

* Any Supplementary Guidance adopted in association with an old Local Development Plan will cease to have effect.

TRANSITIONAL ARRANGEMENTS FOR LDPs

The inclusion of NPF4, incorporating Scottish Planning Policy, in the statutory development plan aims to provide greater consistency and avoid the need for national policies to be repeated in local development plans. Where local variation in policy is justified, this should be included in the plan.

Legislation requires planning authorities in preparing a local development plan to take account of the National Planning Framework. NPF3 is the current National Planning Framework, until NPF4 is published. This requirement will continue as we move to the new development plan system. Although there may be scope to take into account elements of the emerging NPF4 into local development plan's in preparation, consideration should be given to the potential for that content to change and the existing legislative requirement, as outlined above, remains in place.

We expect the regulations and guidance relating to local development plans to come into force in Spring/Summer 2022, in line with the publication of NPF4. However, preparatory work towards new-style plans can begin prior to this, for example, evidence gathering and engagement with stakeholders could begin at an earlier stage.

Although an exact date for local development plan regulations coming into force cannot be given, our current intention is to make transitional provisions so that where a planning authority has published its proposed local development plan (under Section 18(1) of the 1997 Act) before June 2022, they will be able to proceed to adoption under the existing provisions and procedures in the 1997 Act (introduced by the 2006 Act).

Emerging local development plans which have not reached the stage of a published proposed plan before June 2022 will be subject to all the new process introduced by the 2019 Act and these plans should be prepared and programmed on that basis.

Based on current information from planning authorities, this approach should allow sufficient time for all local development plans currently in preparation to be taken forward for adoption under the existing procedures.

Review Timescale for Local Development Plans

The 2006 Planning Act requires local development plans to be replaced at intervals of no more than 5 years. This requirement will remain in place until the provisions of the 2019 Act are enacted, at which point local development plans will be required to be reviewed at intervals of no more than 10 years.

After the provisions of the 2019 Act are brought into force, it will be important for the first round of 'new style' plans to be brought forward in a timely fashion. On that basis, it is envisaged that every planning authority in Scotland will have a 'new style' local development plan in place within 5 years of the development plan regulations coming into force (when NPF4 is published). We will work with the high level group to embed this in performance frameworks.

TRANSITIONAL ARRANGEMENTS FOR SDP's

Approved strategic development plans and any associated supplementary guidance will remain in force until the publication of NPF4. We do not envisage that any new strategic development plans will now be prepared.

LOCAL DEVELOPMENT PLANS – DELIVERY AND PREPARATION

The vast majority of planning authorities in Scotland have an adopted local development plan in place. It is important that as we move towards the introduction of the new development plan system, that the delivery of these adopted plans remains a focus, in order to enable good quality development that helps to meet the desired outcomes and visions of the plans. There are a number of ways this can be progressed, for example, the proactive use of action programming and corporate working across authorities to support proposals in the plan.

Alongside the delivery of adopted local development plans, there is also an opportunity, prior to regulations coming into force, to undertake preparatory work in order to allow an easier transition to the new system. On that basis, consideration should be given to the following:

- Matters to be addressed in the Evidence Report (new Section 16(B) to be introduced by the 2019 Act), for example, what evidence will be needed to inform new local development plans. This could include elements such as, infrastructure requirements, education and health needs, including various land use audits / appraisals and strategies;
- In relation to matters to be addressed in the Evidence Report, the potential for community and stakeholder engagement (new Section 16(B), e.g. disabled persons, gypsies and travellers and children and young people);
- Identify areas of support for communities and emerging Local Place Plans (LPPs), plus other community led plans which the planning authority has been supporting;
- Engagement with ongoing work on development planning guidance, regulations, Regional Spatial Strategies and NPF4.

SUPPLEMENTARY GUIDANCE

Supplementary guidance associated with a strategic development plan will cease to have effect upon the publication of NPF4. At present planning authorities can continue to bring forward supplementary guidance in association with adopted local development plans and will be able to do so until section 22 of the 1997 Act is repealed.

It is envisaged that a period of 24 months, after the coming into force of the development plan regulations, will be allowed for the adoption of supplementary guidance associated with local development plans adopted under the 2006 Act, after which point, no further supplementary guidance will be allowed to come forward for adoption as we transition to the new system.

In recognition of the fact that supplementary guidance will not be part of the new development plan system, planning authorities should consider whether they want to prepare and bring forward new supplementary guidance in association with their local development plans. Informal / non-statutory guidance is a likely location for the content of what is currently in supplementary guidance. However, planning authorities will also want to consider whether certain policy areas that are currently set out in supplementary guidance, will benefit from inclusion in the local development plan itself.

SUMMARY OF KEY POINTS

- The new development planning system is expected to commence around June 2022, to co-ordinate with the publication of NPF4.
- Local development plans in progress (under the 2006 Act) must have reached publication of the proposed plan stage before the publication of NPF4, expected to be June 2022, in order to proceed to adoption under the existing provisions and procedures in the 1997 Act (introduced by the 2006 Act).
- For supplementary guidance, the intention is for a period of 24 months, after the coming into force of regulations, when it can be adopted in connection with an adopted local development plan.
- Once the new legislation comes into force, we envisage all planning authorities to have a new style local development plan (prepared under the 2019 Act) in place within 5 years.
- Ahead of the regulations being put in place, planning authorities may wish to focus on delivery of their adopted local development plan and consider what preparatory work can be undertaken to support the transition to the new system.
- The position presented within this guidance is the intention at this point in time. Should there be changes in other key factors, for example, the timing of NPF4, amendments may be needed.

CONTACT

Should individual planning authorities wish to discuss the transitional arrangements, please contact: developmentplans@gov.scot

Q&A

Q When will the new system commence?

A The new development planning system is expected to commence around June 2022. The intention is that planning authorities which have published their proposed local development plans (prepared under existing legislation), by that point, will be able to progress to adoption under existing procedures.

Q What will happen if our LDP preparation process, under the current system, has not reached proposed plan publication by June 2022?

A In this case, any plan prepared will be subject to the new legislative provisions, which will work towards the preparation of a new style local development plan under new procedure introduced by the 2019 Act. This will include preparing an Evidence Report (and all other requirements) before preparing a local development plan.

Q What will happen to existing LDP's and associated Supplementary Guidance?

A When a new local development plan is adopted, it will, as now, supersede equivalent policies in the previously adopted local development plan. Any supplementary guidance issued in connection with that previously adopted local development plan will cease to have effect.

Q What happens to existing and forthcoming SDP's?

A Existing approved strategic development plans will remain in place until the publication of NPF4. Upon the publication of the approved NPF4 all strategic development plans and any supplementary guidance issued in connection with them cease to have effect.

Q Should Planning Authorities take any steps to 'future proof' forthcoming LDP's under existing system?

A There is benefit in considering how elements of the future system can be incorporated into plans which are forthcoming under the current system. We will work with planning authorities as they explore new ways of working as we transition into the new development plan system. Planning authorities are also involved in the working groups which are exploring this in more detail.

Q How should Planning Authorities now deal with supplementary guidance?

A Adopted supplementary guidance will cease to have effect upon the constitution of a local development plan under the new legislation. Consideration should be given to reducing the amount of supplementary guidance prepared and adopted alongside emerging local development plan under the current system.

Q Can supplementary guidance be brought forward and adopted in association with a LDP after the new development plan regulations are brought into force?

A It is envisaged that a period of 24 months will be allowed, after the bringing into force of the development plan regulations, for supplementary guidance to be adopted in association with local development plans adopted under existing (but not the new) procedures, after which time no further supplementary guidance will be able to be brought forward.

Q How can a planning authority address the risk of progressing a LDP, for it then to be incompatible with NPF, for example, if NPF is changed significantly when approved by the Scottish Parliament?

A Any plan, prepared at any time, has to work with a changing context and there will always be challenges arising from sequencing of plans in any system. It is not possible to fully mitigate this as it is an inherent risk associated with the review of a national planning document whilst the development plan process continues. Legislation requires planning authorities in preparing a local development plan to take account of the National Planning Framework. NPF3 is the current National Planning Framework, until NPF4 is published. Where a proposed plan can take into account elements of the emerging NPF4, the planning authority will need to make a judgement on the weight to be given to it and consider the potential implications for its content changing.

Q How will Local Place Plans integrate into the new system?

A We plan to have regulations, guidance and a 'How to Guide' in place by late 2021. It is, therefore, possible that valid LPPs may be registered in time to be taken into account in the new style local development plans. We are considering what, if any transitional arrangements will be needed to ensure that requirements around local place planning are addressed.