Planning (Scotland) Bill – Stage 3

Andy Wightman

160 After section 16B, insert—

<Right to appeal against planning decisions>

Right to appeal against planning decisions

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 47 (right to appeal against planning decisions and failure to take such decisions), in subsection (1A)—

(a) the words from “in relation” to the end become paragraph (a),

(b) after that paragraph insert—

“(b) where the notice of the planning authority’s decision on the application for planning permission includes a statement that the authority consider that the application is for a development that is not in accordance with the development plan for the time being applicable to the area to which the application relates.”.>

Andy Wightman

161 After section 16B, insert—

<Community right to appeal against certain planning decisions>

Community right to appeal against certain planning decisions

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 47 (right to appeal against planning decisions and failure to take such decisions), after subsection (2) insert—

“(2A) Where a planning authority—

(a) decide an application for planning permission, and

(b) any of the circumstances listed in subsection (2B) applies,

a person or body listed in subsection (2C) may appeal to the Scottish Ministers against the decision.

(2B) The circumstances are the planning authority’s decision to grant the application—

(a) includes a statement that the authority consider that the application is for a development that is not in accordance with the development plan for the time being applicable to the area to which the application relates,

(b) is in respect of a development on land in which the planning authority has an interest,

(c) is in respect of a development of a description contained in schedule 1 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SI 2017/102),
(d) is in respect of an application on which there is an objection by a person, body or authority consulted in accordance with regulation 25 and schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (SI 2013/155), and that the grounds for objection have not, in the opinion of the appellant, been addressed.

(2C) The persons or bodies are—

(a) a person who made representations to the planning authority in respect of the application,

(b) a community council representing the area to which the application relates.”.

(3) In section 47A (matters which may be raised in an appeal under section 47(1))—

(a) in subsection (1), for “47(1)” substitute “47”,

(b) the title of the section becomes “Matters which may be raised in an appeal under section 47”.

After section 23

Kevin Stewart

162 After section 23, insert—

<Training for taking planning decisions

Power to impose training requirements: planning authorities

(1) A member of a planning authority who has not fulfilled the specified training requirements is prohibited from—

(a) exercising any of the authority’s specified functions on their behalf, or

(b) being involved in exercising any of those functions on the authority’s behalf as a member of a committee or any other body.

(2) In this section—

(a) “specified” means specified by the Scottish Ministers in regulations under this section,

(b) “planning authority” means—

(i) local authority, and

(ii) National Park authority,

(c) the reference to a member of a planning authority includes a member of a committee of a National Park authority appointed under paragraph 16(1) of schedule 1 of the National Parks (Scotland) Act 2000.

(3) Regulations under this section specifying functions of a planning authority may only specify functions conferred by the planning Acts as defined by section 277 of the Town and Country Planning (Scotland) 1997 Act.

(4) Regulations under this section may in particular—

(a) specify that completing a training course is a training requirement,
specify training requirements on the basis that the content and provider of the
training must be accredited by the Scottish Ministers.

(5) The Scottish Ministers may disapply subsection (1) in relation to a planning authority (or all authorities) by regulations under this section.

Kevin Stewart

163 After section 23, insert—

Performance of planning authorities

Annual report by planning authorities on performance

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After Part 12 insert—

PART 12A
PERFORMANCE OF PLANNING AUTHORITY FUNCTIONS

Annual report

251A Annual report on performance of functions

(1) As soon as reasonably practicable after the end of each financial year, a planning authority are to prepare a report on the performance of their functions (or such of their functions as are specified in regulations made by the Scottish Ministers) during that year.

(2) The planning authority are to—

(a) submit a copy of the report to the Scottish Ministers, and

(b) publish the report.

(3) The Scottish Ministers may by regulations make provision about—

(a) the form of the report,

(b) the content of the report (including about what quantitative and qualitative information is to be included in the report, and what outcomes are to be used to assess the performance by planning authorities of their functions),

(c) the process to be undertaken in preparing the report,

(d) how the report is to be published.

(4) In this section, a financial year is the period of 12 months beginning with 1 April.”.

Kevin Stewart

164 After section 23, insert—

National performance monitoring

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After section 251A (as inserted by section (Performance of planning authorities)) insert—

National performance monitoring

251B National planning improvement co-ordinator
The Scottish Ministers may appoint a person (“the co-ordinator”) to—

(a) monitor the performance by planning authorities of their functions,

(b) provide advice to planning authorities, and to such other persons as the co-ordinator considers appropriate, in relation to what steps might be taken by planning authorities or such other persons to improve the performance of their functions.

Without limit to the generality of subsection (1), the co-ordinator may—

(a) monitor—

(i) the manner in which planning authorities perform their functions for any risk of impropriety or corruption,

(ii) such aspects of planning authorities’ performance and conduct as are raised with the co-ordinator by members of the public as the co-ordinator considers appropriate,

(b) provide information, education and training to planning authorities and such other persons as the co-ordinator considers appropriate.

In exercising functions under this section, the co-ordinator must, in particular, have regard to—

(a) any report on performance prepared under section 251A,

(b) any development plan scheme prepared under section 20B,

(c) any delivery programme prepared under section 21, and

(d) so far as practicable, views expressed by members of the public in relation to the performance by planning authorities of their functions.

The co-ordinator must publish, in such manner as the co-ordinator considers appropriate, reports on—

(a) the activities carried out under subsection (1),

(b) any recommendations the co-coordinator has in consequence of carrying out those activities.

The Scottish Ministers may by regulations make further provision about—

(a) the appointment and functions of the co-ordinator,

(b) reports published under subsection (4).

In this section, “publish” includes, without prejudice to that expression’s generality, publish by electronic means (as for example by means of the internet).”>
The Scottish Ministers may appoint a person to conduct an assessment of a planning authority’s or planning authorities’ performance—

(a) of their functions generally, or
(b) of particular functions,
with a view to identifying improvements in how the authority or authorities carry out their functions.

In appointing a person, the Scottish Ministers are to specify—

(a) the planning authority or authorities to which the assessment is to relate,
(b) the functions to be assessed,
(c) the period to which the assessment is to relate, and
(d) such other restrictions on the scope of the assessment as they consider appropriate.

After appointing a person, the Scottish Ministers are to notify each relevant planning authority of—

(a) the appointment, and
(b) the scope of the assessment.

In this section and sections 251D to 251F—

“appointed person” means a person appointed to conduct the assessment under subsection (1),
“relevant planning authority” means a planning authority to which the assessment relates.

251D Powers of appointed person etc.

(1) For the purposes of any assessment conducted under section 251C, a planning authority must allow an appointed person access at all reasonable times—

(a) to any premises of a relevant planning authority, and
(b) to any document relating to a relevant planning authority which appears to the appointed person to be necessary for the purposes of the assessment.

(2) In subsection (1), “document” means anything in which information is recorded in any form (and references to producing a document are to be read accordingly).

251E Report of assessment

(1) On completion of an assessment conducted under section 251C, the appointed person is to—

(a) prepare a report,
(b) issue it to each relevant planning authority,
(c) submit it to the Scottish Ministers, and
(d) publish it.

(2) A report prepared under subsection (1)(a) is in this section and sections 251F and 251G referred to as a “performance improvement report”.
The performance improvement report may recommend improvements which a planning authority should make as to how they carry out their functions under the planning Acts.

In this section, “publish” includes, without prejudice to that expression’s generality, publish by electronic means (for example on the internet).

251F Response report

(1) After receiving the performance improvement report, each relevant planning authority is to prepare and submit to the Scottish Ministers a report (in this section and section 251G referred to as a “response report”) as to—

(a) the extent to which, the manner in which and the period within which they propose to implement the recommendations of the performance improvement report which relate to them,

(b) in so far as they decline to implement those recommendations, their reasons for so declining.

(2) A relevant planning authority need not prepare a response report if there are no recommendations of the performance improvement report which relate to them.

(3) A planning authority who submit a response report to the Scottish Ministers are to publish it.

(4) In subsection (3), “publish” includes, without prejudice to that expression’s generality, publish by electronic means (for example on the internet).

Section 30 of the Planning etc. (Scotland) Act 2006 (assessment of planning authority's performance or decision making) is repealed.

Kevin Stewart

166 After section 23, insert—

<Assessment of planning authorities’ performance

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) After section 251F (as inserted by section (Assessment of planning authorities’ performance)) insert—

“251G Directions to planning authority

(1) The Scottish Ministers may issue a direction to a planning authority requiring them to take such action as is specified in the direction if—

(a) it appears to them that the planning authority are not implementing the recommendations of a performance improvement report without giving an adequate explanation,

(b) the Scottish Ministers are not satisfied that the planning authority’s proposals in the response report will effectively implement the recommendations, or

(c) it appears to the Scottish Ministers that the planning authority are not timeously carrying out such implementation as the authority proposed in the response report.
(2) A direction under subsection (1) may, in particular, require the planning authority to prepare and submit a further response report under section 251F(1) within a period specified in the direction.

(3) The Scottish Ministers may, by direction, vary or revoke a direction issued under subsection (1).”.

Schedule 2

Kevin Stewart

167 In schedule 2, page 80, line 15, after <[ ]> insert <251B(5)>