

# **PLANNING (SCOTLAND) ACT 2019**

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## **EXPLANATORY NOTES**

### **OVERVIEW OF THE ACT**

#### **PART 1 – DEVELOPMENT PLANNING**

##### **Development planning**

##### *Section 7: Local development plans*

34. Section 7 of the Act amends the provisions of the 1997 Act which set out the procedures for preparing and adopting a local development plan. Minor and consequential amendments to other sections of the 1997 Act are set out in paragraph 2 of schedule 2 of the Act.
35. Section 15(1) of the 1997 Act provides that a local development plan is a plan in which is set out a spatial strategy for the development and use of land in the area, such other matters as may be prescribed, and any other matters the planning authority consider appropriate. Section 7(2)(a) of the Act adds wording to paragraph (a) of section 15(1) of the 1997 Act, requiring the strategy to take account of the matters mentioned in section 15(5). This wording is moved from section 15(2) of the 1997 Act, which required local development plans outwith strategic development plan areas to set out a vision statement. Section 7(2)(c) of the Act repeals section 15(2) of the 1997 Act.
36. Section 7(2)(d) of the Act inserts new subsections (2A) and (2B) into section 15 of the 1997 Act requiring a local development plan to include statements on the provision of public conveniences and water refill locations.
37. Section 15(5) of the 1997 Act sets out a list of matters which a planning authority must take account of in setting out its spatial strategy. This is currently attached to the vision statement required by section 15(2), but section 7(2)(a) of the Act moves it to the spatial strategy, as section 15(2) is repealed by section 7(2)(c). Sections 7(2)(e) and 7(3) of the Act amend the list of matters in section 15(5) that are to be taken into account.
38. Section 7(4) of the Act amends section 16 of the 1997 Act, dealing with the preparation and monitoring of the local development plan. Paragraph (a) amends the time period within which local development plans must be prepared, from intervals of no more than five years as set out in the 1997 Act, to intervals of no more than 10 years.
39. Paragraph (b) requires the planning authority to take into account any local outcomes improvement plan for the part of the district to which the local development plan relates, in addition to the existing requirement to take into account the National Planning Framework. Section 14(4) of the Act also adds any registered local place plan for the area. Paragraph (c) requires them to have regard to preserving disused railway infrastructure for future public transport requirements, and to the list published under section 16E (inserted by section 8 of the Act) of persons seeking land for self-build housing.

40. Section 7(4)(d) of the Act repeals sections 16(9) and (10) of the 1997 Act. This removes the requirement to publish a statement about the monitoring of changes in the characteristics of the district and the impact of policies and proposals in the local development plan. However, the requirement to monitor those matters will continue in place, as section 16(8) of the 1997 Act is not being amended.
41. Section 7(5) of the Act introduces section 16A into the 1997 Act, requiring planning authorities to make appropriate arrangements to promote and facilitate participation by children and young people in the preparation of the local development plan, and to publish information about those arrangements.
42. Section 7(6) introduces sections 16B, 16C and 16D into the 1997 Act.

### **Evidence report for preparation of local development plan**

43. New section 16B introduces the evidence report and “gatecheck” process for local development plans. It requires an evidence report to be prepared, covering the matters specified in section 15(5) of the 1997 Act and other such matters as may be prescribed. The evidence report must also set out information on action taken by the planning authority in relation to meeting the housing needs of older people and disabled people, meeting the accommodation needs of Gypsies and Travellers, and inviting and supporting local communities to prepare local place plans.
44. Subsection (2) of new section 16B sets out groups the planning authority must consult with in preparing the evidence report, and subsection (4) requires the evidence report to include a statement on the consultation undertaken (with a different list of groups).
45. Under subsections (5) and (6), the evidence report must be approved by the full planning authority, before being submitted to the Scottish Ministers under subsection (7). These subsections do this by requiring the planning authority to approve the proposed evidence report before submitting it and then disapplying section 56 of the Local Government (Scotland) Act 1973 to the function of approving the proposed report (which means that the task cannot be delegated to, for example, a committee or an officer of the authority).
46. Subsections (8) to (12) provide for the Scottish Ministers to appoint a person to assess the report and sets out the process which applies depending on whether or not the appointed person is satisfied with the report. Subsection (13) allows for regulations to cover costs, procedure and what is to be assessed. Subsection (14) and (15) set out definitions for section 16B, including that the meaning of “Gypsies and Travellers” is to be specified in regulations. The Scottish Ministers must consult before making such regulations.
47. New section 16C provides that the Scottish Ministers may issue guidance to planning authorities about undertaking effective community engagement in relation to the local development plan. A planning authority must have regard to any such guidance.
48. New section 16D requires a planning authority to carry out a play sufficiency assessment in preparing an evidence report. The Scottish Ministers must make regulations about the form and content of this assessment, who must be consulted in relation to the assessment and about its publication.
49. Section 7(7) of the Act repeals section 17 of the 1997 Act. This removes the requirement for a main issues report to be prepared for a local development plan. Additional consequential changes to remove reference to main issues reports are also made in schedule 2 of the Act.

### **Preparation and publication of proposed local development plan**

50. Section 7(8) of the Act amends section 18 of the 1997 Act to require planning authorities to prepare a proposed local development plan when they are notified that the appointed

person is satisfied that the evidence report is sufficient, as per paragraph 46 above. The planning authority are required to have regard to the appointed person's report in preparing the proposed plan. The provisions also require the appointed person's report and the proposed local development plan to be published at the same time and in the same manner.

51. Paragraph (d) of section 7(8) of the Act introduces a new subsection (1A) to section 18 of the 1997 Act, which requires a planning authority within the relevant area to consult the Central Scotland Green Network Partnership on the proposed local development plan (for as long as it is included in the National Planning Framework as a national development). This paragraph was inserted by amendment and does not correctly identify the development or the body responsible for it. However, despite these deficiencies, the intention of requiring planning authorities to consult the Central Scotland Green Network in appropriate cases is clear.
52. Paragraph (d) also introduces subsections (1B) and (1C) into section 18 of the 1997 Act, which require the proposed plan to be approved by the full council of the planning authority before the plan is published. This is done in the same way as for the proposed evidence report under section 7(6) of the Act (new section 16B(5) and (6) of the 1997 Act).
53. Section 7(8)(e) of the Act amends the minimum time period for representations to be received once the proposed plan is published, from not less than six weeks as set out in the 1997 Act, to not less than twelve weeks.
54. Section 7(8)(f) of the Act repeals wording relating to where an authority decides to make no or only a certain type of modifications, meaning that the requirement to submit the proposed plan to the Scottish Ministers applies to all proposed local development plans, instead of a different approach being taken depending on whether or not (or what type of) modifications have been made. Paragraph (g) adds a requirement that where modifications are made to the proposed plan, the planning authority must prepare a report setting out the modifications made and the reasons for making them, and submit this to the Scottish Ministers with the proposed plan.
55. Section 7(8)(h) of the Act removes the requirements to publish the proposed plan and to advertise the authority's intention to adopt the plan if there is to be no examination. These are replaced by new arrangements in the subsequent subsections.
56. Section 7(8)(i) of the Act repeals subsections (5) to (9) of section 18 of the 1997 Act. This removes the requirement for a modified proposed plan or new proposed plan and for those to be published and representations allowed on them. This enables changes to be made to the proposed plan without requiring a further stage of plan preparation.

### **Examination of proposed local development plan**

57. Subsections (9) to (14) of section 7 of the Act remove the Scottish Ministers' ability to intervene in local development plans (LDPs) at the end of the plan preparation process, prior to its adoption; adjust requirements relating to publication and notification requirements to prevent duplication of process due to the changes; and introduce new powers for the appointed person where they find the proposed plan is not satisfactory.
58. At present, if a proposed plan is unsatisfactory (for example by failing to allocate sufficient land for housing) the Reporter is expected to make recommendations for modifications, which the planning authority must implement. The Scottish Ministers may also direct the authority to consider modifying the plan, and may prevent the plan being adopted until they approve it. The new provisions place the responsibility back on the planning authority to address any failures in the plan, either before or immediately after the plan is adopted.
59. Section 19 of the 1997 Act relates to examination of the proposed local development plan. Section 7(9)(a) of the Act inserts a new subsection (5A) into section 19. This

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requires that when an examination of a plan is to take place, either at the request of the authority or by Ministers, the planning authority must publish the proposed plan and a report setting out any modifications made and the reasons for them. The change to section 19(9), made by paragraph (e), is in consequence of this and by reference to the new subsection (5A), allows publication to include publication by electronic means.

60. Section 7(9)(f) of the Act repeals paragraphs (b) to (d) in section 19(10) of the 1997 Act. This removes the requirements for the planning authority, following the examination, to publish the plan and modifications made to it, to advertise their intention to adopt the plan and to notify those who made representations on it. This avoids duplication with the publicity requirements when the plan is constituted, set out in section 20A of the 1997 Act.
61. Section 7(9)(g) of the Act removes section 19(12) of the 1997 Act. This removes the requirement for planning authorities to send copies of various documents to the Scottish Ministers, including the modifications made, any reasons for not modifying the plan as recommended, the proposed plan, the examination report, environmental assessment undertaken and details of the advert of their intention to adopt the plan.
62. Section 7(9)(d) of the Act introduces new subsections (8A) and (8B) into section 19 of the 1997 Act. Subsection (8A)(a) replaces provisions (removed by section 7(9)(c)) which enable recommendations to be made to modify the proposed local development plan. Subsection (8A)(b) introduces a new power for the appointed person (Reporter) to recommend that the plan is amended following its adoption. If a recommendation is made under subsection (8A)(b) new subsection (8B) requires that the report submitted to the planning authority including that recommendation is also sent to the Scottish Ministers.
63. Section 7(9)(b) of the Act broadens otherwise mandatory requirements of section 19(8) of the 1997 Act to allow for the new section 19ZA, inserted by section 7(10).
64. New section 19ZA gives the appointed person a new power, if they are not satisfied that the amount of land allocated is sufficient to meet the targets that are set in the plan, to issue a notice to a planning authority to require it to prepare another proposed local development plan. Subsection (3) sets out what the notice must include and subsection (4) sets out requirements to notify Ministers and those who have made representations, and to publish it (electronically). If the planning authority receives such a notice, under subsection (5) they must prepare another proposed local development plan. Subsection (6) allows this to be done on the basis of the existing evidence report, rather than having to start from the beginning of the process (although it does not prevent the authority for preparing a new evidence report if it considers it appropriate to do so).
65. Section 19A of the 1997 Act deals with whether the planning authority's consultation and public involvement with respect to the proposed plan has conformed with their participation statement in place at the time. The appointed person must consider this before carrying out the examination. If the appointed person is not satisfied, the Scottish Ministers may direct the authority to undertake further consultation, after which the authority may modify and must resubmit the proposed plan. Section 7(11) of the Act removes the separate requirements to publish the modified plan and advertise that a proposed plan has been resubmitted in these circumstances, and instead applies the requirement to publish the proposed plan and report on modifications under new section 19(5A).
66. Section 7(12) of the Act amends section 20 of the 1997 Act, which provides for the local development plan to be constituted when it is adopted by the planning authority. In particular, it removes subsections (2) to (7), which allow the Scottish Ministers to direct that modifications are to be made to the proposed plan, extend the time before which the plan may not be adopted, or require that the plan is to be constituted when it is approved

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by the Scottish Ministers, rather than when it is adopted by the planning authority. In place of these, the Act inserts new subsections (1A) and (1B) into section 20.

67. New subsection (1A) provides that planning authorities cannot adopt their plan until 28 days have passed following submission of the proposed local development plan to the Scottish Ministers. This allows Ministers 28 days within which they can either appoint a person to examine the plan, or decide not to. New subsection (1B) requires, where an examination has taken place, for the examination report to have been received by the planning authority before they can proceed to adopt the plan.
68. Section 7(13) of the Act inserts new subsections (1A) to (1E) into section 20A of the 1997 Act, which deals with publication and publicity for the local development plan.
69. New subsection (1A) provides that in certain circumstances, as soon as reasonably practicable after the local development plan is constituted, the planning authority must publish either (a) a “recommended-modification statement” or (b) a “report on modifications”.
70. New subsection (1B) defines the circumstances where a recommended-modification statement is required – this being where a planning authority has declined to follow a recommendation in an examination report. New subsection (1E)(a) provides that the statement must set out the modification and explain why it was not made.
71. New subsection (1C) sets out where a report on modifications is required – this is where the constituted plan is different to the proposed plan as a result of modifications from earlier stages. New subsection (1D) provides that if a report on modifications was published at the examination stage, only new modifications need to be included in the report following constitution of the plan; if no new modifications were made no report need be published.
72. Section 7(14) of the Act inserts a new subsection (4A) into section 20B of the 1997 Act relating to development plan schemes. A development plan scheme is a document setting out the authority’s programme for preparing and reviewing their plan. The development plan scheme is currently required to include a participation statement, which is an account of when consultation is likely to take place, with whom, its likely form, and steps to be taken to involve the public at large. New subsection (4A) requires that when the planning authority is preparing a development plan scheme, they must seek the views of, and have regard to any views expressed by, the public at large on the content of the participation statement. This will allow interested stakeholders to have a say in how they can be most effectively consulted, so that authorities can tailor their approach to improve its effectiveness.