



**REPORT TO: PLANNING & REGULATORY SERVICES COMMITTEE ON
25 FEBRUARY 2020**

SUBJECT: THE PLANNING ACT (SCOTLAND) 2019

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND
FINANCE)**

1. REASON FOR REPORT

- 1.1 This report asks Committee to note the duties and requirements contained in the Planning (Scotland) Act 2019 and the timescales for bringing forward regulations and additional guidance.
- 1.2 This report is submitted to Committee in terms of Section III (3) (1) of the Council's Scheme of Administration relating to exercising the statutory functions of the Council as Planning Authority under the Planning Act.

2. RECOMMENDATION

2.1 It is recommended that the Committee agrees:

- (i) to note the requirements of the Planning (Scotland) Act 2019;**
- (ii) to note that responses have been submitted to the Scottish Government in relation to both consultations on Planning Performance & Fees – 2019 and Reviewing & Extending Permitted Development Rights;**
- (iii) that further reports are submitted to this Committee when regulations and further guidance are published; and**
- (iv) that further reports are submitted to the Community Engagement Group and Community Planning Partnership when further information regarding Local Place Plans is published.**

3. BACKGROUND

- 3.1 An independent panel was appointed to carry out a review of Scotland's planning system in 2015 and concluded that while the main structure of the system was not broken, the planning system could be improved to meet its full potential. The improvements identified would require a strong commitment to

change practices and culture within the profession. The key drivers for the review were:

- Deliver more good quality homes
- Improve the experience and influence of communities
- Effective development planning leading positive change
- More proactive management of development
- Strong leadership coupled with management of skills, resources and performance.

3.2 The review identified 6 outcomes to guide planning reform;

- Strong and flexible development plans
- The delivery of more high quality homes
- An infrastructure first approach to planning and development
- Efficient and transparent development management
- Stronger leadership, smarter resourcing and sharing of skills
- Collaboration rather than conflict- inclusion and empowerment

3.3 The Scottish Government agreed with the panel assessment and the Planning (Scotland) Act 2019 received Royal Assent on 25th July 2019. The implementation of the Act is now underway and some of its provisions are now in force. The Scottish Government Transforming Planning in Practice programme (see **Appendix 1**) involves the development of further regulations and guidance to implement the provisions of the Act. The Scottish Government is now working through a detailed work programme to implement the Act alongside a suite of other actions to complete the transformation of Scotland's planning system in practice.

3.4 The Scottish Government has moved quickly to bring forward detailed proposals for substantial changes to the planning fees structure with the aim of having early clarity around costs and resources with the new fee arrangements to be in place by mid-2020. The consultation on Planning Performance and Fees closed on 14 February 2020 and a response has been submitted welcoming the proposed increases across the full range of planning applications. The new fee regime would allow for discretionary charging and discounts, extends the range of services for which fees can be charged, allows for a surcharge to be imposed on retrospective applications and makes it possible for authorities to charge a higher fee for a premium service. Fee increases will be closely linked to performance ensuring a good quality service and good quality outcomes.

3.5 Under the wider planning reform programme the other work stream that has also been brought forward is the Scottish Government's proposed programme for Reviewing & Extending Permitted Development Rights (PDR) in Scotland. The consultation on the programme closed on 28 January 2020 and a response has been put back highlighting any areas of concern. The early elements of this programme will include priority being given to changes to hill tracks, changes to help address climate change (for example, micro-renewable technologies), measures to support digital connectivity and measures to support delivery of affordable homes in rural areas. It is anticipated that these changes will assist in streamlining some aspects of the

planning system that currently require to be the subject of a full planning application.

- 3.6 At the strategic level, a Call for Ideas to inform National Planning Framework (NPF) 4 has been published with a deadline for commenting by the end of March. NPF4 will have an enhanced role under the new legislation, forming part of the Development Plan and will include development policies. This is the subject of a separate report to this Committee.

4. **PROPOSAL**

- 4.1 A summary of the main proposals set out in the new Act is in **Appendix 2**. Some aspects of the new Act have already been embedded into the emerging Moray Local Development Plan 2020 or have been part of this Council's approach for some time and some duties have already been introduced. However, there are a lot of new duties, some of which could have significant staff resource implications for the Council across a number of services and these are identified in **Appendix 2** and highlighted below;

- NPF4- the next (fourth) NPF will set out the long term spatial strategy for Scotland to 2050, will incorporate Scottish Planning Policy and will have enhanced status as part of the statutory development plan. A Call for Ideas has been published and is the subject of a separate report to this Committee. It is important that the Council fully engages in this process to ensure Moray's interests are represented. NPF4 is expected to be published in draft Q3 2020.
- Regional spatial strategies- The Act removes the requirement for strategic development plans in the four largest city regions and introduces a requirement for all authorities, working together as they see fit, to prepare regional spatial strategies which set out development priorities at a strategic level. The NPF and local development plans must have regard to the regional spatial strategy. Statutory guidance is anticipated by Q4 2021.
- Evidence Report/ Gatecheck- The Act makes significant changes to the local development plan process, aiming to make them more effective, with greater community engagement and more focussed on delivery. Main Issues Reports are no longer required, with a new Evidence report and Gatecheck process introduced, along with additional engagement requirements. The Act also removes provisions regarding statutory supplementary guidance and moves local development plans to a 10 year cycle from the current 5 year cycle. Guidance relating to local development plans is expected to be published in Q4 2021.
- Community Engagement and Participation of Children and Young People- improving community involvement in the planning system has been a key aim from the outset of the planning review. Guidance is expected to be published by Q1 2021 and will include changes to pre-application consultation with local communities in relation to major developments.

- Local Place Plans- the Act introduces a requirement for planning authorities to publish an invitation to prepare local place plans with a date by which they must be prepared in order for them to be taken account of in preparing the local development plan. Information is also to be published on support available for preparing local place plans. A review of the effectiveness of local place plans will be carried out 7 years after the Bill was given Royal Assent.
- Masterplan Consent Areas- these could be a proactive delivery tool to promote development by granting up front consents for planned development, removing a lot of risk for developers/ investors. A number of pilot exercises are underway and these will inform regulations which will be in place by Q4 2021.
- Land value capture uplift- the Scottish Government remains very interested in the concept of capturing land value uplift and using that to fund infrastructure. The Scottish Government propose to bring forward a package of proposals that will identify how local authorities can effectively assemble land, tackle problem properties and capture land value uplifts. It is not anticipated that the Government will legislate on this issue in the current Parliament, but will engage with local authorities, the Scottish Land Commission, the Scottish Futures Trust and industry representatives to explore all options.
- Development Management Commencement Regulations 2019 - these came into effect on 1 December 2019 and 1 March 2020. Further regulations or guidance will be put in place by Q1 2021 covering duration of planning permission and completion notices by Q1 2021. The regulations of immediate interest are summarised below:
 - **Section 42** – Increases in the levels of fines for Enforcement and also introduces a requirement for the courts to take account of financial benefit when setting fines. Maximum level of fines increased from £20,000 to £50,000. This is intended to help ensure that the fine is set at a level that is a genuine deterrent.
 - **Section 25** – Noise sensitive developments (Agent of Change Principle) inserts a new section to protect existing activities that create significant noise.
 - **Section 23** – Notification of all major planning applications to all Councillors, MSP's and MP.
 - **Section 27** – Removal of requirement for full Council decision on applications requiring a Pre-Determination hearing.
 - **Section 30** – Statement on accordance with development plan to be clearly included in decision notices.
 - **Section 26** – Introduce requirements for certain large developments to include Changing Place Toilets to align with Building Standards Technical Guidance.
- Enforcement Charter – the requirement for enforcement charters to include a statement on the authority's monitoring of compliance with planning permission for major developments will be brought forward by Q1 2021 together with guidance on monitoring.

- Short Term Lets - the Act will allow local authorities to designate short term let control areas, within which the use of a dwellinghouse for short term letting is deemed to involve a material change of use, and therefore always needs planning permission. Regulations are aimed to be in place by Q4 2020.
- Delegation Schemes & Local Reviews - any changes needed to regulations will be considered and aim to be laid in Q3 2021. Further guidance to be issued.

5. **NEXT STEPS**

- 5.1 Many parts of the Act will be implemented by the Scottish Ministers making regulations or issuing guidance. These will be reported to Committee as they are published, along with details of the Council's proposed response to the National Planning Framework 4. In terms of Local Place Plans, it is proposed that in addition to reporting regulations/ guidance to this Committee, that reports are also submitted to the Community Engagement Group and Community Planning Partnership.
- 5.2 The Scottish Government expect to implement most of the Act by early 2021, except where there are specific reasons for a later timescale.
- 5.3 **Appendix 1** is an extract from the Scottish Government "Transforming Planning in Practice-Post-Bill Work Programme" September 2019.

6. **SUMMARY OF IMPLICATIONS**

(a) **Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The planning system plays an important role in planning for and mitigating the effects of climate change as well as supporting the delivery of the Council's aspirations for economic development, providing land for private and affordable housing, safeguarding the environment, planning for infrastructure, delivering quality placemaking and promoting opportunities for health.

Community engagement is a key part of the local development plan and this is strengthened in the proposals emerging from the Act.

(b) **Policy and Legal**

The proposals set out in the Act are legislative requirements for the Council to implement.

(c) **Financial implications**

The financial implications for the Council are difficult to determine at this time and will be the subject of a future report, covering both staffing implications and the need for a budget to support delivery of the Moray Local Development Plan 2020.

(d) Risk Implications

There is a risk that if the new duties are not properly resourced and fully implemented then the aspiration to transform the current planning system will not be fully realised.

(e) Staffing Implications

Staffing implications are difficult to assess until all regulations and guidance have been published on all the new duties. However, it is clear that it will be challenging to meet the requirements, particularly those summarised in paragraph 4.1 within the current staffing levels across a number of sections in the Council and without a budget.

A further report on the staffing implications for Strategic Planning and Development, Development Management, Transportation, Legal and the Community Support Unit will be presented to a future meeting of this Committee when the full implications of the Act are known.

(f) Property

None.

(g) Equalities/Socio Economic Impact

No Equality Impact Assessment is required for this report. An Assessment will be undertaken when new Local Development Plan regulations are published.

(h) Consultations

The Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Senior Engineer Transport Development, the Community Support Manager, the Acting Housing Strategy and Development Manager, the Equal Opportunities Officer and Lissa Rowan (Committee Services Officer) have been consulted and comments received have been incorporated into the report.

7. CONCLUSION

7.1. The Planning (Scotland) Act 2019 received Royal Assent on 25 July 2019 introducing a number of significant changes to Scotland's Planning system.

7.2. This report highlights the main changes, particularly new duties which are likely to have significant resource implications for the Council.

7.3 Further reports will be reported to this Committee when additional regulations and guidance are published and the full implications of the new duties contained within the Act are known.

Authors of Report:

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Background Papers:

Ref: