

ABERDEEN CITY COUNCIL

COMMITTEE	City Growth and Resources
DATE	06 February 2020
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	The Planning (Scotland) Act 2019
REPORT NUMBER	PLA/20/011
DIRECTOR	N/A
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Claire McArthur
TERMS OF REFERENCE	2.2 Determine the Council's strategies for city growth and place planning except in relation to major infrastructural planning and the Local Development Plan

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to update Members on the expected implications for Aberdeen City Council resulting from the Planning (Scotland) Act 2019.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Agrees, in terms of the discretionary powers afforded to Aberdeen City Council by the Planning (Scotland) Act 2019 (as described in paras 3.10.1 to 3.10.11 of this Report):-
- a) to instruct the Chief Officer - Strategic Place Planning to propose to Aberdeenshire Council a partnership for the production of a Regional Spatial Strategy for the Aberdeen City Region;
 - b) that no current need for a Masterplan Consent Zone exists with the Council's administrative boundary;
 - c) that no current need for a Short Term Let Control Area exists with the Council's administrative boundary;
 - d) that any future decision on whether or not to charge discretionary planning fees would be considered through a Cost Benefit Analysis undertaken as part of the General Fund Revenue Budget process and the proposed budget for Strategic Place Planning; and
 - e) that any necessary changes to the Council's Powers Delegated to Officers resulting from the Planning (Scotland) Act 2019 be undertaken through the annual review to the Council's Scheme of Governance, which is due to be presented to the Council meeting on 2 March 2020.

3. BACKGROUND

3.1 The Planning (Scotland) Bill 2017 was introduced to the Scottish Parliament on 4 December 2017 and was approved on 20 June 2019. The Bill received Royal Assent on 25 July 2019 and thereafter became the Planning (Scotland) Act 2019. The Planning (Scotland) Act 2019 (“the Act”) amends the primary legislation concerning the use and development of land in Scotland, namely the Town and Country Planning (Scotland) Act 1997.

3.2 In order to determine the expected implications of the Act for Aberdeen City Council, a Summary and Review Programme has been prepared and is appended as Appendix 1 to this Report. This Summary and Review Programme discusses each part of the Planning (Scotland) Act 2019 in detail and also provides indicative timescales on when further guidance and implementation from Scottish Government is expected. In summary, the Act:

- Introduces a new statutory link between development and community planning with communities having the opportunity to prepare Local Place Plans;
- Removes the requirement to prepare Strategic Development Plans and instead introduces a requirement to prepare Regional Spatial Strategies;
- Includes the National Planning Framework as part of the statutory Development Plan;
- Introduces an Infrastructure Levy (albeit detail on such is limited at this time);
- Requires Local Development Plans to be adopted every 10 years rather than every 5 years;
- Repeals the ability of a Council to produce Supplementary Guidance;
- Introduces Masterplan Consent Areas to replace Simplified Planning Zones;
- Introduces increased financial penalties for breaches in planning control;
- Provides an increased remit for Local Review Bodies;
- Introduces new requirements for Councils to produce annual performance reports;
- Requires that Elected Members undergo training before being able to vote on planning decisions (after 2021); and,
- Requires Councils to identify/appoint a ‘Chief Planning Officer’ (further guidance expected late 2020).

3.3 A full assessment of the implications of the Act will not be possible until additional secondary legislation / regulations / guidance has been prepared. Members should note that the Chief Officer - Strategic Place Planning will report back to a meeting of this Committee to seek any decisions required resulting from the publication of additional secondary legislation / regulations by the Scottish Government.

Influence

- 3.4 In terms of influence, the Act may result in more Government influence over the development planning system, for example by incorporating the next National Planning Framework as part of the statutory Development Plan. Once published it will be this document that will set a detailed strategic investment framework for development across Scotland, including setting targets for housing. For Aberdeen this was previously assessed and prepared regionally via the Strategic Development Plan. There will be no independent Examination of the new National Planning Framework, and its route of approval is by resolution of the Scottish Parliament.

Strategic Planning

- 3.5 The Act abolishes the need for Aberdeen City and Aberdeenshire to jointly produce a statutory Strategic Development Plan (SDP) for the area. This will directly impact on the work and focus of the Strategic Development Planning Authority and may have implications for other regional partnerships as new arrangements for regional working are established. As discussed further in paragraph 3.10.1, the Act requires the Council to produce a Regional Spatial Strategy (RSS), however this new Strategy will not hold the same weight as the SDP as it will not form part of the statutory Development Plan for the area.
- 3.6 The Act also introduces changes to the process of producing the Council's own Local Development Plan (LDP), for example moving this from a 5-year review cycle to a 10-year cycle. The Policy Memorandum which accompanied the Bill considers that this move will ensure LDPs better reflect investment and development timescales and form a more settled and reliable vision for how an area should develop in the future. The Memorandum also considers that this move will allow resources to be redirected towards LDP implementation. The move to a 10-year cycle does however mean the Local Development Plans may be at greater risk of becoming out-of-date, and so it will be important that the Council consider what, if any, amendments to the LDP may be necessary during the 10 year period. Further Regulations on the process surrounding amending a Local Development Plan are not expected until 2022.

Customers

- 3.7 In relation to our customers, the Act allows more opportunities for communities to get involved in preparing strategies for their local areas through Local Place Plans, and for more young people to become involved in the preparation of a Local Development Plan. A greater alignment with community planning and links to Local Outcome Improvement Plans are also required.
- 3.8 For the development industry, changes to Development Management and Enforcement procedures are not as wide ranging as those for Development Planning, however proposed changes to planning fees and Permitted Development Rights will be of interest to many.

New Duties

- 3.9 The Act places 49 new duties on planning authorities. These range from provision of information to support preparation of a National Planning Framework to annual performance reporting and mediation. A list of the 49 new duties is attached as Appendix 2.
- 3.10 Although the vast majority of the new Act is mandatory, there are a number of “discretionary” powers afforded to the Council – i.e. where the Council can decide what action, if any, to take. These are discussed further in paragraphs 3.10.1 to 3.10.11 below. Recommendation 2.1 of this Report sets out the Officer Recommendation to Members on how best to proceed with these “discretionary” powers:

Regional Spatial Strategy

- 3.10.1 As mentioned above, the Act includes a new duty to prepare a Regional Spatial Strategy (RSS). This is defined as a long-term spatial strategy in respect of the strategic development of an area. The Act (Part 1, Section 5) alters the Town and Country Planning (Scotland) Act 1997 to require a planning authority, or two or more such authorities acting jointly, to prepare and adopt a Regional Spatial Strategy. For Aberdeen this will replace the previous need to prepare a Strategic Development Plan (SDP). Unlike the SDP, the new RSS will not be part of the statutory Development Plan covering the area.
- 3.10.2 Although Authorities can decide to prepare a Regional Spatial Strategy on their own, it is Officers recommendation that continuing the existing regional planning relationship with Aberdeenshire would be the most sensible option moving forward. Aberdeen City and Aberdeenshire Councils have a long tradition of both partnership and successful regional working. The North East of Scotland has an almost unique geography and environment and the two Councils have, over many years, developed a very strong bond between the City, the regional centre, and the surrounding country. Approval is therefore sought from Members for the Chief Officer - Strategic Place Planning to approach Aberdeenshire Council with a proposal to enter into a formal partnership for production of a Regional Spatial Strategy for the Aberdeen City Region. The ultimate route of adopting any RSS would be set out as part of any new partnership agreement. It may be that a new Joint Committee, to replace the existing Strategic Development Planning Authority Committee, would be required as part of this process. Once further detail is known Officers will report back if required.

Masterplan Consent Area Scheme

- 3.10.3 Part 2 of the Act alters the Town and Country Planning (Scotland) Act 1997 to allow the Planning Authority to designate Masterplan Consent Area Scheme(s) within its area. Any such Scheme would act as a grant of authorisation (for example planning permission) for carrying out the type(s) development specified in its designation – for example, housing, business, infrastructure.

- 3.10.4 The Planning Authority can choose whether or not to designate a Masterplan Consent Area Scheme. A Masterplan Consent Area Scheme would grant approval for specified types of development, removing the need for an application for planning (or other relevant) permission within the scope of the Scheme. Officers do not currently see the need for any Masterplan Consent Area Scheme to be designated with the Aberdeen City boundary. This is because there is no site/area within the City where designation of such a Scheme would be beneficial in bringing forward new development in a sustainable and managed manner. Most of the large masterplanned new community sites across the City (Grandhome, Countesswells, Newhills etc) have already obtained a number of their necessary consents and would likely not benefit from such a Scheme at this point in their development given the level of work that would be required for any Scheme to be prepared. No Simplified Planning Zones (the closest former equivalent) have historically been progressed in Aberdeen, mainly due to a lack of interest from the development industry, but also due to the complex process for progressing any such Zone under the previous legislation.
- 3.10.5 Notwithstanding the above, Members should note that powers have also been conferred on Scottish Ministers in connection with Masterplan Consent Area Schemes, and that Ministers could therefore direct a planning authority to make a Scheme in such terms as Ministers consider appropriate.

Short Term Let Control Area

- 3.10.6 Part 3, Section 17 of the Act alters the Town and Country Planning (Scotland) Act 1997 to allow the Planning Authority to designate all or part of its area as a Short Term Let Control Area. Within any such area the use of a dwellinghouse for short term letting (e.g. via Air B&B or equivalent) would involve a material change of use, and therefore require planning permission.
- 3.10.7 The Planning Authority can choose whether or not to designate a Short Term Let Control Area. Officers do not currently see the need for any Short Term Let Control Area to be designated with the Aberdeen City boundary. This is because Aberdeen has historically not experienced the same level of issues as other places when it comes to short-term lets (e.g. noise and disturbance resulting from concentrations of such premises). Officers will however keep this issue under review, and will revert back to Committee should this position change and the need to reconsider designation of a Short Term Let Control Area emerge.

Fees and Performance

- 3.10.8 Part 4, Section 41 of the Act alters the Town and Country Planning (Scotland) Act 1997 in respect of planning application fees. This section expands the Scottish Government's powers to make regulations about fees. In particular, it allows for discretionary charging and discounts/waivers, extends the range of services for which fees can be charged (including to Scottish Ministers), allows for a surcharge to be imposed for retrospective applications, and makes it possible for authorities to charge a higher fee for a premium service.

3.10.9 On 18 December 2019 the Scottish Government issued a consultation paper (Planning Performance and Fees) in respect of this Section. The closing date for the consultation is 14 February 2020 and a response will be submitted on behalf of Aberdeen City Council by the Chief Officer - Strategic Place Planning. It is recommended that, further to any new regulations being published following this consultation, any future decision on whether or not to charge discretionary planning fees would be considered through a Cost Benefit Analysis undertaken as part of the General Fund Revenue Budget process and the proposed budget for Strategic Place Planning.

Other Matters – Scheme of Governance Review

3.10.10 It is proposed that a decision on the following discretionary powers be delegated to the Chief Officer – Strategic Place Planning. This will be considered as part of the Scheme of Governance review, and recommended within the Powers Delegated to Officers when a Report on such is presented to the Council meeting on 2 March 2020:

- Applications for Local developments;
- Consent, agreement or approval required by a condition attached to a local development approval;
- Applications for approval required under a development order;
- Certificates of lawfulness of existing uses / Section 150/151 developments;
- Applications for advertisement consent;
- Changing Orders; and,
- Completion Notices (as amended).

3.10.11 All Powers Delegated to Officers (PDOs) have been reviewed to make sure they reflect any new requirements of the Planning (Scotland) Act 2019 known to Officers at this time. Terms of Reference have also been reviewed to consider any applicable changes required and will also be presented to Council in March 2020.

4. FINANCIAL IMPLICATIONS

4.1 When the Planning (Scotland) Bill was first laid before Parliament on 5 December 2017 the Financial Memorandum accompanying it said that it presented a cost-neutral approach. During the Stage 2 and 3 debates, a number of new duties and responsibilities were however introduced into the Bill without identification of the resources required to undertake them.

4.2 As noted above, the Planning (Scotland) Act 2019 has placed a total of 49 new duties on planning authorities (Refer: Appendix 2). The Royal Town Planning Institute (RTPI) estimates that, across Scotland, the cost of implementing these could be between £12.1 million and £59.1 million over a ten-year period. An additional 40 duties have also been placed on the Scottish Government.

4.3 In relation to Aberdeen, assessments of the new legislation have been made which indicate the cost impact could be between £3 million and £8 million over the equivalent ten-year period. The exact cost will be dependent on whether there is a need to formally make all the designations available under the new Act, including those outlined under paragraph 3.10 above.

4.4 As noted above, on 18 December 2019 the Scottish Government issued a consultation paper on Planning Performance and Fees. Although only a draft for consultation, it is worth noting that the proposed increases alone will not cover the cost of the additional duties for planning authorities resulting from the Act. The consultation paper notes (on page 5) that:

“Although research published by the RTPI has identified that the Planning Act will place additional duties on planning authorities, it is not the role of planning fees to cover those new duties unless they relate specifically to the determination of an application. However, it is noted that currently planning fees only account for on average 63% of the cost of determining an application. Therefore, we expect that closing that gap should free up resources for the remainder of the planning service.”

4.5 The proposed budget for Strategic Place Planning for 2020/21 is due to be considered as part of the General Fund Revenue Budget at the Council Budget meeting on 3 March 2020. This proposed budget will be prepared in consideration of the new duties arising from the Act and the potential for an increase in planning application fees.

5. LEGAL IMPLICATIONS

5.1 The exact timeline for production of secondary legislation and guidance is not yet known, and therefore it is not currently possible to provide a detailed timeline for the implementation of all the Act’s various provisions. As discussed in paragraph 3.3 above, the Chief Officer - Strategic Place Planning will report back to this Committee any additional implications to Aberdeen City Council or decisions that need to be made resulting from the publication of additional secondary legislation / regulations by the Scottish Government.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Financial	Risk associated with non-compliance with statutory requirements may be increased costs related to appeals	H	Consider how statutory functions can be adequately complied with to avoid legal action against the Council being taken.

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
	and legal proceedings.		Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.
Legal	Risk associated with refusal non-compliance with statutory requirements may be an increase in appeals and legal proceedings. There could also be increased risk with Scottish Ministers using their discretionary powers to instruct the Council to carry out the statutory requirements. This could have financial implications, as discussed above. There could also be a resource issue if additional appeals/legal proceedings were raised and if the Council had to respond reactively to any instructions from Scottish Ministers.	H	Consider how statutory functions can be adequately complied with to avoid legal action against the Council being taken. Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.
Employee	Non-compliance with statutory requirements could put employees in Strategic Place Planning in a difficult position,	H	Consider how statutory functions can be adequately complied with to ensure employees are retained and in a position to undertake their roles

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
	<p>both ethically and professionally. There could also be an additional demand on Legal Services staff in supporting Strategic Place Planning Staff with advice. Additionally, there could be a further pressure on Legal Services staff in dealing with additional appeals and Legal proceedings occasioned by a refusal to comply with statutory requirements. Staff morale could decrease as a result.</p>		<p>effectively.</p> <p>Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.</p>
Customer	<p>Our customers expect us to comply with statutory requirements. Non-compliance could cause significant reputational damage. It could damage the Council's position in terms of dealing with members of the public involved in the planning process whether as applicant or party submitting representation.</p>	H	<p>Consider how statutory functions can be adequately complied with in line with customer expectations.</p> <p>Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.</p>
Environment	<p>The Act includes measures to contribute to</p>	H	<p>Consider how statutory functions can be adequately complied in</p>

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
	tackling climate change and increasing the sustainable use of resources. Non-compliance with the Act could pose a threat to these measures.		order to ensure environmental provisions can be progressed. Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.
Technology	Work undertaken to support the progression of the Act and the Digital Planning Agenda is being progressed by the Scottish Government. Any technology risks should be considered in this context.	H	Consider how the Digital Planning agenda related to Council technology assets. Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.
Reputational	Non-compliance with the Act could cause serious reputational damage to the Council which could lead to an increase in risk of legal actions against the Council which could cause further reputational damage.	H	Consider how statutory functions can be adequately complied with in line with customer expectations. Further detail on mitigation will not be known until further guidance / Regulations from Scottish Government have been prepared.

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	<p>The Act includes many provisions which will impact on the Economy of Aberdeen in the context of the LOIP. In general terms the planning system supports the delivery of the Economy Stretch Outcomes by ensuring enough land is available for employment uses. Changes to the Development Plan system made by the Act will alter how such land is allocated in the future, for example in terms of timescales for review of the Local Development Plan.</p> <p>The full impact of the Act on the Stretch Drivers and Key Driver will be considered once further detail on the individual provisions of the Act is provided through additional guidance / Regulations.</p>
Prosperous People	<p>The Act includes many provisions which will impact on the People of Aberdeen in the context of the LOIP. The Act includes further opportunities to involve more people, and specifically young people, in the planning system. The Act also includes provisions to consider the health and wellbeing impact of new proposals and the housing need of the City's changing population trends.</p> <p>The full impact of the Act on the Stretch Drivers and Key Driver will be considered once further detail on the individual provisions of the Act is provided through additional guidance / Regulations.</p>
Prosperous Place	<p>The Act includes many provisions which will impact on the Place of Aberdeen in the context of the LOIP. By its nature the planning system is all about the creation and improvement of place. The Act also includes provision for enhanced food growing opportunities, as well as measures to try and address climate change and active travel priorities.</p> <p>The full impact of the Act on the Stretch Drivers and Key Driver will be considered once further detail on the individual provisions of the Act is provided through additional guidance / Regulations.</p>

Design Principles of Target Operating Model	
	Impact of Report
Customer Service Design	The additional duties placed on the Council by the Act will need to be considered in the context of Customer Service Design to ensure customer needs are fulfilled and digital strategies can be incorporated where possible.
Organisational Design	The Act requires greater connections between spatial and community planning, and the implications for Organisation Design will need to be considered in this context.
Governance	Governance structures, such as Powers Delegated to Officers and Terms of Reference, will need to be reviewed as the Act is enacted so as to ensure the most efficient and transparent ways of working.
Workforce	To be successful the Act will require an empowered and accountable workforce which is recognised and rewarded.
Process Design	As the Act is implemented a number of existing process will need to be re-examined to ensure they are fit for purpose.
Technology	The Act is to be supported by the Scottish Government's Digital Planning Agenda which may hold additional opportunities.
Partnerships and Alliances	Implementing the Act will require engagement with key stakeholders on collaborative solutions for the city and wider region.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	Not required
Data Protection Impact Assessment	Not required

Duty of Due Regard / Fairer Scotland Duty	Not applicable
--	----------------

9. BACKGROUND PAPERS

The Planning (Scotland) Act 2019 – available via:

<http://www.legislation.gov.uk/asp/2019/13/contents/enacted>

Scottish Government; Planning: Post Bill Work Programme – available via:

<https://www.gov.scot/publications/transforming-planning-practice-post-bill-work-programme/>

RTPI Research Paper – Financial Implications of Implementing the Planning (Scotland) Act 2019 – available via:

[https://www.rtpi.org.uk/media/3447036/RTPI%20Scotland%20-%20Financial%20Implications%20of%20Implementing%20the%20Planning%20\(Scotland\)%20Act%202019.pdf](https://www.rtpi.org.uk/media/3447036/RTPI%20Scotland%20-%20Financial%20Implications%20of%20Implementing%20the%20Planning%20(Scotland)%20Act%202019.pdf)

The Planning (Scotland) Bill 2017: Policy Memorandum – available via:

[https://www.parliament.scot/S5_Bills/Planning%20\(Scotland\)%20Bill/SPBill23PMS052017.pdf](https://www.parliament.scot/S5_Bills/Planning%20(Scotland)%20Bill/SPBill23PMS052017.pdf)

10. APPENDICES

- Appendix 1 – The Planning (Scotland) Act 2019: Summary and Review Programme
- Appendix 2 – The Planning (Scotland) Act 2019: List of New Duties for Planning Authorities

11. REPORT AUTHOR CONTACT DETAILS

Claire McArthur

Team Leader – Masterplanning, Design & Conservation

cmcarthur@aberdeencity.gov.uk

01224 523098