

REGULATIONS UNDER THE PLANNING (SCOTLAND) ACT 2019

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Several sets of regulations have now been laid in the Scottish Parliament under the Planning (Scotland) Act 2019. This note explains what they do, and provides a timeline for action for planning authorities.

The Planning (Scotland) Act 2019 (Commencement No. 1) Regulations 2019

These regulations were laid in Parliament on 7 October 2019 and came into force on 8 November. They bring into force the changes in section 2 of the Act to how the **National Planning Framework** is to be prepared, and this work is currently progressing. They also give the Scottish Ministers powers to make regulations about **development planning**, in sections 3, 5, 7, 10 and 11 of the Act, and about **local place plans** in section 14. Those regulations are being developed through engagement and consultation and are expected to be made in 2021.

The Commencement No.1 Regulations also bring into force the **Purpose of Planning** in section 1 of the Act. This will underpin the preparation of the National Planning Framework, and also applies to planning authorities' work on local development plans (and strategic development plans, where relevant).

The purpose of planning is "to manage the development and use of land in the long term public interest", and anything which contributes to sustainable development or achieves the national outcomes is to be considered as being in the long term public interest. As planning authorities already have duties to have regard to the national outcomes and contribute to sustainable development in carrying out their functions, their development planning activities should already be in line with the purpose.

The Planning (Scotland) Act 2019 (Commencement No. 2, Saving and Transitional Provisions) Regulations 2019

These regulations were laid in Parliament on 8 November and came into force on 20 December 2019. They bring the following provisions into force:

- Section 23 of the Act amends section 34 of the 1997 Act on giving notice of applications. It requires that the planning authority must **give notice of any application for a major development to each local authority Councillor, MSP and MP** representing the district to which the application relates. This applies to applications for planning permission, for approval required by a development order, for consent, agreement or approval required by a condition on planning permission, or for modification or discharge of a planning obligation.

The regulations commence this provision for all applications received by the authority on or after **1 March 2020**, allowing time for authorities to amend their procedures. It is assumed that notification will be sent by email or other electronic means. Details for MPs and MSPs can be found by the postcode of the development at <https://www.parliament.uk/mps-lords-and-offices/mps/> and <https://www.parliament.scot/msps.aspx> respectively. All MSPs for the relevant region must be notified as well as the constituency MSP.

- Section 25 of the Act inserts new section 41A into the 1997 Act, which relates to applications for planning permission for “**noise-sensitive developments**”, where residents are likely to be affected by significant noise from existing activity in the vicinity. Where this is the case the planning authority must take particular account of whether the new development includes sufficient measures to “mitigate, minimise or manage” the effect of noise between the development and any existing cultural venues or facilities, dwellings or businesses in the vicinity. Cultural venues include in particular live music venues. The authority also may not place conditions on the planning permission that would impose additional costs on any existing “noise source” for acoustic design measures to address noise issues.

The regulations commence this provision for all applications received by the authority on or after **20 December 2019**.

The Chief Planner letter dated 16 February 2018 highlighted the importance of live music venues to Scotland’s culture and economy, and the need to consider the impact on venues when new development is proposed. The letter asked planning authorities to ensure that decisions in such cases reflect the Agent of Change principle. In light of that letter we expect that all planning authorities will be giving consideration to the Agent of Change principle when determining applications. However, the introduction of a specific statutory requirement may lead to some changes in the way this consideration is undertaken and recorded. To avoid potential delays to applications which may be close to decision, the new requirement will only apply to applications received after the commencement date.

- Section 42 of the Act increases the maximum level of **fin**es that can be imposed for failing to comply with the requirements of various types of notices issued to enforce planning controls, and provides that the courts should take into account any financial benefit gained from the offence.

The new fines will apply to any offence committed in relation to a notice which is served on or after **20 December 2019**.

The Planning (Scotland) Act 2019 (Commencement No. 3) Regulations 2019

These regulations were laid in Parliament on 15 November 2019 and came into force on 1 December. They bring various parts of the Act into force on two dates, as set out below. Please see the [work programme](#) for information on how we propose to take regulations and other actions forward.

1 December 2019

- Section 18: Changes Ministers’ powers to make regulations about **pre-application consultation**, in particular to allow them to make provision about the content of the report developers must produce following their consultation.
- Section 20: **A technical change** so that provision about the procedure for applications to develop land without compliance with conditions can be made by regulations as well as by development order.
- Section 24: Introduces specific reference to **biodiversity**, and net positive effects on biodiversity, in the power to make regulations on environmental impact assessment.
- Section 26: Brings into force the power to make regulations to amend the requirements for certain large developments to include **Changing Places Toilets**. We will bring forward regulations before the end of the year to align these requirements with those set out in the Building Standards Technical Guidance, and bring the requirements into force in the planning system.

- Section 29: Activates the requirement for Scottish Ministers to lay a statement before the Scottish Parliament setting out the circumstances in which they consider it appropriate to **call-in** an application for their own decision.
- Section 41: Changes the powers to make regulations about **planning fees**, including the ability to introduce more discretionary charging, discounts, and a surcharge for retrospective applications.
- Section 47: Brings into force the power to appoint a **National Planning Improvement Co-ordinator**.
- Section 48: **A technical change** to allow regulations made under the 1997 Act to make different provision for different areas, as well as different purposes.
- Section 49: Activates the requirement for Scottish Ministers to **publish and give reasons for all directions**. Directions can be found on the Scottish Government website <https://www.gov.scot/policies/planning-architecture/ministerial-planning-decisions/#notified-applications>
- Section 51: Activates requirements for the Scottish Ministers to consult with communities before designating a **National Scenic Area**, and to report on the consultation at the end of the year.

This section also amends the requirements on planning authorities to pay special attention to safeguarding or enhancing the character or appearance of a National Scenic Area when exercising planning powers, removing the words “the desirability of”.

- Section 52: Changes the powers to make regulations about giving **notice of applications for listed building consent**, under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. These changes would allow similar notification requirements to be imposed for listed building consent as for planning applications.
- Section 53: Brings into force the requirement for all planning authorities to prepare a **forestry and woodland strategy**. The wording in the Act closely reflects the existing guidance in Scottish Planning Policy (2014, para 201) (SPP), and therefore it is not considered that any change in approach to such strategies is required. Planning authorities may wish to set out their plans for revising existing forestry and woodland strategies (or preparing one, for those few authorities that do not already have a strategy).

Forestry and Woodland Strategies under the current SPP are generally prepared as supplementary guidance relating to the local development plan. As the Act removes the option to prepare statutory guidance, these strategies will become standalone documents. Planning authorities may wish to incorporate elements of them into the local development plan, and they will also stand as material considerations in relation to planning applications.

- Section 62 and paragraph 9 of schedule 2: These are **technical provisions** that determine the Parliamentary procedure for scrutiny of regulations relating to Changing Places Toilets and the Planning Improvement Co-ordinator.

1 March 2020

- Section 27: Removes the requirement that any application which has been subject to a **pre-determination hearing** must be determined by full council.

Section 14(2) of the Planning etc. (Scotland) Act 2006 amended section 56 of the Local Government (Scotland) Act 1973, which deals with the delegation of functions to committees or officers of the local authority. It stated that decisions could not be delegated in relation to classes of development prescribed under section 38A(1) of the 1997 Act (pre-determination hearings). The classes of development prescribed for this purpose by regulation 27 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 are national developments, and major developments which are significantly contrary to the development plan.

Pre-determination hearings are usually held by the Planning Committee of the local authority. Concerns were raised that having the decision made by the full Council meant that some of those making the decision had not heard the evidence given at the hearing, as well as potentially creating delay. Authorities will now need to consider whether they wish decisions following pre-determination hearings to be made by the Planning Committee or by full Council, and to amend their standing orders accordingly.

The change will apply to all applications that fall to be determined on or after 1 March 2020, including those where the pre-determination hearing has been held before that date.

- Section 30: The decision notice on an application must include a **statement as to whether the authority consider the development is in accordance with the development plan**, and their reasons for taking that view.

Section 37(2) of the 1997 Act states that, "In dealing with an application for planning permission, the authority must have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.". The requirement for a statement on accordance with the development plan is inserted as section 37(2A).

Section 43 of the 1997 Act provides that regulations may require a planning authority to give any applicant for planning permission a notice of how their application has been dealt with, and this is contained in regulation 28 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Section 43(1A) of the 1997 Act requires that any such notice must include a statement of the reasons on which the authority based its decision. We expect that those reasons would include reference to relevant parts of the development plan and any other material considerations taken into account in the decision. Planning authorities may wish to review their templates for decision notices to ensure the statement on accordance with the development plan is clear, alongside any other reasons for the decision.

The change will apply to all decision notices issued on or after 1 March 2020, regardless of when the decision is made.

The Planning (Scotland) Amendment (Ancillary Provision) Regulations 2019

These regulations were laid in Parliament on 8 November 2019. Because they change the text of the Act they were subject to affirmative procedure, meaning that they could not come into effect until Parliament had passed a motion to approve them, following consideration by Committees. They came into effect on 20 January 2020.

The regulations make several amendments to the Act to replace or delete references to sections of the 1997 Act that were removed during the Parliamentary process. The most important are those that relate to the publication of the National Planning Framework, now mentioned in section 3CA(7) of the 1997 Act, inserted by section 2(13) of the Act. The date on which the Framework is published will determine when strategic development plans cease to have effect, and whether the Framework or a local development plan will take precedence if there is any incompatibility between them.

The regulations amend these sections but do not bring them into force at this stage.

The Town and Country Planning (Changing Places Toilet Facilities)(Scotland) Regulations 2020

These regulations were laid in Parliament on 5 March 2020. Because they change the text of the Act they were subject to affirmative procedure, meaning that they could not come into effect until Parliament had passed a motion to approve them, following consideration by Committees. They came into effect on 18 May 2020.

The regulations amend the provisions in section 41B of the 1997 Act, inserted by section 26 of the Act, which state that an application for planning permission for certain types of development cannot be approved unless the development includes a specified toilet facility. The regulations add to the types of development covered, adjust the description of the required toilet facility, and introduce a minimum size limit so that the requirement only applied to buildings over 5000m² or with capacity of 1000 people. This brings the planning requirements into line with Building Standards guidance which came into effect in October 2019.

[Planning Circular 1/2020](#) gives full details of the requirements.

The Planning (Scotland) Act 2019 (Commencement No.4 and Transitional Provision) Regulations 2020

These regulations were laid in Parliament on 5 March 2020 and came into force on **18 May**. They bring into force:

- Section 26, inserting section 41B on **Changing Places Toilets**, as amended by the Changing Places Toilet Facilities regulations (see above). This will apply to all applications received on or after 18 May 2020
- Powers for Ministers to make regulations under section 17, about the arrangements for designating **short term let control areas**.

The Planning (Scotland) Act 2019 (Commencement No. 5 and Saving, Transitional and Consequential Provisions) Regulations 2020

These regulations were laid in Parliament on 24 September and came into force on 18 November 2020. They bring into force:

- Section 34, which amends section 75 of the 1997 Act to **modify the description of a planning obligation** and clarify that such obligations may comprise either (or both) obligations which restrict or regulate the development or use of land or which require financial payments, either of a specified amount or periodical sums
- Section 37, which amends sections 75A and 75B in relation to the **procedures for modifying or discharging planning obligations**, to provide planning authorities and developers with greater flexibility as to the modification or discharge of planning obligations previously entered into.

The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021

These regulations were laid in Parliament on 16 December 2020. They were subject to the affirmative procedure, meaning that they could not come into effect until Parliament had passed a motion to approve them, following consideration by committees. They subsequently came into force on 1 April 2021.

Section 17 of the 2019 Act inserted a new section 26B into the 1997 Act, which allows a planning authority to designate all or part of its area as a **short-term let control area**. In designated areas, the use of a dwellinghouse for providing short-term lets will be a material change of use and requires planning permission.

The regulations set out the definition of a short-term let for the purposes of section 26B, require that before designating an area a planning authority must publicise its intention and obtain Scottish Ministers' approval, in terms specified by the regulations. Similar requirements are set out in the regulations relating to the process for varying or cancelling a designation.

At the same time as laying these regulations in Parliament, the Scottish Government also laid regulations to introduce a new licensing scheme for short-term lets; also expected to come into effect on 1 April 2021.

The Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020

This development order was laid in the Parliament on 18 December 2020 and came into force on 1 April 2021. The order introduced new and extended permitted development rights in relation to several development types:

- **digital telecommunications infrastructure**
- **agricultural development**
- **peatland restoration**
- **development related to active travel**
- **aquaculture**

Permitted development rights remove the need to apply for planning permission in relation to developments specified in the legislation, and subject to specified terms and circumstances. [This guidance note](#) explains the new and extended permitted development rights included in this development order.

The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021

These regulations were laid in Parliament on 24 February 2021 and will come into force on 1 October 2021. They amend the statutory requirements for **pre-application consultation** with local communities, which apply to major and national developments and specify criteria for exemptions. The aim of pre-application consultation is that local communities are made aware of major development proposals at an early stage and have the opportunity to comment to the prospective applicant before the proposal is finalised and an application for planning permission is made.

Changes made by the regulations include:

- an increase to set a minimum of two public events to be held, with a minimum of 14 days between the first and final event, and with feedback on earlier comments to be provided at the final event;
- statutory requirements relating to the content of pre-application consultation reports to demonstrate compliance; the planning authority must refuse to deal with an application if the requirements have not been met;
- circumstances in which exemptions from the pre-application consultation requirements apply; and
- transitional arrangements so that new requirements will only apply to cases where the proposal of application notice has been served on or after 1 October 2021.

The full range of changes made by these regulations are explained in more detail in [this policy note](#).

The Planning (Scotland) Act 2019 (Commencement No. 6 and Transitional Provision) Regulations 2021

These regulations were laid in Parliament on 24 February 2021 and came into force on 1 April 2020. They bring into force:

- Section 17, which (insofar as not already in force) allows a planning authority to designate all or part of its area as a **short-term let control area** with effect from 1 April 2021; timed to coincide with the coming into force of the related regulations (see above).
- Section 18(3), which amends section 35B(3) of the 1997 Act, with effect from 1 October 2021, to add a time limit specifying that to comply with **pre-application consultation**

requirements, a planning application for a major or national development must be made within 18 months from when the associated proposal of application notice has been given to the planning authority; otherwise the application could not be made without a further pre-application consultation exercise. The regulations include a transitional arrangement for circumstances where the proposal of application notice had been served prior to 1 October 2021; in which case a time limit of 18 months from 1 October will apply.

Timeline for planning authorities

Date	Provisions coming into force	Sections of 2019 and 1997 Acts
1 December 2019:	<ul style="list-style-type: none"> • Requirement to pay special attention to safeguarding or enhancing the character or appearance of a National Scenic Area when exercising planning powers – removal of the words “the desirability of” safeguarding etc. • Requirement to produce Forestry and Woodland Strategy. 	<p>Section 51(2), amends section 263A(2) of the 1997 Act.</p> <p>Section 53, inserts section A159 into the 1997 Act.</p>
20 December 2019	<ul style="list-style-type: none"> • Agent of Change (noise sensitive developments) – requirement to take particular account of measures to mitigate, minimise or manage the effect of noise applies to applications received from this date. • Increase in fines for offences in relation to notices issued from this date. 	<p>Section 25, inserts section 41A into the 1997 Act.</p> <p>Section 42, amends sections 126, 136, 138, 144, 144C, 145 and 186 of the 1997 Act.</p>
1 March 2020	<ul style="list-style-type: none"> • Requirement to notify all Councillors, MSPs and MPs of major applications received from this date. • Removal of requirement for full Council decision on applications requiring a pre-determination hearing, for decisions taken from this date. • Statement on accordance with the development plan to be clearly included in decision notices issued from this date. 	<p>Section 23, amends section 34 of the 1997 Act</p> <p>Section 27, repeals section 14(2) of the Planning etc. (Scotland) Act 2006</p> <p>Section 30, amends section 37 of the 1997 Act</p>

18 May 2020	<ul style="list-style-type: none"> Requirement for specified developments to include a Changing Places Toilet, for applications received from this date. 	Section 26, inserts section 41B of the 1997 Act as amended by Changing Places Toilet Facilities Regulations.
18 November 2020	<ul style="list-style-type: none"> Amendments to procedures for modifying or discharging planning obligations. 	Section 37, amends sections 75A and 75B of the 1997 Act
1 April 2021	<ul style="list-style-type: none"> Enables, and sets procedure for, designation of short-term let control areas. 	Section 17, inserts section 26B of 1997 Act
1 October 2021	<ul style="list-style-type: none"> Amendments to procedures and requirements for pre-application consultation, and adding an 18-month maximum period for submission of a planning application 	Section 18(3) amends section 35B(3) of the 1997 Act