

Consultation Response

Development Plan Amendment Regulations Consultation

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NPF: Full Review Requirements

Question 1: To what extent do you agree that it is appropriate to adopt a broad and high-level approach as to when a full review of the National Planning Framework is required?

Disagree

The proposed broad and high-level approach taken to setting a trigger for a full review of the NPF is understandable given the complexities associated with measuring what constitutes a “significant” change.

We agree that minor administrative changes to the NPF should not require a full review – for example, simple and straightforward amendments to change a name or terminology, or to add or alter references.

However, this broad and high-level approach has the potential to result in a number of unintended and undesirable consequences. For example:

- The 50% trigger treats all national developments and national planning policies the same which could result in the alteration of policies through the amendment process that have significant consequences for the implementation of the NPF. For example, NPF4 places significant weight on tackling the climate and nature crises. Any alteration to the wording of this policy which results in the watering down or removal of the weight currently attached to it, would be a significant change compared to simply amending a reference or link in another section of NPF4. However, if this amendment was not accompanied by alterations to 16 other NPF policies, such a significant change could be dealt with as an amendment rather than a full review under this proposal.
- The 50% trigger would mean that a full review would not be required if a policy or national development were added or removed. Although adding or removing a national development or policy would not result in a change to 50% or more of the NPF it would still, in our opinion, have potential significant consequences for the interpretation and implementation of NPF4 as a whole, thereby warranting a full review.
- The 50% trigger does not account for cumulative changes overtime that, when combined, result in a significant alternation to the NPF. Although we do not anticipate that the NPF will undergo numerous amendments over the course of a short period of time, the 1997 Act does allow for the NPF to be amended “at any time”. If this power was utilised to its full degree, a situation could arise whereby 75% of NPF4 could be amended through three incremental changes of 25% each that, by themselves, would not trigger a full review but which would, cumulatively, result in a significant change to the NPF.

Given the above concerns, we recommend that the trigger for a full review of the NPF not be solely based on the quantity of proposed changes, but also on the potential significance of those changes to the intent, interpretation, and implementation of the NPF. It is important that appropriate tests be applied and that there be a sufficient level of transparency in the NPF amendment process.

To assist with this transparency, it was suggested by some of our members that the Scottish Government be required to publish an annual statement of all the amendments proposed to be made to the NPF that year. Similar to the Development Plan Schemes that local planning authorities are required to prepare on an annual basis. This statement could include a summary of:

- the amendments proposed to be made to the NPF that year
- the purpose of those amendments
- the likely implication of those amendments to the interpretation and implementation of the NPF
- the process to be followed in making the amendment (including who will be consulted and when)
- the proposed timescales of the amendment process.

Question 2 – In cases where amendments would require changes to half or more of the contents of the NPF, to what extent do you agree that a full review of the NPF would be required?

Disagree

In line with our response to Question 1 above, we agree that a full review should only be required as a consequence of a significant change to the NPF. However, we do not agree that a significant change can be measured solely by the quantity of the NPF that is proposed to be altered.

Our members have expressed concerns that the 50% trigger for a full review would be unduly onerous if proposed changes that were significant to warrant a full review could not take place through this process because they have not met the 50% test.

Additional tests should be employed which judge the significance of the proposed changes against the goals and objectives of the NPF and their likely impact on the NPF's interpretation and implementation to warrant a full review.

NPF: Engagement and Preparation

Question 3 – In preparing an amendment to the NPF, to what extent do you agree that the Scottish Ministers should have the same considerations as they would for a full review of the NPF, where that is relevant to the proposed amendment?

Agree

We agree that the same considerations should apply to proposed amendments to the NPF as they do for a full review of the NPF.

Question 4 – To what extent do you agree with the list of those that the Scottish Ministers should consult with on a proposed amendment?

Agree

We broadly agree with this approach. However, careful attention will need to be paid when identifying particular groups that come under the 'public at large' category. Whilst we acknowledge that not all amendments will be of interest to all members of the public, Scottish Ministers may not be able to fully anticipate the varying degrees of impact of an amendment on all individuals and groups. Having a broad category, whilst being broadly

inclusive of everyone, could have the opposite effect of being so broad that it opens up the possibility that certain individuals or groups could be unintentionally overlooked in the process. Careful attention must therefore be paid to ensure that the views of individuals and/or groups are not unintentionally excluded.

In addition to the above, paragraph 32 of the consultation paper proposes that Section 3AC apply to NPF amendments. This would enable Scottish Ministers to direct planning authorities to provide information about a specified range of matters to assist them in amending the NPF. Many of our members felt that the NPF amendment process should also include a mechanism for planning authorities to voluntarily provide information that they believe is relevant to a proposed amendment to the NPF without having to await a formal request from the Scottish Ministers or the formal consultation period once the amendment has already been drafted. It was felt that requiring Scottish Government to publish an annual statement of proposed NPF amendments (similar to a Development Plan Scheme) would support local authorities in this process - making them aware of proposed amendments well in advance, giving them an opportunity to ascertain if they have information that could add value to the NPF amendment process.

Question 5 – To what extent do you agree that a copy of the proposed amendment should be laid in the Scottish Parliament during the consultation period?

Agree

No further comment

Question 6 – To what extent do you agree with the proposed minimum 6-week consultation period, understanding that the timescale may be extended when deemed appropriate given the significance and nature of the amendment?

Disagree

Whilst we acknowledge that not all amendments (particularly those of an administrative nature) will require a lengthy consultation period, we have concerns that if a minimum 6-week consultation period is regularly adopted that this would be too short for communities to feel properly and meaningfully engaged in the amendment process.

Community groups that meet only once a quarter and that may have reduced capacities at certain other times of the year (for example, during the 6-week summer school holidays) would be unduly impacted by the adoption of a minimum 6-week consultation period. It is important that the minimum consultation period gives communities a meaningful opportunity to engage in the amendment consultation process. We are concerned that adopting a minimum 6-week consultation fails to achieve this outcome.

NPF: Adoption

Question 7 – To what extent do you agree that the Scottish Ministers be required to publish an Explanatory Report before the amended NPF is adopted?

Agree

We agree that the Scottish Ministers should be required to publish an Explanatory Report before the amended NPF is adopted. However, we believe that in addition to a summary of the representations received and changes to the draft amended framework, that this Report should also set out a summary of the consultation carried out – including:



- the consultation format,
- participants, and
- if the intended outcomes of the consultation were satisfactorily achieved.

RTPI members who raised this as a desirable addition to the Explanatory Report likened it to the Statement of Conformity that Local Planning Authorities are required to prepare as part of the Local Development Plan preparation process.

The inclusion of this additional information would enhance both the accountability and transparency of the amendment process.

Question 8: To what extent do you agree that all amendments to the NPF should have to be approved by a resolution of the Scottish Parliament?

Agree

No further comment

Question 9 – To what extent do you agree that the amended NPF should take effect when it has been adopted by Scottish Ministers?

Agree

No further comment

Question 10 – To what extent do you agree that the full updated version of the amended NPF, incorporating the amendment, should be published as soon as practicable after it has been adopted by Scottish Ministers?

Agree

We believe that the amended NPF should signpost in it where amendments have occurred and the date the amendment was adopted. This could either be within the main body of the NPF itself, or in a separate List of Amendments, appended to the NPF. We also believe that former versions of the NPF should remain available online. This would further enhance the transparency of the amendment process.

In addition to the above, our members questioned what the implications would be of an amendment to the NPF (and LDP) on the interpretation of Section 24(3) of the 1997 Act which states: "In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail".

Although it is our understanding that amendments to the Statutory Development Plan are not intended to alter the dates of the NPF or LDP as defined under Section 24(4) of the 1997 Act, we recognise that this could be open to interpretation.

For example, if an amendment to the NPF is adopted which then creates incompatibility between a provision of the NPF and LDP, it could be interpreted that:

- As the date of the NPF amendment is later than the date of the LDP, the NPF as a whole should prevail over the LDP. In this scenario, provisions that were not affected by the amendment process would prevail over the LDP which, in our opinion, would be an undesirable outcome.

Or

- Only the amended provision of the NPF would prevail over the LDP. In this scenario, the "later in date" test would apply only to the provision in question rather than to the whole NPF or LDP. In our opinion, this

would also be an undesirable outcome as it would create unnecessary confusion whereby multiple dates would then be applicable to the NPF and LDP in terms of interpreting Section 24(3) of the Act.

Our members expressed concern that adopting either of the above interpretations would result in a confusing leapfrogging exercise, whereby in some local authority areas LDPs would prevail over NPF4 and in other local authority areas, NPF4 would prevail over the LDP as each statutory document is amended at different times.

It is our opinion that amendments to the Statutory Development Plan should not impact the intent of Section 24(3) of the Act – i.e. that amendments to either the NPF or LDP should not alter the date of either document for the purpose of applying the “later in date” test in accordance with Section 24(3) of the Act. In our opinion, this interpretation reflects the original intent of the Act.

However, we believe it is important that clarity is provided on this point from the outset prior to the regulations coming into force, to avoid potential future lengthy delays as the different interpretations are tested through the appeals process and in the courts.

LDP: Preparation and Considerations

Question 11 – To what extent do you agree that planning authorities should be required to have regard to community engagement guidance issued by the Scottish ministers under Section 16C when amending a LDP?

Agree

We agree that there is merit in planning authorities following the guidance for community engagement issued by Scottish Ministers. However, in RTPI Scotland’s response to the Scottish Government’s consultation on this guidance, we expressed concern that undertaking the meaningful and collaborative methods of engagement set out in the guidance will be resource intensive in terms of time, staff and finances. In addition, in order for this engagement to be delivered effectively, it is imperative that the planning authority staff undertaking these community engagement activities are appropriately trained to ensure they are equipped to:

- Employ the right engagement methods at the right time, with the right members of the community in accordance with the guidance.
- Facilitate these engagement methods in a way that ensures maximum productivity is achieved (including how to handle community backlash and/or hostile situations that may unintentionally arise).
- Appropriately collate and analyse the quantitative and qualitative data gathered through these engagement activities such that it positively influences the outcomes of the process.

RTPI Scotland have critical concerns that current constraints on resourcing and funding could continue to act as a barrier to the successful implementation of this guidance in both the LDP preparation process and the LDP amendment process. RTPI Scotland’s latest research on resourcing the planning system (<https://www.rtpi.org.uk/research-rtpi/2023/december/resourcing-the-planning-service-rtpi-scotland-research-briefing/>) reveals that:

- Planning expenditure is still falling, with a 28.6% drop since 2010-11, leaving it as the most reduced and lowest funded local authority department on a national scale.
- Workforce is at the lowest level in five years at 1205 members of staff in local authorities as of 2022/23.



- The planning workforce continues to age, and employees 50+ now represent 39.6% of the total.
- RTPI Scotland's 2022 update reported that the Planning (Scotland) Act 2019 has introduced 49 unfunded duties on local authorities. The Scottish Government's roll out of this legislation risks planners (and the planning system) being immediately placed on the back foot in terms of delivering on these duties without a robust resourcing and upskilling strategy in place.
- Based on past statistics and current trends, there appear to be too few planners entering the sector through higher education to meet replacement demands.

Although RTPI Scotland is generally supportive of local planning authorities adhering to the effective community engagement guidance when amending a LDP, without additional support to local planning authorities and communities in the effective delivery of this guidance, in terms of resources and training, its successful implementation is likely to be severely hampered.

Question 12 – To what extent do you agree that planning authorities should be required to provide a statement outlining how they intend to engage with stakeholders on an amendment to a LDP?

Disagree

A number of our members were of the opinion that this would constitute an unnecessary additional step in the LDP amendment process that would be frustrating in the long-term for both planning authorities and communities. It is essential that if the LDP amendment process is to be successful, particularly with respect to planning authority engagement with local communities, that neither be at risk of being overburdened and that any steps required to be undertaken as part of the amendment add visible value to the amendment process in a meaningful way.

Question 13 – To what extent do you agree that not every amendment to a LDP should require specific participation of children and young people?

Disagree

We broadly agree that not every LDP amendment process will require engagement with the same groups and members of the public. This will largely depend on the content of the amendment and its implications on the intent and implementation of the LDP and should be carefully determined on a case-by-case basis having regard to the UN Convention on the Rights of the Child (<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>). This Convention requires, amongst other things, that:

- the best interests of the child be a top priority in all decisions and actions that affect children (Article 3)
- Government's must do all they can to make sure every child can enjoy their rights by creating systems and passing laws that promote and protect children's rights (Article 4)
- Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously (Article 12).

It is important that any regulations that come into force, including any associated guidance, require local planning authorities to uphold the UN Convention on the Rights of the Child through the LDP amendment process.

Although we acknowledge that children and young people will not always be affected by a proposed LDP amendment, there could be instances where LDP amendments

impact this group in ways that may not be anticipated by local planning authorities. As such, by watering down this requirement for the purpose of the LDP amendment process, we run the risk of unintentionally excluding children and young people from the process.

Question 14 – To what extent do you agree that, when preparing an amendment, a planning authority must have regard to the information and considerations set out in regulation 9 of the Town and Country Planning (Scotland) (Development Planning) regulations 2023?

Agree

We agree that not all considerations will be relevant to every amendment, so there needs to be flexibility to allow planning authorities the scope to establish which considerations are relevant and to apply the necessary weight. This is particularly important to ensure that the LDP amendment process is appropriately proportionate and distinct from the full review process, to ensure that it adds value and does not deter local planning authorities from utilising their powers to undertake an LDP amendment.

Related to the above point, it is important that the resourcing implications of the amendment process be stressed here. Although we appreciate the potential value of having a simplified mechanism to amend an LDP, this does still place additional resourcing pressures on local planning authorities to undertake the amendment(s). In order for the LDP amendment process to be successful, including to ensure all applicable factors are taken into consideration, local planning authorities must have the necessary resources (including staff with the right knowledge, skills and tools) in place to undertake the amendment process.

Local Place Plans

When engaging with our members on this consultation, many of them expressed uncertainty as to the how the LDP amendment process interacts with the LPP preparation and registration process. Section 16(2)(iii) of the 1997 Act requires the planning authority to “take into account” any registered local place plan to which the LDP relates. Some of our members saw merit in utilising the LDP amendment process for the purpose of incorporating LPPs within the LDP, and (we were told) this scope has given some communities the confidence to proceed with the LPP process even though there may not be perfect alignment between the LPP and LDP preparation timescales.

However, our members also voiced the importance of transparency and managing community expectations to ensure that the LDP amendment process does not become reactionary and that it is properly managed to reflect the reality of planning authority workloads.

There were also questions expressed by our members in relation to what is meant by “take into account” with respect to LPPs. It might not always be the case that the content of an LPP can simply be copied over into the LDP through the amendment process.

We believe more attention should be paid to the interaction between the LDP amendment process and the LPP preparation and registration process, which could potentially be addressed in the updated LDP guidance referred to in this consultation paper.

National Planning Improvement Framework

There is an important point we feel requires highlighting here around monitoring how local planning authorities are utilising the LDP amendment mechanism and ensuring that all relevant considerations are being addressed in a proportionate way.

Our members expressed the view that guidance will only take local planning authorities so far in ensuring they get it right, and that a more effective approach in



the longer-term would be to give planning authorities the opportunity to learn from one another. There was a general feeling that this type of peer-to-peer learning approach has important interlinkages with the new National Planning Improvement Framework currently being piloted by the Improvement Service and Scotland's National Planning Improvement Champion. The consultation paper does not mention this important work which, our members felt, is disappointing considering it has the potential to add significant value to the LDP amendment process moving forward.

LDP: Justification

Question 15 – To what extent do you agree that an authority should be required to collate relevant evidence to inform the proposed amendment and prepare a Justification of Amendment Statement?

Agree

We see the value of this proposal, particularly in terms of enhancing the transparency of the amendment process. However, we reiterate the importance of ensuring that planning authorities are properly resourced to carry out the amendment process effectively and efficiently, including the preparation of Justification of Amendment Statements. Steps in preparing reports and statements take up valuable staff time and resources. For this to be a meaningful part of the amendment process that adds value, it is important that planning authorities are properly resourced. Otherwise, steps such as these could become yet another administrative burden and checkbox exercise that adds little value to the process in real terms. We also reiterate our previous point about the importance of ensuring that the LDP amendment process is appropriately proportionate and distinct from the full review process, to ensure that it adds value and does not deter local planning authorities from utilising their powers to undertake an LDP amendment.

The consultation paper comments early on that it is not anticipated that the LDP amendment process would be used to add in single sites to an LDP. Whilst we understand the reasoning for this, there is a desire among many of our members for this to be left to the discretion of local planning authorities. It was pointed out that there could be circumstances that justify the inclusion of single sites into an LDP through the amendment process – for example, to allow for a brownfield site to be brought forward that contributes positively to the overarching objectives of the LDP. In this regard, appropriate tests should be applied as part of the justification stage of the LDP amendment process.

Question 16 – To what extent do you agree that a Play Sufficiency Assessment should not be required for an amendment to a LDP?

Agree

No further comment.

Question 17 – To what extent do you agree that an authority should not be required to have regard to the self-build list for every amendment to a LDP?

Agree

No further comment.



LDP: Consultation

Question 18 – To what extent do you agree that approval by the full council is not always required before the publication of a proposed amendment to a LDP for consultation?

Agree

We agree that approval by the full council will not always be required, and that this decision should be left to each planning authority to judge on a case-by-case basis.

Question 19 – To what extent do you agree that the proposed amendment to a LDP should be published for consultation, alongside the Justification of Amendment statement and any statement on the consequences for the Delivery Programme which are to be published for information?

Agree

No further comment

Question 20 – To what extent do you agree that planning authorities should be required to notify Scottish Ministers and to consult with the public at large and key agencies, alongside others they consider appropriate, when amending a LDP?

Agree

We broadly agree with this proposal. However, we reiterate our response to question 4 that careful attention will need to be paid when identifying groups that come under the 'public at large' category. Whilst we acknowledge that not all amendments will be of interest to all members of the public, local planning authorities may not be able to fully anticipate the varying degrees of impact of an amendment on all individuals and groups. Having a broad category, whilst being broadly inclusive of everyone, could have the opposite effect of being so broad that it opens the possibility that certain individuals or groups could be unintentionally overlooked in the process. Careful attention must therefore be paid to ensure that the views of individuals and/or groups are not unintentionally excluded.

Related to the above, it is vital that planning authorities are properly resourced to ensure they are equipped to undertake meaningful engagement that adds value to the amendment process. Also, whilst we fully support the inclusion of key agencies in this process, we are acutely aware they are also experiencing resourcing and capacity challenges that may act as a barrier to their ability to engage meaningfully in the LDP amendment process. This challenge could be further exacerbated if key agencies receive multiple LDP amendment requests from different LPAs simultaneously.

Question 21 – To what extent do you agree with the proposed minimum 6 weeks consultation period, understanding that the timescale may be extended when deemed appropriate given the scale of the amendment?

Disagree

We reiterate our response to question 6 above that, whilst we acknowledge that not all amendments (particularly those of an administrative nature) will require a lengthy consultation period, we have concerns that if a minimum 6-week consultation period is



regularly adopted that this would be too short for communities to feel properly and meaningfully engaged in the amendment process.

Community groups that meet only once a quarter and that may have reduced capacities at certain other times of the year (for example, during the 6-week summer school holidays) would be unduly impacted by the adoption of a minimum 6-week consultation period. It is important that the minimum consultation period gives communities a meaningful opportunity to engage in the amendment consultation process. We are concerned that adopting a minimum 6-week consultation fails to achieve this outcome.

LDP: Adoption

Question 22 – To what extent do you agree with our proposed approach to independent examination?

Agree

No further comment

Question 23 – To what extent do you agree that an amendment to a LDP should take effect when it is adopted by the planning authority?

Agree

No further comment

Question 24 – To what extent do you agree that a full, updated version of the amended LDP, incorporating the amendment, should be published in the same way as the initial LDP?

Agree

We believe that the amended LDP should signpost in it where amendments have occurred and the date the amendment was adopted. This could either be within the main body of the LDP itself, or in a separate List of Amendments, appended to the LDP. We also believe that former versions of the LDP should remain available online. This would further enhance the transparency of the amendment process.

We also reiterate the importance of providing clarity on the interpretation of Section 24(3) of the 1997 Act which states: "In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail".

Although it is our understanding that amendments to the Statutory Development Plan are not intended to alter the dates of the NPF or LDP as defined under Section 24(4) of the 1997 Act, this could be open to interpretation (as explained in our response to question 10 above).

It is our opinion that clarity must be provided on this point from the outset prior to the regulations coming into force, to avoid potential future lengthy delays as the different interpretations of the Act are tested through the appeals process and in the courts.



Impact Assessments

Question 25 – To what extent do you agree with our approach to the impact assessments for the proposed regulations?

Neutral

No further comment