

PLANNING (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

As an amendment to amendment 114, line 10, add at end –

<() The Scottish Ministers must issue guidance to planning authorities for the purposes of this section.”.>

Effect

This amendment requires Scottish Ministers to issue guidance in relation to the purpose of planning.

Reason

A purpose of planning was not included in the Bill at introduction and while the concepts of sustainable development and the national outcomes will be familiar to planning authorities, guidance is likely to be of assistance to planning authorities in the context of the purpose of planning. Guidance will also help to ensure that there is consistency in approach to the role across planning authorities.

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In section 1, page 7, line 10, leave out <120> and insert <90>

Effect

This amends the maximum period for consultation on the National Planning Framework (NPF).

Reason

The Bill requires consultation on the proposed draft NPF in addition to the requirement for the Scottish Parliament to approve the framework. In particular, the Scottish Ministers are to “have regard to any representations about the proposed draft framework that are made to them within no more than 120 days of the date on which the copy of the proposed draft framework is laid before the Parliament”.

This amendment seeks to alter this maximum period to one of 90 days. Such a period is in line with the Scottish Government’s aim, and common practice, to consult for a minimum period of 12 weeks (84 days). A minimum period of 12 weeks was also reflected in previous guidance from the Cabinet Office’s such as their *Code of Practice on Consultation*¹. A maximum period of 90 days in respect of the proposed draft NPF would accord with the general practice and aim to consult for 12 weeks.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

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In section 1, page 7, line 13, leave out <120> and insert <90>

Effect

This is a consequential amendment.

Reason

This is a consequential amendment.

PLANNING (SCOTLAND) BILL
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Leave out section 1A

Effect

This removes section 1A which concerns the preparation and publication of an open space strategy.

Reason

This section was introduced to the Bill at stage 2. The protection of open space is currently delivered through the local development plan and Scottish Planning Policy, in particular Scottish Planning Advice Note 65². Planning Advice Note 65 contains advice for planning authorities on open space and open space strategies. In the interests of clarity in the law, it would be an improvement to the Bill if this section was deleted.

² <https://www.gov.scot/publications/planning-advice-note-pan-65-planning-open-space/>

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In section 2A, page 10, line 11, add at end -

<In Section 8(1)(a), leave out “take into account” and insert “ensure that the plan prepared is consistent with”.>

Effect

This introduces a requirement for Strategic Development Plans to be consistent with the National Planning Framework. This amendment will only be relevant if Strategic Development Plans are retained.

Reason

For a number of years, the planning system in Scotland has operated on a hierarchical basis where the highest tier of the development plans sets a strategy and policy context in an appropriate geographical area. Currently the high level plans, Strategic Development Plans (SDPs), are the culmination of joint working between planning authorities. It is expected that this will continue at regional level in the preparation of SDPs (if they are retained – we note the amendments seeking to remove SDPs and replace them with Regional Spatial Strategies) and also during the preparation of the new National Planning Framework (NPF) which will now form part of the Development Plan. At present, Local Development Plans (LDPs) take forward the agreed strategy at a local level in a way that is consistent with the approach that has been agreed by stakeholder authorities at the higher plan stage.

The Town and Country Planning (Scotland) Act 1997 requires an SDP to “take into account” the NPF³. The Bill provides that the NPF will be subject to consultation and Parliamentary scrutiny⁴.

This amendment introduces a requirement for SDPs to be consistent with the NPF. In the absence of a legal duty of consistency, there is a risk that SDPs could be at odds with the approved NPF since the authorities would only have to “take into account” the NPF and would not be bound to follow it. If there is no duty for SDPs to be consistent with the NPF, there is a risk that a lower tier of the Development Plan (LDPs) may be contrary to the wider vision that has been agreed by stakeholders at the time the NPF is produced. This could

³ Town and Country Planning (Scotland) Act 1997, section 8(1)(a).

⁴ Section 1.

lead to conflict and uncertainty and may impact on delivery of the agreed strategy for the wider area.

PLANNING (SCOTLAND) BILL
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In section 2A, page 11, leave out lines 39 to 41.

Effect

This prevents the repeal of the provisions in the Town and Country Planning (Scotland) Act 1997 concerning independent examination of Strategic Development Plans and for Ministerial approval or rejection of Plans. This amendment will only be relevant if Strategic Development Plans are retained.

Reason

The Bill currently provides in section 2A(7), (8) and (9) for the repeal of sections 12, 12A and 13 of the Town and Country Planning (Scotland) Act 1997. These sections provide for independent examination of Strategic Development Plans (SDPs) and for the approval or rejection of an SDP by Scottish Ministers. We note the amendments seeking to remove SDPs and replace them with Regional Spatial Strategies.

The removal of the independent examination process was not consulted upon and the impact of revoking these provisions has not been fully explored. Independent examination enhances accountability by ensuring that there is a 'check and balance' on the plan.

The benefits of independent examination of an SDP have been demonstrated in recent years. For example, recent examinations of the Clydeplan and SESplan SDPs resulted in amendments to each plan's housing strategy to facilitate the delivery of substantial numbers of new affordable homes. This was not included in the original drafts of the SDPs.

PLANNING (SCOTLAND) BILL
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In section 3, page 15, line 19, leave out <become subparagraph (i)> and insert <are deleted>

Effect

This is a paving amendment.

Reason

This is a paving amendment.

PLANNING (SCOTLAND) BILL
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In section 3, page 15, line 20, leave out from beginning to end of line 24 and insert –

<after “take into account” insert

“(i) any local outcomes improvement plan (within the meaning of section 6 of the Community Empowerment (Scotland) Act 2015) for the part of their district to which the local development plan relates,”,>

Effect

This is a paving amendment.

Reason

This is a paving amendment.

PLANNING (SCOTLAND) BILL
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In section 3, page 15, line 25, add at end –

<“() is to ensure that the plan prepared is consistent with the National Planning Framework,”>

Effect

This introduces a requirement for Local Development Plans to be consistent with the National Planning Framework.

Reason

For a number of years, the planning system in Scotland has operated on a hierarchical basis. The highest tier of the development plans sets a strategy and policy context in an appropriate geographical area. Currently the high level plans, Strategic Development Plans (SDPs, if they are retained), are the culmination of joint working between planning authorities. At present, Local Development Plans (LDPs) take forward the agreed strategy at a local level in a way that is consistent with the approach that has been agreed by stakeholder authorities at the higher plan stage.

As currently framed, the Bill, in conjunction with the existing provisions of the Town and Country Planning (Scotland) Act 1997, requires an LDP to “take into account” the NPF⁵ and an LDP to be “consistent with” an SDP, if applicable⁶. The Bill provides that the NPF will be subject to consultation and Parliamentary scrutiny⁷.

This amendment introduces a requirement for LDPs to be consistent with the NPF. In the absence of a legal duty of consistency, there is a risk that LDPs could be at odds with the approved NPF since the plan-making authority would only have to “take into account” the NPF and would not be bound to follow it. This means that the LDP could be contrary to the wider vision that has been agreed by stakeholders at the time the NPF is produced.

If there is a desire for local flexibility on particular issues, that can be provided for in the policy of the NPF.

⁵ Town and Country Planning (Scotland) Act 1997 section 16(2) and Planning (Scotland) Bill section 7(3).

⁶ Town and Country Planning (Scotland) Act 1997 section 16(6).

⁷ Section 1.

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In section 7, page 23, line 17, leave out lines 18 to 19 and insert –

<(a) are to ensure that the amendment prepared is consistent with the National Planning Framework,

(b) are to take into account – >

Effect

This is a consequential amendment.

Reason

This is a consequential amendment.

PLANNING (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

Leave out section 11B

Effect

This removes the section on the use of a dwellinghouse for short-term holiday lets.

Reason

This section was introduced to the Bill by amendment at stage 2. It was not subject to pre-Bill consultation.

There is currently a great deal of uncertainty around the treatment of short-term holiday lets and the law merits greater clarity. The Scottish Government has launched a consultation on this matter: *Short-term Lets*⁸. We consider there is merit in the matter being considered as a whole following upon that consultation rather than legislation developing in what could result as a piece-meal fashion.

In addition, this section does not clarify what is meant by “short-term holiday lets” other than by making two specific exclusions and provides that “Scottish Ministers may issue guidance on the interpretation”. There requires to be certainty around the definition, particularly given the potential for an individual to commit a criminal offence in the event that an enforcement notice is served and not complied with.

There is a wide range of existing regimes within which short term lets may currently operate and be controlled, for example, planning, licensing, enforcement of real burdens and title conditions, and taxation, to name a few. If the matter is to be dealt with within the planning system, there requires to be clarity as to the basis for a planning application, for example a change of use, and what factors must be taken account of in deciding if that has occurred. The matter merits full consideration and consultation with stakeholders.

⁸ <https://www.gov.scot/publications/short-term-lets-consultation-regulatory-framework-scotland/>

PLANNING (SCOTLAND) BILL
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In section 19, page 58, line 3, add at end –

<(14) The Scottish Ministers must issue guidance to planning authorities on the matters dealt with in this section.>

Effect

This inserts a provision requiring Scottish Ministers to issue guidance on planning obligations under section 75 of the Town and Country Planning (Scotland) Act 1997.

Reason

This provision requires Scottish Ministers to issue guidance on planning obligations. Planning authorities may benefit from guidance from Scottish Ministers in relation to such matters, particularly in light of the insertion of new subsection (1A) into section 75 and the infrastructure levy provisions in the Bill which have the potential to interact with existing planning obligation provisions. Guidance will also help to ensure that there is consistency in approach to the role across planning authorities.

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In section 26C, page 67, line 25, add at end -

<() The Scottish Ministers must issue guidance to planning authorities concerning the role of an authority's chief planning officer.>

Effect

This inserts provision requiring for Scottish Ministers to issue guidance on the role of a chief planning officer.

Reason

The role of chief planning officer is a new role created in the Bill. Planning authorities will likely benefit from guidance from Scottish Ministers in relation to the role. Such guidance will help to ensure that there is consistency in approach to the role across planning authorities.

PLANNING (SCOTLAND) BILL
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Leave out section 26D

Effect

This has the effect of removing the provisions on national scenic areas from the Bill.

Reason

National scenic areas are currently afforded legislative protection including a mandatory requirement to consult with Scottish Natural Heritage before issuing a direction in relation to a National Scenic Area⁹. Current provisions also provide, in a number of circumstances, a trigger for Scottish Ministerial notification and call-in should the advice of Scottish Natural Heritage not be accepted¹⁰.

We consider that this provision is unnecessary due to the current protections. It is not clear that in practice, the provisions of the Bill which seek to remove the words “the desirability of” from section 263A(2) of the Town and Country Planning (Scotland) Act 1997 would provide greater protection of national scenic areas than they are currently afford.

⁹ Town and Country Planning (Scotland) Act 1997, section 263A(6).

¹⁰ Scottish Development Department (SDD) Circular 9/1987 and the General Permitted Development Order (GPDO) 1992 as amended.

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In section 30A, page 70, line 9, leave out <10> and insert <5>

Effect

This amends the period within which regulations must be introduced in relation to an infrastructure levy from 10 years to 5 years.

Reason

It is appropriate that there is a restriction on the duration of the Scottish Ministers' powers to introduce regulations on an infrastructure levy. This provides an opportunity for scrutiny of the Government in relation to this Part of the Bill by providing a time-limited period for regulations to be introduced. This ensures that if no action is taken within the time period specified, and the Government wishes to take steps to introduce an infrastructure levy in the future, there is an opportunity for Parliament to consider the merits of the matter again.

This amendment reduces the period from 10 years to 5 years. This period is of sufficient length for the Scottish Ministers to consider, consult on, and introduce regulations, while ensuring that any such regulations are introduced timeously. This will help to ensure clarity as to the law and provide some certainty for individuals and businesses.

We note such an amendment is recommended by the Delegated Powers and Law Reform Committee in their report on the Bill at stage 2¹¹.

¹¹ Delegated Powers and Law Reform Committee, 22nd Report, 2019, Planning (Scotland) Bill: as amended at Stage 2 (SPP 519), paragraph 95.

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In Schedule 1, page 73, line 7, add at end–

- <7A The infrastructure-levy regulations must specify that payments in respect of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 for a particular development cannot be required where payment is already due in respect of that development in terms of the infrastructure levy.>

Effect

This provides that a payment cannot be required in terms of a planning obligation where a payment is already due in respect of the infrastructure levy.

Reason

The Bill does not contain provision regarding the application of the infrastructure levy to developments which are already subject to a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997. There is therefore a clear potential for double charging of developments. Such double charging would be inappropriate and may impact upon development. This amendment seeks to avoid this by requiring any regulations made by the Scottish Ministers to provide that an infrastructure levy cannot be imposed in respect of development which is the subject of a planning obligation.