

Appendix 3: Development Plan Amendment Regulations: Consultation Response

Amending the National Planning Framework

Requirement for a Full Review of the National Planning Framework

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 NPF is required?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree.

This approach is necessary to ensure that national planning policy or developments are not changed too significantly through the simplified amendment process. Especially since significant changes could necessitate the review of Local Development Plans.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

It is noted that long term confidence in the planning system is a consideration in defining this threshold. However it is highlighted that easy process by which to make amendments to the NPF could in itself create uncertainty. In the English planning system where continuous changes to their equivalent national document, the National Planning Policy Framework, has led to local authorities withdrawing or pausing Local Plan preparation while waiting for updates to this document. However, it is understood that the more defined process of consultation and scrutiny proposed for an NPF amendment (addressed in later questions) than in the English system, does help in addressing this issue.

It is agreed that half of the policies or national development is a reasonable trigger, however the Scottish Government should also consider what the bar is for changing a combination of national planning policies and national developments. As currently proposed it is either half or more of policies OR half or more of developments. This could mean that 16 of the 33 policies could be changed AND 8 of the policies could be changed in an amendment, without triggering a full review, despite this being an arguably greater change to the framework than amending half of the policies, or half of the developments independently. It seems likely that these will be changed in combination, as a change to national developments (such as an additional national development) would likely necessitate a change in policy to support the development.

Engagement and Justification

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree.

It is logical that Ministers should have regard to considerations under 3AB(3)(a), 3AB(3)(a), 3A(4A), 3A(5) and 3A(3e) as this keeps considerations for amending the NPF consistent in considerations with full NPF review. Applying different weight to these considerations depending on the subject of these amendments is appropriate.

Regarding engagement, it is noted that paragraph 29 of the consultation document it is “envisaged” that Ministers would usually provide an update as to the engagement they intend to carry out, appropriate to the specific amendment. It is not clear from this if the regulations will require Ministers to release an update to engagement. It is considered it would be logical to require a Participation Statement for amendments. This is a requirement for full reviews of the NPF under Section 3AB(4) of the 1997 Act, and applying the requirements to amendments through the regulation would provide more certainty to stakeholders as to what can be expected regarding expect. The participation statement can still appropriate to the scope of the amendment.

Preparation

Question 4: To what extent do you agree with the list of those the Scottish Ministers should consult with on a proposed amendment i.e. the public at large, key agencies and planning authorities?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree.

The included list is agreed, and use of broad term "public at large" in paragraph 35 of the consultation paper. “The public at large” enables flexibility to engage those to whom the amendment is most relevant. Again, we would like to highlight participation statement as a useful tool to specify stakeholders of interest and provide certainty in the engagement that will take place.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

As a full reviewed version of the NPF is laid before parliament it makes sense that amendments are also laid before parliament, given it is a national policy document.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree. We agree that a flexible timescale for consultation is appropriate. However, six weeks may be too short and eight weeks may be a more appropriate minimum length.

Consideration of comments and representations

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Strongly Agree. Having a clear understanding of the evidence and consideration of representation received through consultation is essential for transparency in a participatory planning system.

Parliamentary Approval

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Strongly Agree. This provides consistency with the process for fully reviewing the NPF.

Taking Effect

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

Strongly agree | agree | neutral | disagree | strongly disagree.

Strongly Agree. This seems reasonable.

Publication

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Strongly Agree. This seems reasonable and would provide full transparency.

Amendment to Local Development Plans

Early Engagement/discussions

Question 11: 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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

The public should have an equivalent opportunity to be involved with an amendment to the LDP as with a full LDP review especially if it is dealing with controversial and sensitive issues which previously had public interest.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Setting out how stakeholders will be engaged on an amendment to the plan is reasonable. In practice it seems likely that the Planning Authority will use the decision to amend plan as an opportunity to update the Participation Statement. Although simply requiring a statement does enable some flexibility.

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

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

The engagement taking place should be relevant and proportionate to the amendment being proposed. In areas that are of limited interest to children and young people a requirement to engage them may be unnecessary and may add unnecessary time and engagement apathy. A statement should be provided why it is not necessary to engage children and young people.

Information and Considerations

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

It is generally agreed that considerations in regulation 9 of the 2023 development planning regulations should be considerations in amending a plan, and that these issues can be given appropriate weight depending on the amendment.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

The local authority should have to present a reasoned justification for amendments with evidence including the results of engagement. Clear guidance on the expected content and extent of the justification statement in the LDP guidance would be helpful.

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

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

The Play Sufficiency Assessment will not be relevant to all amendments. Local Authorities can still have regard to it when it is appropriate and provide a statement why it is not relevant for the amendment.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree.

The self-build list will not be relevant to all amendments, but the local authority can still have regard to where relevant and provide a statement why it is not relevant.

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?

Strongly agree | agree | neutral | disagree | strongly disagree

Disagree.

It is inconsistent for a full proposed LDP to require agreement by full council, but not an amendment. It is recommended that amendment should go to full council.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

All information on the amendment should be provided alongside it with the consultation.

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree. This would seem reasonable and would depend on the scale and significance of the amendment.

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?

Strongly agree | agree | neutral | disagree | strongly disagree

Agree that regulation should allow flexibility to enable consultations that are proportionate to the amendment. However, six weeks may be too short and eight weeks may be a more minimum appropriate length.

Consideration of Representations/examination

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

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree

The approach for amending the LDP is the same as for a full LDP, however the examination process should be proportionate to the nature of the amendment.

Taking Effect

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?

Strongly agree | agree | neutral | disagree | strongly disagree

Agree.

This is consistent with the approach to a full LDP and it is not considered that an alternative approach is necessary and could be confusing.

Publication

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?

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree.

It is requested clarity on an issue regarding publication date. Section 24 (3) of the 1997 act states that "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." Does this Section 24 (3) refer to plans as a whole or, can it also apply to individual amendments of plans? For example, in a case where an LDP is later in date than the NPF, but the NPF is then amended, is the whole NPF now considered later in date than that LDP, or just the amendment to the NPF?

If the later, it may be helpful to require LDPs and the NPF with incorporated amendments, to have a summary of amendments, which specify the parts of the plan have been subsequently amended and at what date.

Impact Assessment

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

Strongly agree | agree | neutral | disagree | strongly disagree.

Agree, however this is an issue for the Scottish Government to satisfy themselves.