

Transforming Planning in Practice Regulations and Guidance – Discussion Paper

Procedures for Local Development Plans

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1. Introduction

This paper is intended to support the sub-group in producing the outputs that will inform the drafting of the regulations and guidance associated with the new development plan system. It outlines the requirements of the 2019 Act, thinking so far and includes questions to prompt consideration and discussion by sub-group members.

The **aim** of the sub-group work is to produce a clear description of the new process for preparing a local development plan following the Planning (Scotland) Act 2019.

The outputs of the sub-group will be:

- **Flow chart** of the process, milestones and outputs needed for preparing an LDP.
- **Description** of the individual stages, including **legal** requirements, advice on **how** to meet them, identification of **responsibilities** and **timescales** for each stage.

The output should reflect the fact that a review of our national planning policies is ongoing and that current approaches may evolve – flexibility will therefore be essential.

2. Requirements of the 2019 Act

The table in Annex A contains a summary of the Local Development Plan process as prescribed by the Town and Country Planning (Scotland) Act 1997, as amended by the 2019 Act. A clear version of the Act incorporating the amendments is available [online](#) – it sets out the development planning requirements in full.

The table in Annex A sets out where there are powers to prescribe more detail in regulations or where Ministers are required to issue guidance. The subgroup should

consider whether there is a need to make regulations on any points, including whether the requirements in the current regulations should be changed.

3. Thinking so far

Several matters that the regulations and guidance will need to contain in relation to LDP procedures have been identified during the planning reform considerations of the last few years. The following key documents provide reference and are available either on or via the [Transforming Planning](#) web pages:

- Report of Independent Panel (May 2016)
- Places, People and Planning: Consultation Paper (January 2017)
- Independent Analysis of Consultation Responses (to January 2017 consultation)
- Places, People and Planning: Position Statement (June 2017)
- Planning Bill Policy Memorandum (December 2017)

There has been widespread support throughout the reforms for a plan-led system. The aim has been to make changes to procedures that make plans stronger, simpler and more flexible. Whilst the focus of the sub-group is on the procedures for preparing a plan, the wider context to have in mind is that of refocusing plans on outcomes rather than process.

There are diagrams within the above documents (and collated in the 'library' materials available to the subgroup) that provide indications of the preparation process and associated timescales. The review period is now 10 years with the intention of having a 20 year vision but a preparation process of approximately 2 to 3 years enabling efforts during the remaining time to focus on delivery of the plan.

Key aspects of the reform of the plan process relate to delivery and collaboration. Co-ordination of plan preparation with the Delivery Programme is important to support corporate commitment within an authority. The above references also give an indication of the significance placed on involvement and engagement during the plan preparation process.

Planning reform has highlighted the importance of embedding an Infrastructure First approach into Local Development Plans. Each stage of the new process has a role to play. Plans need to be better informed early on with regard to utilities and services, to support site selection and then delivery, so that the spatial strategy and outcomes are realised.

The process of plan preparation must also align with procedures associated with the range of impact assessments required, including Equalities Impact Assessments, the Fairer Scotland Duty and Strategic Environmental Assessment (SEA). Plan preparation must also take account of the Local Outcome Improvement Plan (LOIP) for the area to which the plan relates. These and the matters identified above are matters for the sub-group to consider.

4. Discussion Questions

Output 1

- What are the key stages, milestones and outputs in the process?
- Where are the links to engagement and consultation?
- Is it appropriate to include an open call for ideas and/or for sites early in the process?
- How does the plan process align with SEA requirements?

Output 2

- How can the process for preparing a plan be more corporate across the local authority and create more buy in from the outset?
- Who is responsible for and who else needs to input at each stage?
- What is an appropriate indicative / average timescale for each stage?
- Where are the links to delivery?

Contextual questions

- What might a 'how to' guide to preparing plans look like to promote a new style of plan?
- Are there key elements that should be prescribed (fixed) in regulations, where there is the power to do so, rather than covered more flexibly in guidance?

Note: At this point we are not seeking detailed suggestions for how the new system for amending plans will work. It will however be necessary in developing an illustration of the new LDP procedures to give some thought to broadly how this could work.

5. Background Information

Existing Regulations & Guidance

- Existing [development planning regulations](#)
- [Circular 6/2013](#)
- Gov.scot [web guidance](#)

Guidance available in other nations

- Wales - [Development plans manual](#)
- England – [Guidance on plan-making](#)

Annex A. Summary of the Local Development Plan Process, as required by the 2019 Act.

Powers to make further regulations are highlighted in **yellow**

| Stage | Action Required | TCPA 1997 | Powers to make regulations |
|-------------------------------|--|---|---|
| Ongoing | Local authority to prepare and update annually a Development Plan Scheme including Participation Statement | 1. XXX | |
| Before getting started | 1. Local Development Plan is to be prepared every 10 years 2. Local communities to be invited to prepare Local Place Plans | 2. s.16(1) 3. s.15A | 1. None 2. To be considered by Community Engagement working group |
| Step 1 | Prepare evidence report | s.16B(1)-(6) | Evidence report subgroup to consider procedure in detail |
| Step 2 | Submit evidence report to Scottish Ministers for assessment. If assessment is successful, proceed to Step 3. If not, Step 2a. | s.16B(7)-(9) | |
| Step 2a | DPEA prepares Assessment Report and recommendations. Planning Authority revises Evidence Report in response. Once satisfactory proceed to Step 3. | s.16B (10)-(12) | |
| Step 3 | 1. Prepare Local Development Plan 2. Promote and facilitate participation of children and young people (u25s) 3. Have regard to guidance on community engagement | 1. s.18(1) 2. s.16A 3. s.16C | 1. None 2. None 3. To be considered by Community Engagement working group |
| Step 4 | Full Council approves Proposed Local Development Plan | s.18(1B), (1C) | None |
| Step 5 | 1. Planning Authority publishes Proposed Local Development Plan and Evidence Report 2. Notify and consult with key agencies and prescribed persons | 1. s.18(1)(a)-(aa) 2. s.18(1)(b)-(e) | 1. 'publish in such a manner as is prescribed' 2. 'such persons as may be prescribed'* |

Annex A. Summary of the Local Development Plan Process, as required by the 2019 Act.

Powers to make further regulations are highlighted in **yellow**

| Stage | Action Required | TCPA 1997 | Powers to make regulations |
|---------------|--|-------------------|---|
| | 3. If applicable consult with Central Scotland Green Network | 3. s.18(1A) | 3. None |
| | 4. 12 weeks for consultation | 4. s.18(2) | 4. None |
| Step 6 | Modify Proposed Local Development Plan to take account of consultation (if desired) | s.18 (3) | None |
| Step 7 | Submit Proposed LDP to Scottish Ministers, with report on consultation and engagement, Proposed Delivery Programme and Modifications Report (if modifications have been made) | s.18(4) | None |
| Step 8 | 1. If representations received have not all been taken account of, Proposed Local Development Plan moves to examination. | 1. s.19(1)- (3) | 1. None |
| | 2. Publish Proposed LDP and modifications report, and advertise and serve notice of the examination. | 2. s.19(5A), (6) | 2. "publish in the prescribed manner" |
| | 3. Examination of compliance with Participation Statement | 3. s.19(4), s.19A | 3. None* |
| | 4. Examination | 4. s.19(5) | 4. The Scottish Ministers may make regulations as to...** |
| | 5. Reporter publishes Examination Report with recommendations and reasoning. If Reporter judges that a change is required that cannot suitably be addressed by a modification, they may recommend that once adopted the LDP is amended under s.20AA. | 5. s.19(8)-(8B) | 5. None |
| | 6. If Reporter "is not satisfied that the amount of land allocated for housing in the Proposed LDP is sufficient to meet the targets it includes in relation to the housing needs of people living in the part of the district to which it relates", they may issue a notice requiring | 6. s.19ZA | 6. None |

Annex A. Summary of the Local Development Plan Process, as required by the 2019 Act.

Powers to make further regulations are highlighted in **yellow**

| Stage | Action Required | TCPA 1997 | Powers to make regulations |
|----------------------------------|--|--|--|
| | the planning authority to prepare another LDP. It is not necessary to prepare a new Evidence Report. | | |
| Step 9 | Planning Authority must make recommended modifications, unless they have unacceptable environmental impacts and can choose whether to make any others in light of the report. | s.19(10), (11) | s.19(10)(a)(i)'...decline to do so, on such grounds as may be prescribed...' *** |
| Step 10 | Proposed Local Development Plan is adopted and constituted as the LDP. | s.20 | None |
| Step 11 | <ol style="list-style-type: none"> 1. LDP is published. 2. In addition, as soon as practicable following the LDP's adoption: <ul style="list-style-type: none"> - Where the Reporter recommended a modification that was not implemented, the Planning Authority must publish a recommended-modification statement - Where the constituted LDP differs from the Proposed Plan, a report on modifications must be published (but only need include modifications made since any modifications report published under s.19(5A). | <ol style="list-style-type: none"> 1. s.20A(1) 2. s.20A(1A) – (1E) | <ol style="list-style-type: none"> 1. Specified in Act 2. "publish in the prescribed manner" <p>Ref Step 9 - s.19(10)(a)(i)'...decline to do so, on such grounds as may be prescribed...'</p> |
| Alongside LDP preparation | <ol style="list-style-type: none"> 1. Delivery Programme for the LDP is to be prepared by the local authority, including a Proposed Delivery Programme to be published with the Proposed Plan. The delivery programme must be published within three months of the relevant LDP being constituted 2. Local authority is to 'seek the views of' and 'have regard to any views expressed by' key agencies and others 3. Key agencies have a duty to cooperate with the local authority in the preparation of the Proposed and Delivery Plan 4. The Delivery Programme must be kept up to date, and on publication be sent to the Scottish Ministers, and made available in a local library and by electronic means | s.21 | <ol style="list-style-type: none"> 1. None 2. 'such persons as may be prescribed' 3. None 4. None |

Annex A. Summary of the Local Development Plan Process, as required by the 2019 Act.

Powers to make further regulations are highlighted in yellow

| Stage | Action Required | TCPA 1997 | Powers to make regulations |
|---|--|-----------|---|
| | 5. s.21(7) enables Regulations to make further provision for Delivery Programmes | | 5. 'Regulations may make provision as to – (a) the form and content of, and (b) the procedures for preparing and adopting, a delivery programme**** |
| <p>* Existing requirement under 2006 system</p> <p>** “The Scottish Ministers may make regulations as to—</p> <p>(a) meeting general administrative costs, staff costs and overheads incurred in relation to an examination under subsection (3) or (4),</p> <p>(b) procedures to be followed at such an examination, and</p> <p>(c) what is to be assessed in such an examination and matters by reference to which the assessment is to be made;</p> <p>but the form the examination is to take (as for example whether it should be in public or as to whether persons who have made representations, and other persons, are to be heard or are to present written submissions) is to be at the discretion of the appointed person.”</p> <p>*** No 53 – Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009</p> <p>**** See The Town and Country Planning (Development Planning) (Scotland) Regulations 2008 s.25-26</p> | | | |