

1

2009

DEVELOPMENT PLANNING

Circular

Scottish Planning Series

PLANNING CIRCULAR 1 2009

Development Planning

February 2009
© Crown copyright 2009
ISSN 0141-514X
ISBN 978 0 7559 7420 7



PLANNING SERIES:

Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

Circulars contain Scottish Government policy on the implementation of legislation or procedures.

Statements of Scottish Government policy in the SPP, NPF and Circulars may be material considerations to be taken into account in development plans and development management decisions.

Designing Places and the West Edinburgh Planning Framework have the same status in decision making as the SPP and NPF.

Planning Advice Notes provide advice and information on technical planning matters.

Further information in the Scottish Government's role in the planning system is available on <http://www.scotland.gov.uk/Topics/Built-Environment/planning>

CONTENTS

	Paragraph
INTRODUCTION	1
Priorities For Development Plans	5
SUSTAINABLE DEVELOPMENT	6
DEVELOPMENT PLAN SCHEMES	7
STRATEGIC DEVELOPMENT PLANS	9
Monitoring And The Evidence Base	11
Form And Content	13
Plan Preparation	16
Engagement And The Main Issues Report	17
The Proposed Plan	23
Modifications	24
Submission To Scottish Ministers	26
Examination	29
Approval Or Rejection	30
Publication Of And Publicity For The Approved Plan	31
LOCAL DEVELOPMENT PLANS	32
Monitoring And The Evidence Base	34
Form And Content	38
Plan Preparation	42
Engagement And The Main Issues Report	43
Publicity	49
The Proposed Plan	53
Modifications	56
Submission to Scottish Ministers	59
Examination	60
Adoption	61
DEVELOPMENT PLAN EXAMINATIONS	68
Appointment of a Person to Examine the Plan	69
Examination of Conformity with the Participation Statement	73
Scope of Examination	75
Examination Procedure and Further Representations	79
Post-examination Procedures	82
Costs and Administration	84
PROCEDURES WHERE THE APPOINTED PERSON CONCLUDES THAT AUTHORITIES HAVE UNDERTAKEN UNSATISFACTORY CONSULTATION	85
ACTION PROGRAMMES	89
SUPPLEMENTARY GUIDANCE	93
KEY AGENCIES	100
DEFAULT POWERS	104
TRANSITIONAL ARRANGEMENTS	105
REVOCATIONS	110

INTRODUCTION

1. Part 2 of the Planning etc. (Scotland) Act 2006 introduced a new statutory basis for development planning in Scotland into the Town and Country Planning (Scotland) Act 1997 ("the Act"), including the replacement of structure plans and local plans by strategic development plans (SDPs) and local development plans (LDPs). The Act also gives Scottish Ministers powers to prepare regulations concerning a range of detailed aspects of the new development planning system. These regulations replace the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983.
2. This circular accompanies three statutory instruments:
 - **The Town and Country Planning (Development Planning) (Scotland) Regulations 2008** (These are the main development planning regulations. References to 'regulations' in this circular are to this set unless otherwise stated);
 - **The Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009** (These are separate from the main regulations because they were dealt with by the Scottish Parliament under affirmative procedure); and
 - **The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008.**
3. The Act itself includes detailed provisions on many of the procedures to be followed in preparing development plans. It also contains specific powers to prepare regulations which provide further detail on the development planning system. This circular explains how these two sets of requirements fit together. It is intended to provide a single straightforward description of the legal requirements, and also to explain Scottish Ministers' expectations for the key parts of the process.
4. The regulations provide a minimum set of requirements to ensure that Scottish Ministers' priorities for the operation of the development planning system are achieved. They are intended to allow authorities to respond appropriately to the very different circumstances in which plans will be prepared over time and across Scotland.



PRIORITIES FOR DEVELOPMENT PLANS

5. Scottish Ministers' Planning Policy sets the broad principles that should underpin a genuinely plan-led modernised system. Development plans should be succinct and set out ambitious long term visions for their areas. They should be kept up-to-date and provide a practical framework within which the outcome of planning applications can be decided with a degree of certainty and efficiency. All interests should be engaged as early and as fully as possible, and there should be a clear focus on high quality outcomes. The primary responsibility for operating the development planning system lies with local, national park and strategic development planning authorities.

SUSTAINABLE DEVELOPMENT

6. Section 3E of the Act requires planning authorities to carry out their development planning functions with the objective of contributing to sustainable development. In doing so they must have regard to any guidance Scottish Ministers issue for this purpose.

DEVELOPMENT PLAN SCHEMES

7. Section 20B of the Act requires each planning authority and strategic development planning authority to prepare a **development plan scheme** at least annually. The scheme is to set out the authority's programme for preparing and reviewing their SDP or LDP(s), and what is likely to be involved at each stage. The scheme must include a **participation statement** stating when, how and with whom consultation on the plan will take place, and the authority's proposals for public involvement in the plan preparation process. Regulation 24 also requires schemes to contain a timetable, specifying the month the authority proposes to publish its next main issues report and proposed plan and to submit the plan to Scottish Ministers. After adopting the scheme, the Act requires the authority to publish it (including electronically), send two copies to Scottish Ministers and place copies in public libraries. There is no requirement to consult on the content of development plan schemes.

8. Authorities may usefully choose to include other information in the scheme, including the current components of the statutory development plan and their programme for preparing and adopting supplementary guidance. Where a mosaic of different plans is involved, a location map may be helpful. Scottish Ministers expect participation statements to contain a range of innovative techniques and activities for consulting stakeholders tailored to local circumstances and the issues being dealt with in the plan.

STRATEGIC DEVELOPMENT PLANS

9. Strategic development planning authorities (SDPAs) are required by section 4(1) of the Act to prepare and review strategic development plans (SDPs), and submit these to Scottish Ministers within four years of the approval of the existing plan. The SDPA Designation Orders of 2008 only established SDPAs in the Glasgow, Aberdeen, Dundee and Edinburgh city regions.
10. The normal process for preparing SDPs is set out in Figure 1 alongside the strategic environmental assessment (SEA) process and indicative timings.

MONITORING AND THE EVIDENCE BASE

11. An early task of the SDPA will be to monitor:
 - changes in the principal physical, economic, social and environmental characteristics of the SDP area; and
 - the impact of the policies and proposals of the existing plan(s).
12. As a product of this exercise, section 4(10) of the Act requires SDPAs to publish a **monitoring statement**. The SDPA are to publish the monitoring statement, including electronically, alongside the publication of any main issues report. The guidance on monitoring and evidence given at paragraphs 36 and 37 (below) apply equally to SDPs.



FORM AND CONTENT

13. Section 7(1) of the Act requires SDPs to contain:

(1) A **vision statement**. This is a broad statement of how the development of the area could and should occur and the matters that might be expected to affect that development, including:

- the principal physical, economic, social and environmental characteristics of the area;
- the principal land uses in the area;
- the size, composition and distribution of population in the area;
- the infrastructure of the area (including communications, transport and drainage systems and systems for the supply of water and energy);
- how that infrastructure is used; and
- any anticipated change in these matters.

(2) A **spatial strategy**. This is a broadly based statement of proposals as to the development and use of land in the area.

(3) An analysis of the relationship with development and land use proposals in **neighbouring areas** that are likely to affect the SDP area.

(4) Any other matter the SDPA consider appropriate.

14. Scottish Ministers expect SDPs to be concise visionary documents that set clear parameters for subsequent LDPs and inform decisions about strategic infrastructure investment. Vision statements should provide a realistic expression of what the plan area could be like in 20 years time and a useful springboard for the spatial strategy of the plan. The spatial strategy should encapsulate the headline changes that the plan seeks to achieve, and provide a locational strategy for new development up to year 12 from plan approval and a broad indication of the scale and direction of growth up to year 20. The spatial strategy should be specific enough to limit the options available for subsequent LDPs to those that would have a broadly similar impact on: (a) other planning authorities in the SDPA; and (b) strategic infrastructure and greenspace networks. The principal topics for SDPs are expected to be land for housing, business, shopping and waste management development, strategic infrastructure (including transport, water supply and waste water) and strategic greenspace networks (including green belts). SDPs may be site specific especially where there are no realistic alternative sites.

15. The SDP may contain, or be accompanied by, any maps, diagrams, illustrations or other descriptive matter the SDPA thinks appropriate. But Regulation 2 requires that it contains a **map** or **diagram** describing the spatial strategy.

PLAN PREPARATION

16. SDPs should be properly integrated with other statutory plans and strategies affecting the development and use of land. In preparing a SDP or main issues report, section 8(1) of the Act requires the SDPA to take into account the National Planning Framework. Regulation 3 also requires it to have regard to:
- The resources available for carrying out the policies and proposals in the plan;
 - Any approved or proposed SDP for a neighbouring SDP area;
 - Any regional transport strategy, river basin management plan or local housing strategy relating to the area;
 - The national waste management plan; and
 - Issues arising out of the European directive on the control of major accident hazards involving dangerous substances.

Depending on future legislation, it is possible that further items will be added to this list, including flood management plans, marine plans and further provisions relating to major accident hazards.

ENGAGEMENT AND THE MAIN ISSUES REPORT

17. With a view to facilitating and informing their work in preparing a SDP, section 9 of the Act first requires the SDPA to compile a **main issues report**. This must set out the authority's general proposals for development in the area and in particular proposals as to where development should and should not occur. The report must be sufficiently clear and precise to enable people to understand what is proposed and to make meaningful comments. The report must also contain one or more reasonable alternative sets of proposals. Finally, it must draw attention to the ways in which the favoured and alternative proposals differ from the spatial strategy of the existing approved SDP (if any). There is no legal requirement to draw such a comparison with existing structure plans, but it would be good practice to do this within the first generation of main issues reports. The discussion of main issues reports and engagement at paragraphs 45 to 48 below also applies generally to SDP preparation.



18. SDPs should be fully co-ordinated with other important strategies from the earliest stage with key infrastructure providers signed up to the delivery of the emerging proposals. Therefore, in preparing the main issues report (i.e. before its publication), section 9(4) of the Act and regulation 4 require SDPAs to consult with, and have regard to the views of:
 - the key agencies (listed in paragraph 101 below) ;
 - neighbouring planning authorities; and
 - Scottish Ministers.
19. Regulation 5 applies the following minimum publication requirements to the main issues report, proposed plan and modified plan stages:
 - Publication of a notice in one or more local newspapers and on the internet, setting out:
 - o That the document has been prepared, and where and when it may be viewed;
 - o A brief description of the content and purpose of the document;
 - o Details of how further information may be obtained; and
 - o A statement that representations may be made, and how, to whom and by when they should be made.
 - Sending this information to:
 - The key agencies;
 - Adjoining planning authorities or SDPAs; and
 - Community councils within the SDP area.
 - Making a copy of the document available to inspect at an office of each of the constituent planning authorities and in all public libraries in the plan area; and
 - Publication on the internet.
20. The Act also requires authorities to secure that people who may be expected to want to comment on the main issues report are made aware that they can do so, and are given such an opportunity.
21. In publishing the main issues report, the SDPA are to send a copy of the report and the monitoring statement to Scottish Ministers.
22. Publicity in the course of plan preparation is discussed more fully at paragraph 52 below, which also generally applies to SDPs.

THE PROPOSED PLAN

23. Section 10 of the Act and Regulations 5 and 6 deal with the proposed SDP. The SDPA are to have regard to the representations submitted on the main issues report, and are then to prepare and publish a **proposed SDP**. The proposed plan is to be published in the same way as for the main issues report (see paragraph 19 above), with at least 6 weeks being given for representations to be made. Copies of the plan are to be sent to the key agencies and neighbouring planning authorities, and people who commented on the main issues report are to be notified of where and when they can inspect the proposed plan. The SDPA are also to consult the key agencies and Scottish Ministers. The discussion of proposed plans at paragraph 55 below also applies generally to SDPs.

MODIFICATIONS

24. Following the close of the period for representations on the proposed plan, section 10(3) of the Act allows the SDPA to modify it to take account of representations, matters arising out of consultations or representations, or any minor drafting or technical matters. When modifying, there are two possibilities:
- (1) Where the modifications are so significant as to change the underlying aims or strategy of the plan, the SDPA must prepare and publish a new proposed plan.
- (2) Where this is not the case, the SDPA are to publish the modified plan in the same way as for the main issues report under regulation 5, and thus offer a further opportunity for representations to be made before the plan is submitted to Ministers.
25. The discussion of modifications at paragraph 58 below also applies generally to SDPs.

SUBMISSION TO SCOTTISH MINISTERS

26. Section 10(3) of the Act then requires the SDPA to submit the plan to Scottish Ministers along with:
- a note of the representations made and of whether and how those representations were taken account of in the modified plan. (Note that it would be sensible for the SDPA to prepare this in the same form as the Summary of Unresolved Issues that will be considered at the examination – see paragraphs 70 and 71 below.);



- a report as to how far the SDPA, in preparing the plan, has conformed with the commitments made regarding consultation and public involvement in their participation statement; and
- a copy of their proposed action programme.

It would also be sensible for the SDPA to submit the material required under regulation 20 (and set out in paragraph 70 below) at this time.

27. Regulation 7 sets out the following requirements for publicity around the submission of the plan to Ministers:
- Publication of a notice in at least one local newspaper and on the internet, stating:-
 - That the proposed plan has been submitted to Scottish Ministers;
 - The date of the submission; and
 - Details of when and where the plan may be inspected (including on the internet);
 - Sending the notice to the key agencies and people who submitted representations on the plan; and
 - Making a copy of the submitted plan available for inspection in planning offices and public libraries and on the internet.
28. In the event that the planning authorities that constitute the SDPA cannot agree on the plan's content, section 11 of the Act allows the submitted plan to contain alternative proposals, together with the reasoning behind them.

EXAMINATION

29. On receiving the proposed SDP, section 12(1) of the Act requires the Scottish Ministers to appoint a person to examine the plan where:
- a) There are unresolved representations;
 - b) The proposed plan contains alternative proposals; or
 - c) They otherwise consider an examination to be appropriate.

The examination process is discussed further from paragraph 68 below.

APPROVAL OR REJECTION

30. Once they have received the proposed SDP from a SDPA, and the report from the person who carried out any examination, section 13 of the Act allows Scottish Ministers to approve or reject the plan. Where the plan is approved this may either be in whole or in part, and Ministers may, in approving the plan, modify it. The procedure for making modifications will vary depending on whether an examination has been held:
- Where there has been an examination, Ministers may make modifications in approving the plan, and will set out reasons for these.
 - Where there has not been an examination, Ministers will, before approving the plan, publish any modifications, along with the reasons for making them, and consult as they consider appropriate, but including with the key agencies and the SDPA. In these circumstances, there will be an opportunity to make representations on the modifications prior to Ministers approving the plan. Scottish Ministers will notify the SDPA of any such representations, and may make further modifications in the light of these representations.

PUBLICATION OF AND PUBLICITY FOR THE APPROVED PLAN

31. Section 14 of the Act requires that as soon as possible after approval, the SDPA are to publish the plan (including electronically) and send two copies to Scottish Ministers. They are also to place copies of the approved plan in local libraries, advertise in a local newspaper and notify people who made representations on the plan that the SDP has been published and where it is available for inspection.

LOCAL DEVELOPMENT PLANS

32. Section 16 of the Act requires all planning authorities to prepare one or more local development plan (LDP) for their area as soon as practicable after the Act comes into force. These must cover the whole of the authority's area, although one location may be covered by more than one LDP if prepared for different purposes (e.g. minerals), and LDPs may extend across the areas of more than one planning authority. Regardless of how many LDPs cover a local authority area, all must be replaced at least every 5 years. Authorities must also keep their plans under review.



33. The normal process for preparing LDPs is set out in Figure 2 alongside the strategic environmental assessment (SEA) process and indicative timings. In SDP areas there should be a degree of twin-tracking of SDP and LDP preparation in order to ensure that SDP strategies are implemented quickly. Scottish Ministers expect LDPs in SDP areas to be adopted within 2 years of the approval of the relevant SDP. LDP main issues reports or proposed plans may be published on the basis of a proposed SDP, but the LDP should not be submitted to Ministers until the SDP has been approved.

MONITORING AND THE EVIDENCE BASE

34. An early task of planning authorities will be to monitor:
- changes in the principal physical, economic, social and environmental characteristics of the area; and
 - the impact of the policies and proposals of the existing plan(s).
35. As a product of this exercise, section 16 of the Act requires the planning authority to publish a monitoring statement. The planning authority is to publish the **monitoring statement**, including electronically, alongside the publication of any main issues report.
36. Whereas changes to the action programme will reflect progress with particular development proposals, the monitoring report is likely to focus more on the wider impact of the plan on area and population-wide indicators and on how far the objectives and vision of the previous plan have been realised. It will be one way of identifying the issues to discuss in the main issues report.
37. The monitoring statement will form one part of the evidence base for the plan. Evidence is required to inform plan-making, justify the plan's content, and provide a baseline for later monitoring. Information gathering and analysis should serve efficient high quality plan-making. Authorities should therefore take a proportionate approach and consider what is required, and where scarce resources can best be spent, to inform the particular issues being addressed in the plan. Evidence should be presented in a form that can be readily understood.

FORM AND CONTENT

38. Section 15 of the Act requires LDPs to contain a **spatial strategy**, this being a detailed statement of the planning authority's policies and proposals as to the development and use of land. Outside SDP areas, LDPs must also contain a **vision statement**, as described in paragraph 14 above. Planning authorities may also include any other matters in the plan that it considers appropriate.

39. Scottish Ministers expect LDPs to be concise map-based documents that focus on their specific main proposals for the period up to year 10 from adoption. Outside SDP areas, they should also provide a broad indication of the scale and location of growth up to year 20. Minor proposals and detailed policies may be removed to supplementary guidance, especially if there is no significant change from the previous plan, and provided an appropriate context remains in the plan itself. In SDP areas, LDPs need not repeat policy material contained in the SDP.
40. Section 15(4) of the Act allows LDPs to contain any maps, diagrams, illustrations and descriptive material the planning authority think appropriate, but regulation 8 requires the inclusion of a proposals map to illustrate the plan's policies and proposals spatially and allow the specific location of proposals to be accurately identified. The **proposals map** may constitute a number of sheets, thus allowing for the use of insets and the use of different scales for different parts of the plan area.
41. Section 15(3) of the Act also requires LDPs to contain a **schedule of land** that is owned by the planning authority (and the local authority in national parks) and affected by any of the policies, proposals or views expressed in the plan. Schedule 1 of the regulations contains a form for this purpose. Scottish Ministers intend this provision to relate to policies, proposals or views relating to specific built developments on specific sites, and not to broad policy designations.

PLAN PREPARATION

42. LDPs should be properly integrated with other statutory plans and strategies affecting the development and use of land. In preparing the LDP, section 16 of the Act requires authorities to take into account the National Planning Framework. Within SDP areas, it also requires LDPs to be consistent with the SDP. Regulation 10 also requires the planning authority to have regard to:
- the resources available for implementing the plan;
 - any LDPs prepared for other purposes but covering the same area;
 - any neighbouring LDPs, SDPs, or English regional spatial strategies or local development frameworks;
 - any regional or local transport strategy, river basin management plan, or local housing strategy relating to the plan area;
 - the national waste management plan; and
 - issues arising out of the European directive on the control of major accident hazards involving dangerous substances.



Depending on future legislation, it is possible that further items will be added to this list, including flood management plans, marine plans and further provisions relating to major accident hazards.

ENGAGEMENT AND THE MAIN ISSUES REPORT

43. With a view to facilitating and informing their work in preparing a LDP, Section 17 of the Act requires planning authorities to first compile a **main issues report**. This must set out the authority's general proposals for development in the area and in particular proposals as to where development should and should not occur. The report must be sufficiently clear and precise to enable people to understand what is proposed and to make meaningful comments. It must also contain one or more reasonable alternative sets of proposals. Finally, the report must draw attention to the ways in which the favoured and alternative proposals differ from the spatial strategy of the existing adopted LDP (if any). There is no legal requirement to draw such a comparison with existing local plans, but it would be good practice to do this within the first generation of main issues reports.
44. LDPs should be fully co-ordinated with other key strategies from the earliest stage with key infrastructure providers signed up to the delivery of the emerging proposals. Therefore, in compiling the main issues report (i.e. before its publication), section 17(4) of the Act and regulation 11 requires the planning authority to consult with and have regard to any views expressed by:
 - the key agencies;
 - the Scottish Ministers;
 - any adjoining planning authority (including national park authorities); and
 - any planning authority within the same SDPA as the LDP area.
45. Main issues reports are key documents in terms of front-loading effective engagement on the plan, and aligning development planning with SEA. They are the principal opportunity within the plan preparation process for productively consulting stakeholders on the content of the plan and for involving the wider public. Main issues reports are not draft versions of the plan, but should concentrate on the key changes that have occurred since the previous plan and on the authority's big ideas for future development. They should identify a preferred option and reasonable alternatives, and be informed by a sound evidence base. Content that the authority proposes to retain from the existing plan, or which does not have a significant environmental or other effect, should be identified but with limited discussion.

46. Publication should come before the planning authority has reached a firm view as to the strategy that should be followed, and the authority's approach should not be one of 'defending' their proposals but one of genuine openness to different ideas. Main issues reports should be engaging documents that encourage the public and other stakeholders to read and respond to them.
47. The main issues report is a key stage for SEA, and will be accompanied by the draft environmental report. The report therefore needs to contain enough detail and consider alternatives sufficiently at the strategic, policy and site-specific level to meet the statutory requirements for environmental assessment. Separate guidance will be provided on how the SEA and development plan processes relate.
48. Main issues reports may be viewed as progress reports issued in the course of an ongoing process of engagement that will last throughout the period of plan preparation. The character of the engagement activity will change as the plan progresses. In the early stages, the authority should concentrate on involving stakeholders in identifying and assessing issues and options. When the authority's thinking starts to coalesce around preferred options at the time of the main issues report, the approach should be more consultative: asking people to respond to proposals. Following publication of the proposed plan the character of engagement will change again: the authority has now reached a view, and the emphasis should be on providing information and facilitating representations.

PUBLICITY

49. Regulation 12 requires the following minimum publication requirements to apply at the main issues report, proposed plan and modified plan (if any) stages:
 - Publication of a notice in one or more local newspapers, setting out:
 - o That the document has been produced and where and when it may be viewed;
 - o A brief description of the content and purpose of the document;
 - o Details of how further information may be obtained; and
 - o A statement that representations may be made, and how, to whom and by when they should be made.



- Sending this information to:
 - o the key agencies;
 - o neighbouring planning authorities;
 - o planning authorities within the same SDPA; and
 - o community councils.
 - Making a copy of the document available to inspect at an office of the planning authority and in public libraries; and
 - Publication on the internet.
50. The Act requires authorities to secure that people who may be expected to want to comment on the main issues report are made aware that they can do so, and are given such an opportunity.
51. In publishing the main issues report, the authority is to send a copy of it to Scottish Ministers, along with the monitoring statement.
52. These publication requirements are a statutory minimum, and Scottish Ministers' expectation is that authorities will have already carefully considered, through their participation statement, the best ways of engaging stakeholders and the wider public at the various stages of plan preparation.

THE PROPOSED PLAN

53. Having had regard to the representations received on the main issues report, section 18 of the Act requires the planning authority to prepare and publish a proposed plan. Publication at this stage is subject to the same minimum requirements as for the main issues report as described at paragraph 49 above, but the authority must allow at least 6 weeks for representations to be made. The legislation additionally requires the planning authority to:
- Send a copy of the proposed plan to each key agency;
 - Consult the key agencies and Scottish Ministers;
 - Notify any person who commented on the main issues report;
 - Notify the occupiers and neighbours of some specific proposal sites (see para 54 below); and
 - On the rare occasions that a proposed plan is republished following changes to the underlying aims or strategy of an earlier proposed plan, consult people who made representations on the original plan.

54. The planning authority must notify the owners, lessees or occupiers of sites which the proposed plan specifically proposes to be developed and which would have a significant effect on the use and amenity of the site. It must also notify the owners, lessees or occupiers of land neighbouring (i.e. within 20 metres of) sites which the proposed plan specifically proposes to be developed and which would have a significant effect on the use and amenity of the neighbouring land. Notification is only required where there are premises on the site or neighbouring land. In both cases, the authority should use the form included at schedule 2 of the regulations, or similar, and enclose a map of the site. The notification is to be addressed to the “owner, lessee or occupier” of the premises, and not to a named individual.
55. Scottish Ministers expect the proposed plan to represent the planning authority’s settled view as to what the final adopted content of the plan should be. This stage should not be used to ‘test the water’: new or controversial elements of plan content should already have been aired at the main issues report stage (at least as options). Representations by stakeholders and the general public should be concise (no more than 2,000 words plus any limited supporting productions), but should fully explain the issues that people wish to be considered at the examination. There is no automatic opportunity for parties to expand on their representation later in the process. Authorities may therefore wish to consider offering a longer period, of up to 12 weeks for complex plans, to give parties sufficient time to formulate the entirety of their case.

MODIFICATIONS

56. Section 18(3) to 18(9) and regulations 12 and 15 deal with pre-examination modifications. Following the close of the period for representations on the proposed plan, planning authorities may make modifications, but only so as to take account of representations, consultation responses or minor drafting and technical matters. There are four possible ways forward:
- (1) Where no representations have been received, or all representations have been withdrawn or fully taken account of by non-notifiable modifications (i.e. only minor modifications), the authority are to publish the plan, submit it to Scottish Ministers and advertise their intention to adopt it.
- (2) Where there are unresolved representations, but the authority decides to make no notifiable modifications (i.e. only minor modifications), they are to publish the plan and submit it to Scottish Ministers.
- (3) Where the authority decides to make notifiable modifications, they are to publish the modified plan and specify a date (at least 6 weeks ahead) by which



further representations may be made. The authority may then further modify the plan or submit it to Ministers.

(4) Where the authority makes modifications that change the underlying aims or strategy of the proposed plan, they are required to prepare and publish a new proposed LDP.

57. So the making of more significant modifications (termed here 'notifiable modifications') brings with it a further opportunity for the public to make representations. Regulation 15 defines notifiable modifications as those that add, remove or significantly alter any policy or proposal in the plan. Where notifiable modifications are made, the minimum requirements for publication are the same as those at the main issues stage, as set out at paragraph 49 above. There is also a requirement to notify the owners, lessees or occupiers of sites significantly affected by site specific notifiable modifications that propose development, and neighbours of such sites who are significantly affected, in the same way as was described at paragraph 54.
58. From the proposed plan stage, Scottish Ministers expect the authority's priority to be to progress to adoption as quickly as possible. Pre-examination negotiations and notifiable modifications can cause significant delay and so should not be undertaken as a matter of course, but only where the authority is minded to make significant changes to the plan. The examination also provides an opportunity to change the plan, so if authorities see merit in a representation they may say so in their response to the reporter, and leave them to make appropriate recommendations. However, if authorities wish to support a significant change to the plan, especially one that would entail further neighbour notification, this should be done by means of a pre-examination modification.

SUBMISSION TO SCOTTISH MINISTERS

59. On submitting the plan to Scottish Ministers, sections 18(4) and 19(1) of the Act also require authorities to submit their proposed action programme, a report of conformity with their participation statement, and (if there are unresolved representations) a request that Scottish Ministers appoint a person to examine the proposed plan. If possible, it would also be good practice to submit the material required under regulation 20 (and set out in paragraph 70 below) at this time. The submitted plan must also be published by (regulation 16):
 - Placing a notice in one or more local newspapers stating that the LDP has been submitted, when this happened, and where and when the plan may be viewed;

- Making copies available in an office of the planning authority and public libraries; and
- Publishing on the internet.

EXAMINATION

60. On receiving the proposed LDP, Scottish Ministers will, if there are unresolved representations, appoint a person to examine the plan. The examination process is discussed further from paras 68 below.

ADOPTION

61. Examination reports are largely binding on planning authorities. Regulation 2 of the **Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009** states that authorities may only depart from recommendations that:
- a) Would have the effect of making the LDP inconsistent with the National Planning Framework, or with any SDP or national park plan for the same area;
 - b) Are incompatible with Part IVA of the Conservation (Natural Habitats etc) Regulations 1994; or
 - c) Are based on conclusions that could not reasonably have been reached based on the evidence considered at the examination.

Section 19(11) of the Act also allows authorities to environmentally assess the plan following modification in response to recommendations, and to not make modifications that are not acceptable having regard to that assessment.

62. The reference to the Natural Habitats regulations is primarily intended to allow the authority to carry out and take account of an appropriate assessment where they suspect a proposed modification may have a significant effect on a European site. Criterion (c) is intended to relate to the possibility of clear errors (including factual errors) by the appointed person, but not to occasions where the appointed person has reached a different planning judgement to the authority's.
63. Subject to these exceptions, section 19(10) of the Act requires authorities to make the modifications recommended in the examination report, and any other requisite modifications. The intention is that these other modifications should be wholly consequent on the reporter's recommendations (e.g. to rectify any factual or terminological inconsistencies created by the reporter's recommended modifications), and should not introduce unconnected new material into the plan.



64. The planning authority are now to publish the modifications (if any) and the plan as they propose to adopt it by (section 19(10) of the Act and regulation 17):
- Publishing a notice in one or more local newspapers stating:
 - o That the authority propose to adopt the proposed plan;
 - o Whether the plan has been modified following the examination; and
 - o Where and when the plan (as modified if appropriate) and the modifications (if any) may be inspected;
 - Making copies of the proposed plan (as modified if appropriate) and the modifications (if any) available to inspect at the planning office and in all public libraries and on the internet; and
 - Notifying people who made representations on the proposed or modified plan prior to the examination that the proposed plan has been published in the form in which the authority propose to adopt it, and where and when it can be viewed.
65. Within 3 months of receiving the examination report, section 19(12) of the Act requires authorities to send to the Scottish Ministers:
- The modifications made following receipt of the examination report;
 - A statement setting out any recommended modifications that the authority has not made and the explanation for this (by reference to the grounds listed above);
 - The proposed plan they wish to adopt;
 - The report of the examination;
 - The advertisement of their intention to adopt the plan; and
 - Any environmental assessment carried out into the proposed plan as modified.
66. 28 days after this, the authority may adopt the plan unless directed not to by the Scottish Ministers.
67. After the adoption of the plan, section 20A of the Act requires the planning authority to:
- Send 2 copies to Scottish Ministers;
 - Publish it, including electronically;
 - Place copies in public libraries;
 - Notify people who made representations on the proposed or modified plan of its publication and its availability in public libraries; and
 - Advertise its publication and availability in a local newspaper.

DEVELOPMENT PLAN EXAMINATIONS

68. Sections 12, 12A, 19 and 19A of the Act, and regulations 18 to 23 deal with examinations. Examinations are intended as the principal means of independently testing the issues arising from representations on proposed strategic development plans (SDPs) and local development plans (LDPs). They should:
- be succinct and proportionate, and so take significantly less time than the outgoing process. Scottish Ministers expect the process from appointment to reporting normally to take around 6 months, and rarely to exceed 9 months;
 - be focussed on the appointed person seeking out the information they feel they need to reach conclusions on the matters at hand;
 - examine the issues raised in representations rather than responding to each individual representation; and
 - ensure the process is understandable and transparent to the public.

APPOINTMENT OF A PERSON TO EXAMINE THE PLAN

69. Scottish Ministers must serve notice of the appointment of the person to examine a SDP or LDP on the SDPA or planning authority respectively. The appointment of the person to examine the plan is to be advertised in a local newspaper, and those who made unresolved representations (i.e. those that have not been withdrawn or taken account of in modifications) are to be notified, by Scottish Ministers in the case of SDPs, and by the planning authority in the case of LDPs. The SDPA or planning authority are to advertise the appointment in local libraries. This advert and notice should also include information on where documentation connected to the examination, including the summary of unresolved issues, can be viewed.
70. A key principle of the revised examination procedure is that, as far as possible, the appointed person should be furnished with all the information required to reach conclusions and recommendations at the outset. If they have not already done so, regulation 20 therefore requires the planning authority/ SDPA to supply the following material to the appointed person within 14 days of being notified of their appointment:



- A summary of unresolved issues;
- copies of the unresolved representations;
- the environmental report;
- the proposed action programme;
- the monitoring statement; and
- the participation statement current when the proposed plan was published.

Any supporting productions should also be submitted at this stage, but these should be concise, proportionate and limited in number. It would be wise to engage with the Directorate for Planning and Environmental Appeals before formal submission of the summary of unresolved issues (e.g. by sending draft committee reports), to ensure that it is fit for purpose.

71. The summary of unresolved issues is to group the representations into a smaller number of issues. It is to:
- Number and list all the unresolved representations and name the people making the representations;
 - Include a summary of the issues raised in the representations;
 - Include the authority's reasons (generally expressed in less than 800 words per issue) for not modifying the plan in regard to each issue; and
 - Be arranged, so far as practicable, so that the issues appear in the same order as they are set out in the plan.

A form for the summary is included as schedule 4 to the regulations.

72. There is no provision for those who have made representations or the planning authority/SDPA to submit any further material to the examination beyond this unless required to do so by the appointed person. This important shift of emphasis reinforces the front-loading of the process, ensuring that the appointed person, the planning authority and other interested parties have the relevant information up-front to inform the examination of the plan. It will be important too in meeting the requirements for strategic environmental assessment that full information on sites and alternative options is submitted early and not held back until the later stages of plan preparation or even the examination.

EXAMINATION OF CONFORMITY WITH PARTICIPATION STATEMENT

73. Before considering the general issues raised in representations on the plan, sections 12(2) and 19(4) of the Act firstly require examination of whether the authority has consulted on the plan and involved the public in the way they said they would in their participation statement. In carrying out this assessment, Scottish Ministers envisage that the appointed person will only refer to existing published documents such as the participation statement itself, the authority's statement of conformity with this, and any representations relating to the authority's consultation and public involvement activities. They do not expect any additional evidence to be routinely invited on these matters because we are reluctant to create an opportunity for delay.
74. The procedure for when the appointed person finds that an authority has not acted in conformity with their participation statement is set out at paras 85 to 88 below.

SCOPE OF EXAMINATION

75. Regulation 21 limits the scope of matters to be assessed in an examination to issues raised in representations. These issues will be set out in the summary of unresolved issues prepared by the local authority/ SDPA. The appointed person would have the ultimate ability to add to or redefine the issues to be assessed, but at all times these must be limited to issues raised in the original representations.
76. Regulation 21 also allows examinations into SDPs to assess:
- alternative proposals submitted when the planning authorities constituting the SDPA have been unable to agree on its content; or
 - any matters highlighted by the Scottish Ministers in appointing the person to examine the plan.
77. Scottish Ministers' intention is that if any individual policy or proposal in the plan is subject to representations, then this will generally be dealt with as a separate issue. But if multiple representations are made on one policy or proposal, the appointed person may choose to deal with these as a single issue. Regulation 21 is also intended to prevent the scope of the examination spreading to become a wider test of the soundness of the plan.



78. Scottish Ministers intend the appointed person to, within the bounds of the issues raised in representations, primarily examine the appropriateness and sufficiency of the content of the proposed plan. Only if this is insufficient or inappropriate should they consider other sites or approaches. They are not tasked with making the plan as good as it can be, but with modifying those parts that are clearly inappropriate or insufficient. The appointed person should generally not recommend modifications to parts of plans that have been examined in previous examinations or rolled forward from previous plans, unless circumstances have clearly changed.

EXAMINATION PROCEDURE AND FURTHER REPRESENTATIONS

79. In a limited number of cases, the appointed person may feel that they do not have all the information they need to make a proper assessment of an issue. Regulation 22 therefore allows them to, at any stage, request further representations or information from any person. Such requests are not therefore limited to the authority and people who made representations, but could be extended to e.g. key agencies.
80. There need be no link between the importance of an issue and whether the appointed person seeks further representations on it. There may be issues of great significance where the appointed person feels they have all the information they need to reach a conclusion without any further input. Conversely, they may feel unable to make a recommendation on a relatively minor issue without further information.
81. As well as determining on which aspects of which issues, and from which parties, further representations are to be received, the Act is clear that it is the appointed person who will determine the form the examination is to take. The examination may comprise a range of methods including written submissions, hearings and inquiry sessions. The majority of issues are expected to be dealt with without any need for further information to be submitted, but where further evidence is requested, this will normally be in written form. Where an oral session is required, this will normally follow the hearing format rather than formal inquiry sessions. Different aspects of individual issues may be dealt with using a number of formats.

POST-EXAMINATION PROCEDURES

82. On completing the examination, the appointed person will prepare a report setting out and giving reasons for their conclusions and recommendations. The report will also set out the appointed person's assessment of the authority's conformity with their participation statement. Scottish Ministers expect the report to include conclusions and recommendations for each of the issues identified at the start of the examination process, but not on each individual representation.
83. The appointed person will then:
- submit the report to the planning authority (in the case of LDPs) or Scottish Ministers (in the case of SDPs);
 - publish it (including electronically);
 - notify parties who made unresolved representations that the report has been published and submitted; and
 - in the case of SDPs, send a copy of the report to the SDPA.

COSTS AND ADMINISTRATION

84. Unlike local plan inquiries under the outgoing system, Scottish Ministers will be responsible for the organisation and administration of the examination. Regulation 23 requires the general costs and overheads incurred by Scottish Ministers or the appointed person in connection with examinations into SDPs (including the appointed person's remuneration and of the venue) to be met equally by the SDPA and Scottish Ministers, and that these costs associated with examinations into LDPs to be met by the planning authority. The intention is that parties' individual costs incurred preparing and presenting evidence should be met by that party. The Directorate for Planning and Environmental Appeals will provide further information on costs and will invoice the authorities directly.



PROCEDURES WHERE THE APPOINTED PERSON CONCLUDES THAT AUTHORITIES HAVE UNDERTAKEN UNSATISFACTORY CONSULTATION

85. In examining SDPs and LDPs, sections 12(2) and 19(4) of the Act requires the appointed person firstly to examine how far the authority has conformed with the participation statement that was current when the proposed plan was published. If the appointed person considers there were shortcomings, they are to submit a report to Scottish Ministers setting out their reasons for this conclusion and recommending further steps for the authority to take with regard to consultation or public involvement. The appointed person is also to send this report to the authority, who then have 4 weeks to make representations in response to it to Scottish Ministers. Scottish Ministers may then either require further steps with regard to consultation or public involvement to be taken, or direct the reporter to proceed with the main examination.
86. After taking these additional steps, the authority may modify the plan, in which case they must also republish it. A SDP is to be republished in the same manner as for the main issues report, as described in para 19 above (i.e. a further opportunity for representations must be given). There is no requirement to reconsult on modifications to LDPs in these circumstances, but this would be good practice if modifications are significant. In any event, the authority are to resubmit the plan to Scottish Ministers together with:
- a note of the representations received and whether (and to what extent) these have been taken account of; and
 - a report of conformity with the further steps required by Scottish Ministers.
87. The resubmission of SDPs is to be advertised in the same manner as the plan as first submitted to Ministers, as described in para 27 above. A LDP is to be republished and advertised in the same manner as the plan as first submitted to Ministers, as described in para 59 above. But if the modifications are so significant as to change the underlying aims or strategy of the plan, authorities must prepare and publish a new proposed plan.
88. Scottish Ministers expect that these procedures will rarely, if ever, be brought into play. But it is incumbent on authorities to ensure that they fulfil the commitments they made with regard to consultation and public involvement in their participation statement.

ACTION PROGRAMMES

89. Section 21 of the Act and regulations 25 and 26 deal with action programmes. Action programmes set out how the authority proposes to implement the plan, and SDPAs and planning authorities are required to prepare them for SDPs and LDPs. They must set out:
- A list of actions required to deliver each of the plan's policies and proposals;
 - The name of the person who is to carry out the action; and
 - The timescale for carrying out each action.
90. As such, the regulations do not attempt to specify particular types of action that should be included, though these may be expected to include the delivery of key infrastructure and the preparation of supplementary guidance. Actions are not limited to those by the planning authority.
91. In preparing action programmes, authorities are to consult and consider the views of:
- The key agencies;
 - The Scottish Ministers;
 - Anyone the authority proposes specifying by name in the action programme.
92. Proposed action programmes must be published and submitted to Scottish Ministers alongside proposed SDPs and LDPs. Then it is to be adopted and published within 3 months of the plan to which it relates being approved/adopted. Thereafter, the authority are to keep it under review and update and republish it at least every 2 years. Whenever an action programme is published, the authority are to send 2 copies to Scottish Ministers, place copies in local libraries and publish electronically.

SUPPLEMENTARY GUIDANCE

93. Section 22 of the Act and regulation 27 deal with supplementary guidance. This can be adopted and issued by a strategic development planning authority in connection with a SDP, or by a planning authority in connection with a LDP. Any such guidance will form part of the development plan.



94. Regulation 27 requires supplementary guidance to both:
- Cover topics specifically identified in the SDP or LDP as being topics for supplementary guidance; and
 - Be limited to the provision of further information or detail in respect of policies or proposals set out in the SDP or LDP.
95. Before adopting supplementary guidance, authorities must first publicise it, giving a date before which representations may be made. Authorities must make people who may wish to comment aware of the guidance and give them an opportunity to comment. The authority must then consider any comments, and then send Scottish Ministers a copy of the guidance they wish to adopt. In addition, authorities must send Ministers a statement setting out the publicity measures they have undertaken, the comments they received, and an explanation of how these comments were taken into account. After 28 days have elapsed, the authority may then adopt the guidance unless Scottish Ministers have directed otherwise.
96. Scottish Ministers' intention is that much detailed material can be contained in supplementary guidance, allowing the plans themselves to focus on vision, the spatial strategy, overarching and other key policies, and proposals. Provided there is an appropriate context in the SDP or LDP, suitable topics include:
- Detailed policies where the main principles are already established
 - Allocations of small areas of land or local policy designations that do not impact on the spatial strategy of the wider plan area
 - Development briefs and masterplans
 - Exact levels of developer contributions or methodologies for their calculation
 - Forestry and woodland strategies
 - Aquaculture framework documents
97. Matters that should be included in the LDP or SDP, and not in supplementary guidance include:
- departures from national planning policy
 - development proposals of more than local impact
 - green belt boundaries
 - items for which financial or other contributions, including affordable housing, will be sought, and the circumstances (locations, types of development) where they will be sought.

98. Supplementary guidance may be prepared and adopted alongside the SDP or LDP, or subsequently. Guidance adopted in connection with a plan falls when that plan is replaced, but if it remains up-to-date, authorities may readopt it in connection with the replacement plan after limited reconsultation, provided a proper connection with the plan remains. Scrutiny by Scottish Ministers at the pre-adoption stage is likely to focus more on ensuring that the principles of good public involvement and a proper connection with the SDP or LDP have been achieved consistently, than on detailed policy content.
99. Authorities may issue guidance in connection with SDPs or LDPs without going through these procedures, but this should not be termed supplementary guidance and will not form part of the development plan.

KEY AGENCIES

100. Key agencies are bodies specified by Scottish Ministers who are under a duty to co-operate with SDPAs or planning authorities at the following stages in the development plan process:
- The compilation of the main issues reports (Sections 9(5) & 17(5) of the Act);
 - The preparation of the proposed SDPs and LDPs (Sections 10(9) & 18(10)); and
 - The preparation of action programmes and proposed action programmes (Section 21(5)).
101. Regulation 28 defines the key agencies as:
- Scottish Natural Heritage;
 - Scottish Environment Protection Agency;
 - Scottish Water;
 - Scottish Enterprise (only in its area of jurisdiction);
 - Highland and Islands Enterprise (only in its area of jurisdiction);
 - Regional Transport Partnerships (only in relevant areas of jurisdiction);
 - Crofters Commission (only in crofting counties); and
 - Health Boards
102. While legislation cannot specify them individually, the following bodies should have the same level of involvement in the development plan process:



- Historic Scotland;
 - Transport Scotland; and
 - The Forestry Commission.
103. The intention is that, through this full and early engagement, plan-making authorities will have early access to much of the key information they need to produce effective plans. The plans themselves will therefore be realistic and deliverable and tie in with the strategic objectives of other agencies, with these agencies 'buying-in' to the strategy and proposals of plans and assisting in their delivery.

DEFAULT POWERS

104. The Act gives Scottish Ministers a number of default powers which are not core to the plan process and may rarely be required. These include powers:
- To direct one authority to appoint an employee as SDP manager, and other authorities to appoint assistants (section 4(3))
 - To request information from authorities, within 14 days, about the appointment of a SDP manager or assistants (section 4(8))
 - To direct a planning authority to prepare and submit a report as to why it has failed to replace its LDP within five years (section 16(7))
 - To direct the planning authority to consider modifying a LDP, or for Scottish Ministers to approve the plan themselves (section 20).

TRANSITIONAL ARRANGEMENTS

105. On commencement of the new development planning provisions, there will be a number of development plans that have been started but have not yet been approved/adopted. The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order ("the Order") covers the transition between the current legal framework and the new one. The overall aim is to ensure, as much as possible, that plan preparation work is not lost. Therefore, plans (or alterations) that have passed the consultation stage under the outgoing processes, will be able to proceed to approval/adoption following the

provisions in the 1997 Act and the 1983 Regulations. The exception to this will be the examination in public for structure plans and the local inquiry for local plans: where a plan has passed the consultation stage but has not been submitted to Ministers (structure plans) or no notice of local inquiry has been issued (local plans), then the plan will proceed to examination, and then to approval/adoption, following the new provisions. The order also contains other related exceptions to the provisions to avoid the need for new steps to be undertaken that would not have been required under the current system, for example, the requirement on the authority to submit a report on their participation statement and its subsequent assessment by the reporter to the examination.

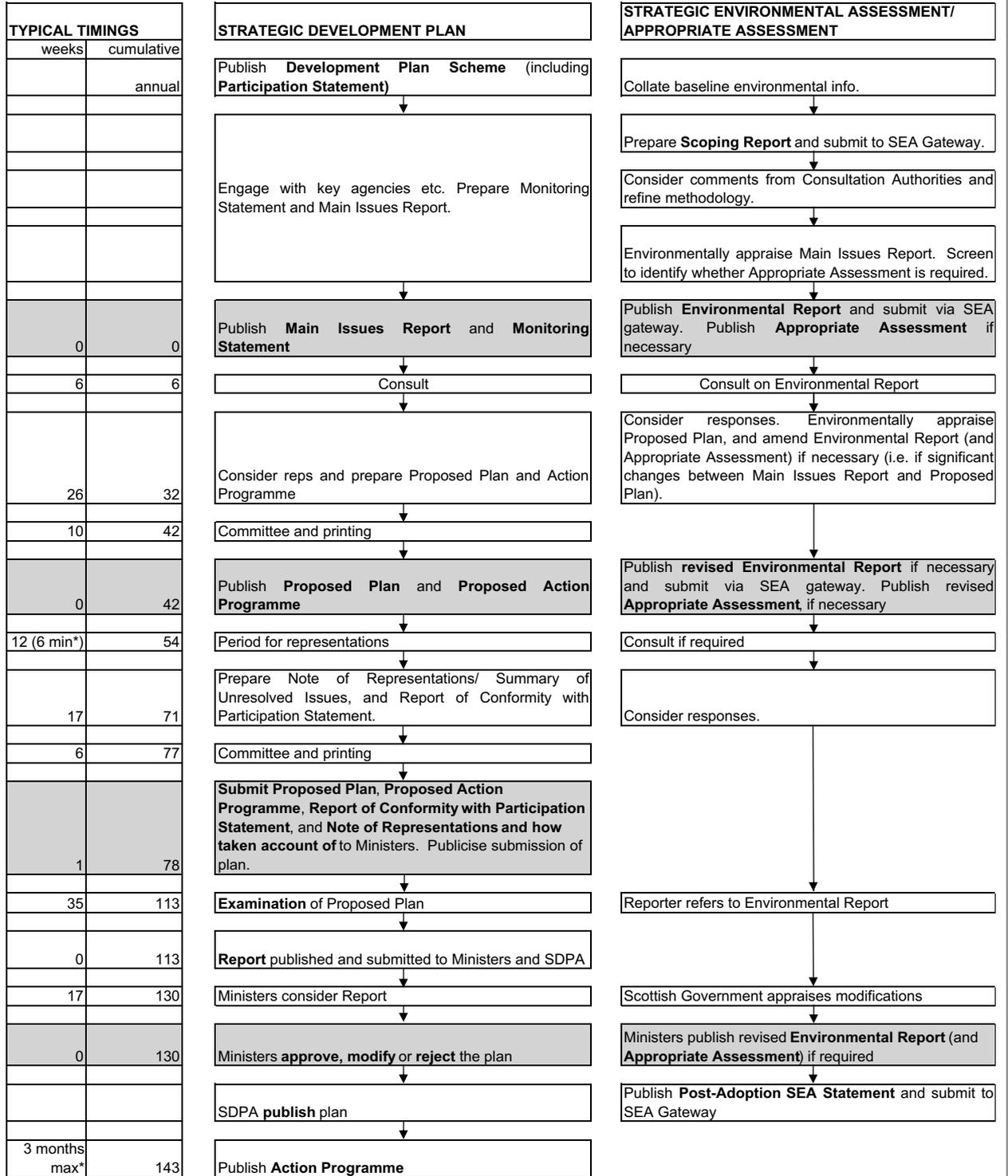
106. Where the structure plan has been submitted to Scottish Ministers or a notice of a local inquiry into a local plan has already been issued, proceedings would continue, following the provisions in the 1997 Act and the 1983 Regulations. Any plans that have been started but have not passed the consultation stage on the date of commencement of the new system will fall, and the authority in question will be required to start a new SDP or LDP, as appropriate. Structure plans and local plans that are started under the current system will continue to be called structure plans and local plans, even if the approval/adoption comes after commencement of the new system. Only those plans started after commencement will be SDPs or LDPs.
107. Schedule 1 of the Act, allows existing development plans to remain in force on commencement of the new system, until they are replaced by a new SDP or LDP, whichever may be the case. Article 6 of the Order provides that structure plans and local plans that are approved and adopted after the commencement of the new development planning system will also remain part of the development plan until replaced by a new SDP or LDP.
108. Article 7 provides that new-style LDPs can be prepared within SDP areas in the absence of an approved SDP. In these circumstances they must be consistent with the approved old-style structure plan.
109. The Order amends the Conservation (Natural Habitats, &c.) Regulations 1994 and the General Permitted Development Order 1992 to take account of the new terminology employed by the new development planning system.



REVOCATIONS

110. PAN 37 and PAN 49 are hereby revoked.

FIGURE 1 - NORMAL STRATEGIC DEVELOPMENT PLAN PROCESS



* statutory period

FIGURE 2 - NORMAL LOCAL DEVELOPMENT PLAN PROCESS



* statutory period

ISBN 978-0-7559-7420-7



9 780755 974207