

# **PLANNING (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Planning (Scotland) Bill introduced in the Scottish Parliament on 4 December 2017.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 23–EN);
  - a Financial Memorandum (SP Bill 23–FM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 23–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The Bill is a vital element of the Review of Planning<sup>1</sup>, which commenced in September 2015 with the appointment of an independent panel made up of users of the planning system. The review is driving a wide programme of improvements to strengthen and simplify the planning system, and to ensure planning better serves Scotland's communities and economy. It brings a greater focus on delivering the developments Scotland needs, with the infrastructure to support it. The Bill provisions will improve the system of development planning, give people a greater say in the future of their places and support delivery of planned development. The Bill and wider review aim to change planning's operation and its reputation from that of a regulator to a positive and active enabler of good quality development; a shift from reacting to development proposals to proactively supporting investment and quality placemaking.
5. The Bill contains a range of provisions which will strengthen processes, engagement and participation rights across the planning system and in delivery of the planning service. It will:
  - Focus planning, and planners, on delivering the development that communities need, rather than focus on continuous writing of plans that lack a clear route to delivery,

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<sup>1</sup> <https://beta.gov.scot/policies/planning-architecture/reforming-planning-system/>

- Empower people and communities to get more involved and to have a real influence over future development,
- Strengthen the strategic role of planning in co-ordinating and supporting the delivery of infrastructure needed to support development, including much-needed housing,
- Reduce complexity, whilst improving accountability and trust in planning processes and decision-making.

6. The contents of the Bill are summarised below and explained in more detail later in this Memorandum.

- Part 1 strengthens and reaffirms the role of the development plan, and of the plan-led system, in setting a clear and deliverable vision of where and how areas will develop. This Part enhances the status of the National Planning Framework, incorporating the Scottish Planning Policy and bringing it within the statutory development plan. It also removes the requirement to produce strategic development plans, and restructures the processes for production of local development plans to support greater emphasis on delivery of development. It includes a new right for communities to produce their own plans for their places.
- Part 2 makes provision for simplified development zones, which will frontload scrutiny of potential development sites, delivering consents through zoning of land.
- Part 3 makes a number of changes to development management processes. This Part amends current provisions for considering and deciding planning applications to support improved efficiency, appropriate local consultation and more local decision-making.
- Part 4 deals with changes required to support effective performance across a range of planning functions. This Part strengthens planning authorities' ability to effectively use their powers to ensure appropriate enforcement of unauthorised development. It also widens the scope for charging of fees in relation to planning functions and takes a more structured approach to performance improvement across planning services. This Part also introduces a new requirement for members of planning authorities to undertake training in planning.
- Part 5 makes provision for the introduction of an infrastructure levy payable to local authorities, linked to development, which can be used to fund or contribute to infrastructure projects that can incentivise delivery of development.

7. A list of abbreviations used in this Memorandum is provided in the Annex.

## **CONSULTATION**

8. The Planning Bill has been developed through a highly inclusive approach, involving extensive engagement and consultation across a full range of stakeholders. Following its formation in September 2015, the independent review panel invited both written and oral evidence from a wide range of stakeholders. The call for written evidence generated over 400 responses and more than 100 people gave oral evidence to the panel. An online discussion forum also generated many ideas and comments. In May 2016, the independent panel published

its final report, *Empowering planning to deliver great places*. This contained 48 recommendations for reform over six main themes:

- Strong and flexible development plans,
- The delivery of more high quality homes,
- An infrastructure first approach to planning and development,
- Efficient and transparent development management,
- Stronger leadership, smarter resourcing and sharing of skills,
- Collaboration rather than conflict – inclusion and empowerment.

9. The Scottish Government's response to the panel's report, published in July 2016, noted the government's agreement in principle with many of the recommendations. A series of six working groups, comprising a range and mix of relevant stakeholders, was convened to support the development of proposals under each of the six themes; initially tasked with identifying possible actions and options for inclusion in the consultation paper. Those same working groups have subsequently met on further occasions, engaging to support the development of the emerging proposals for change throughout the consultation and pre-Bill process.

10. Drawing on the independent panel's report and stakeholder engagement, in January 2017 the Scottish Government published a consultation paper, *Places, People and Planning*, which set out a series of 20 proposals under four key areas of change:

- Making plans for the future: for Scotland's planning system to lead and inspire change by making clear plans for the future,
- People make the system work: to empower people to decide the future of their places,
- Building more homes and delivering infrastructure: to help deliver more high-quality homes and create better places where people can live healthy lives, and developers are inspired to invest,
- Stronger leadership and smarter resourcing: to reduce bureaucracy and improve resources so Scotland's planning system can focus on creating great places.

11. Alongside the consultation, the Scottish Government worked with Young Scot to engage with young people from across Scotland, conducting a survey on opportunities and methods for engaging with young people to ensure their views, insights and experiences are listened to. The survey received 104 responses, sharing experiences, opinions and ideas around planning and their views around how to improve children's and young people's involvement.

12. During the January to April 2017 consultation period, the Scottish Government continued to engage with stakeholders to support discussion and debate on the proposals, in line with a published participation statement. This included discussions with professional organisations and interest groups as well as a number of public 'drop in' sessions and awareness raising events. Alongside the consultation paper, an easy-read guide was also published for community councils.

13. A total of 474 responses were submitted to the *Places, People and Planning* consultation, from a broad range of organisations and individuals. Consultants were appointed to conduct an independent analysis of those responses. The analysis report was published in June 2017, alongside a Position Statement by the Scottish Government. The Position Statement provided an update on progress and set out an integrated package of proposed improvements to the planning system, following on from the consultation. The Position Statement was also accompanied by a Strategic Environmental Assessment (SEA) Environmental Report, which set out the findings of an environmental assessment of those aspects of the proposals which would require changes to primary legislation through the Planning Bill.

14. The Scottish Government invited further responses to the Position Statement and the SEA Environmental Report; noting it was not required for stakeholders to re-state points made in the earlier consultation. A total of 122 responses were made to that additional consultation from a wide range of stakeholders. Again, consultants carried out an analysis of responses, a report of which was published in October 2017.

15. During the consultation, a number of stakeholders expressed an interest in exploring in more detail how some of the proposals would operate in practice. The Scottish Government developed a further, more technical, paper that set out further thinking on how six key changes to the planning system might work in practice. The paper was discussed in a further event with the stakeholder working groups in early October 2017. Drawing on those discussions, the paper is being further refined and will be published by the Scottish Government. It provides a helpful reference point to inform further discussions on the Bill and wider progress of the planning review programme.

16. All published documents relating to the review of planning and development of the Planning Bill are available on the Scottish Government's website.<sup>2</sup>

## **DETAILED POLICY PROVISIONS**

### **Part 1 – Development planning**

#### ***Policy objectives***

17. Development, such as new homes and facilities and places for people to work and to spend their leisure time, has always been needed and places continuously change. The purpose of planning is to guide how land should be used to meet the needs of society. Scotland has a plan-led system, whereby policy and proposals for how its areas will develop in future are set out in the statutory development plan. Planning authorities are required to make their decisions on planning applications in accordance with the development plan unless other material considerations indicate otherwise. There is widespread support for maintaining a plan-led system, and for it to be strengthened to increase certainty about future development and investment. The development plan is more than a technical document – it can shape the future of places for the benefit of communities. To achieve this, plans must be based on a robust and transparent evidence base, informed by open and democratic debate and have a clear path to delivery.

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<sup>2</sup> <https://beta.gov.scot/policies/planning-architecture/reforming-planning-system/>

18. Sections 1 to 8 of the Bill will ensure that development plans, collectively, will set out a clear and deliverable vision for how Scotland's places can grow and flourish. They will bring a far greater focus to delivery of development and improve the confidence that planned development will happen, supported by stronger engagement and collaboration with delivery partners. By being more focused on places than policy, they will be more relevant to communities. Through the Bill, development planning will be restructured to ensure decisions about future development are guided and influenced at appropriate national, local and community levels, to secure greater certainty for investors and communities alike.

19. Despite previous reforms to the planning system, development planning has become too complex and is now an ongoing exercise in procedure, with much effort and resource going into continuous plan-writing and detailed policy development. This has come at the expense of implementation and achieving outcomes. By removing some unnecessary process and general policy, more visionary place-based plans will be achieved and much greater effort can be directed towards making those visions a reality.

20. Often local people's frustrations with planning arise from a system which seems distant from their everyday lives. This detachment can lead to dispute, where developers, planning authorities and communities find themselves in conflict over specific development proposals. This level of conflict is not good for communities or the economy. A stronger development plan can help to reduce this conflict by promoting a collaborative approach and setting out a clear and agreed vision of the future development. Different views are however, inherent in planning and the provisions look to address these early in the plan preparation process, rather than attempting resolution at the end when options are limited. This 'frontloading' of the planning system has long been an aspiration, but the Bill provisions aim to ensure it can be better achieved through fuller and more meaningful collaboration, reduced procedure and a clearer focus on outcomes and delivery.

21. The intent behind the Bill's individual provisions for wide reform of development planning is explained in more detail below.

### ***Alternative approaches***

22. The overarching intent of the Bill's provisions is to front-load the system to lead future development through meaningful engagement and collaboration, and clear evidence. The aim is also to support plan implementation by achieving a stronger commitment to its aims from delivery partners. An alternative approach could have been to focus more of the debate at the end of the planning process when individual planning applications are brought forward. This would however add significant uncertainty and risk to future investment in the development Scotland needs. It is essential for the plan-led system to be retained and strengthened through better engagement and clear leadership.

23. Another alternative would have been to leave the development planning system as it is. However, this has evolved to be too much of an industry in itself, caught up in process, preparation timescales, alignment of different tiers of plans, endless debates about housing numbers and repetitive policy-writing, all taking the focus away from the job of making great places. The status quo is not a realistic alternative. Given the pace of change and need for the planning system to support economic, community and environmental objectives, development

planning needs a more flexible approach that enables individual areas to lead transformational change both in places, and in how decisions are made about those places.

### ***Consultation***

24. The independent review panel was presented with strong evidence from the majority of stakeholders that a plan-led system should remain in place. The panel advised “*aspirations for a plan-led system can only be achieved if development plans provide more certainty, are widely supported and have a much sharper focus on delivery*”.

25. Throughout the subsequent consultations, there has been widespread agreement that development plans are the cornerstone of the planning system. Views vary on the specifics of how development plans could be improved, but there is consensus that a more streamlined and less procedure-heavy system as a whole would be better able to respond to the needs of society and the economy. Many of the Bill provisions reflect consensus on improvements to the system and the agreement of stakeholders that a more collegiate and open approach to development planning would help to provide both greater certainty and improved flexibility.

## **Section 1 – National Planning Framework**

### ***Policy objectives***

26. The National Planning Framework (NPF) is a long-term strategy for Scotland. It is the spatial expression of the Government Economic Strategy, and of the Scottish Government’s plans for development and investment in infrastructure. It identifies ‘national developments’ and other strategically important development opportunities in Scotland. The NPF is not currently part of the development plan, as defined in section 24 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). However, national developments are accorded the same status as the development plan in planning decisions.

27. The Scottish Planning Policy (SPP) is a statement of Scottish Government policy on how nationally important land use planning matters should be addressed across the country. The SPP currently has no statutory status, although there is an expectation that local development plan (LDP) policies will be consistent with national policy, as set in the SPP. In practice, this has led to substantial, and at times slightly inconsistent, repetition of national policy throughout LDPs.

28. The SPP will be incorporated into the NPF and section 8 of the Bill bring the new format of NPF within the development plan. The statutory development plan for any area will consist of the NPF and the LDP. This will give a clearer, simpler structure and, where appropriate, consistency to the development plan. By doing so it will improve confidence in where and how Scotland will develop, and reduce the need for repeated and frequent debate on implementation of well-established policy principles. The enhanced status for this combined NPF and SPP will play a key role in streamlining the planning system as a whole, by removing the need for LDPs to restate national policy, and so enabling them to be shorter and far more focused on places and development delivery. The provisions will, however, still leave appropriate and sufficient scope for variation so that local circumstances can be taken into account; for example to reflect aspects of local distinctiveness of Scotland’s island communities.

29. Under the current provisions, the NPF is reviewed and replaced on a five year cycle. The Scottish Ministers can publish a statement setting out their reasons for not reviewing the NPF within this timeframe, if they decide not to do so. Section 1 of the Bill will change this to a statutory 10-year cycle, consistent with LDPs (see paragraph 44 below), whilst maintaining the option to defer a review and publish the reasons for doing so. This longer period will provide greater stability and certainty as to the future direction for growth, enabling investment choices by developers and infrastructure providers to be made with confidence.

30. Section 7 of the Bill includes a provision for the NPF to be updated through amendments between the 10-year statutory review cycles. The process for any such updates or amendments will be set out in subsequent regulations. The extended timescale means that the addition of this provision can help to ensure that the planning system is able to respond with an appropriate policy provision where urgent matters arise, without requiring a review of the whole document and associated resource requirements.

31. The scope and content of the NPF will also expand to incorporate a more focused strategic planning element at the regional scale, in addition to its existing national focus. Section 1 of the Bill will include a new duty for planning authorities to assist the Scottish Ministers in preparing the NPF, and specifies the matters for which information may be sought. Ministers may also require two or more planning authorities to co-operate with one another when providing this information. The policy aim of this part of the Bill is to ensure that cross-boundary issues are properly addressed and used to inform the NPF. More generally, the overall process for preparation of the NPF will continue to be highly collaborative, as is appropriate for a framework of its importance in shaping the development priorities and policies which will influence investment choices and shape places over the years to come.

32. The Scottish Ministers will maintain responsibility for adopting the finalised NPF. However, consistent with the current arrangements, the NPF will undergo a statutory phase of parliamentary scrutiny before it can be completed. This is a vital element of the development of the framework, to ensure it is well-tested and robust and has democratic accountability. From past experience of the parliamentary consideration of the NPF, the current statutory 60 day period has been testing; particularly in light of the extent of interest across different Scottish Parliament committees. Section 1 of the Bill will therefore increase that period to 90 days to provide greater flexibility for the Parliament and enhance this scrutiny.

### ***Alternative approaches***

33. The only alternative option was to make no change to the existing provisions, or to make some of these changes and not others. This would result in a missed opportunity to streamline and improve the development planning system as a whole by effectively consolidating national and regional scale strategic planning into a single document in order to enable greater local discretion in arrangements for cross boundary working.

### ***Consultation***

34. The independent review panel stated that *“The NPF should be strengthened and prepared collaboratively, to address long term city-region development and infrastructure issues more fully and effectively.”* The panel was of the view that strategic development plans (SDPs) should

be removed from the planning system and replaced with a statutory duty to co-operate with the Scottish Government in the preparation of the NPF. The independent review panel also recommended that the role of the SPP should be expanded, so that LDPs should only set out policies where they are being varied to reflect local circumstances. The panel also suggested consideration be given to integrating the SPP with the NPF, with both having the same weight as the development plan.

35. The consultation found strong cross-sector agreement with proposals for enhancing the status of an integrated and aligned NPF and SPP, along with recognition that this would allow LDPs to focus more on locally tailored spatial strategy and placemaking. There were however a sizeable number of responses, including from communities, who suggested that neither the NPF nor SPP should be given more weight, and that there was a need to be able to take local circumstances into account, which the Bill allows for. In light of these concerns, consultees emphasised the importance of ensuring that engagement in an enhanced NPF was open and inclusive. Collaboration will continue to be a key focus in the preparation in the NPF, including an extended period for parliamentary scrutiny.

## **Section 2 – Removal of requirement to prepare strategic development plans**

### ***Policy objectives***

36. Strategic planning is an essential element of the overall planning system, leading and shaping the long term future of land use in Scotland. However, the ways in which strategic planning can happen vary in different areas and under differing circumstances. The existing requirements for the production of strategic development plans and for the designation of strategic development planning authorities (SDPAs) are too prescriptive, generate overly-complex and lengthy statutory processes and resultant substantial costs, and are limited to only Scotland's four largest city regions. Robust strategic and regional planning is needed across the country, but wider contextual changes and the emergence of regional scale partnership working on other issues, such as transport, are showing that a single approach is likely to be appropriate for all areas. Removing the mandatory detailed processes for strategic development planning will ensure time and cost savings for those authorities involved in the production and delivery of SDPs and leave planning better placed to actively engage with its wider context.

37. Authorities should have the scope and flexibility to determine the best ways for them to work together in bespoke regional partnerships, covering their shared interests; alongside their duties to participate in the production of the NPF, which would include regional planning interests. Section 2 of the Bill will repeal the provisions requiring the formation of the four SDPAs and the production of SDPs, so that there can be a greater freedom for authorities to work collaboratively, with greater autonomy as to how they take this forward through regionally distinctive approaches. In light of this emphasis on subsidiarity more generally, it would be counter-productive to prescribe how regional partnerships should be formed or operate for strategic planning interests.

38. The repeal of the provisions for SDPs and SDPAs is closely linked to the provisions for the preparation of the NPF and the duty for local authorities to co-operate as set out in paragraph 31 above.



### ***Alternative approaches***

39. The only alternative option was to make no change to the existing provisions. This would have missed the opportunities to move the system forward towards a more flexible and bespoke approach to strategic planning that builds in collaboration and partnership that reflects local and regional arrangements and relationships. Retaining the existing provisions would have continued the complexity and the burdens of process and costs described in paragraph 36 above.

### ***Consultation***

40. The independent review panel recommended that, to simplify the system, strategic development plans should be replaced by an enhanced NPF. The panel suggested that “*the NPF should be strengthened and prepared collaboratively to address long-term city-region development and infrastructure issues more fully and effectively*”. It proposed planners proactively coordinate development with infrastructure delivery, and that planning authorities should be given a statutory duty to co-operate with the Scottish Government in producing the NPF.

41. Consultation views were generally supportive of the NPF taking on a more proactive role in relation to strategic planning and infrastructure delivery. Views were otherwise mixed. Some see regional partnerships as an opportunity to more effectively deliver positive change than the current SDP system, while others have concerns about strategic priorities being set at a national level and the risk of a loss of regional planning expertise. There was consensus however that, if SDPs are removed, a clear statutory duty should be introduced to ensure cross-boundary working and collaboration to address strategic planning issues. Broadly, planning authorities from outwith the four SDP areas were supportive of regional partnership working on strategic planning and the opportunities it brings. Meanwhile, those from two of the existing SDP areas, whilst supportive of regional partnership working in principle, considered that SDPs should be retained and strengthened rather than removed. Views of those from the other two SDP areas were less clear on that point. On the whole, there is support for strategic planning and regional partnership working, but mixed views on the appropriate vehicle to achieve this, specifically whether or not to retain the SDPs. The provisions therefore respond to this by including a flexible duty for regional collaboration to inform the NPF.

## **Section 3 – Local development plans**

### ***Policy objectives***

42. Whilst the provisions relating to LDPs may appear to be largely procedural, they aim to achieve a much wider policy objective of significantly strengthening LDPs and giving them a greater focus on place and delivery.

43. Development plans have a critical role to play in providing certainty for both communities and the economy. To achieve that, the provisions aim to create a new system of plans that is more in step with the pace of change and expectations of the economy and society. Improvements to the national level of planning, as set out above, aim to reduce the need for repetition and detailed policy wording within LDPs. This could significantly reduce the time it takes to prepare plans and improve their relevance to communities, by ensuring that there is a much stronger focus on spatial planning and place.

44. Extending the timescale for LDPs from five to 10 years will ensure they better reflect investment and development timescales, forming a more settled and reliable vision for how an area should develop in the future. This will also help to redirect available resources towards their implementation. At present, the focus of renewing the plan as a whole every five years is proving demanding on local authority resources, and can also lead to frequent and repetitive consultation with businesses, key agencies and communities. The policy objective is to substantially reduce the time and effort that goes into preparing plans, in line with the recommendations of the independent panel.

45. Section 3 of the Bill adds a new requirement for the LDP to take into account the local outcome improvement plan for the plan area. This aims to achieve better alignment with wider activities and objectives arising from ‘community planning’ under the Community Empowerment (Scotland) Act 2015. This is a widely agreed and established policy objective which will help to secure greater corporate and community recognition of the role and value of the development plan in delivering better services. It also aims to achieve practical benefits such as joined-up and effective community engagement and consistent prioritisation of council and partner policy objectives. The existing provision for LDPs to provide a vision statement has been repealed to avoid unnecessary preparation of multiple visions for an area – the expectation is that the LDP will contribute to the wider vision for an area as set out in the local outcomes improvement plan.

46. The requirement to produce a Main Issues Report has been removed. Instead, a single draft plan – ‘the Proposed Plan’ – will have a fuller role in the process, with new provisions to lengthen the consultation period and subsequently scope for the local authority to amend it to reflect the views of those who respond to the consultation. This aims to reduce the reported confusion arising from the definition, scope and role of Main Issues Reports.

47. Local development plans are independently examined under existing arrangements. The examination takes place at the end of the preparation process, prior to the plan’s adoption. The provisions introduce a new procedure that aims to improve the examination process, by frontloading some of the key decisions, to ensure there is early discussion and agreement of the outcomes that the plan should seek to achieve. A robust evidence base should form the foundation of an LDP, and a new requirement for planning authorities to produce an Evidence Report will ensure that this evidence base is clearly set out and used as the basis for an early ‘gatecheck’ of the plan.

48. Effectively a new, frontloaded, step in the examination process, the gatecheck will be used to examine the evidence that has been gathered to inform the subsequent preparation of plan. This would be undertaken by an appointed person, likely to be a Scottish Government Reporter, who would have scope to either approve the report, or to make recommendations where additional preparatory work is required. Examples of the matters to be resolved at the gatecheck include agreement of the amount of housing land required from the plan, scoping of the strategic environmental assessment of the plan and information on the capacity of the infrastructure of the area to accommodate future development. Regulations will set out more detailed procedures and content for this part of the process, including consultation requirements. Further preparation and consultation on the plan will not progress until a sound evidence base and agreed outcomes have been secured. This reflects an important policy objective of ensuring

development plans are based on sound evidence and are of a good quality, as well as being collaborative from an early stage and produced in a timely way.

49. To ensure that the LDP is recognised and supported more widely within local authorities, full council (rather than a delegated committee) will approve the proposed LDP.

50. Section 7 of the Bill makes provision for the LDP to be amended by the local authority between full reviews. Regulations will set out requirements for procedural steps, publicising the amendment and consultation. Where substantive amendments are proposed any such procedures would make provision for independent scrutiny of the amendment. In policy terms, it is anticipated that the circumstances where amendments would be permissible would be limited – an example could include evidence of a shortfall in the supply of housing land or a significant change in the socio-economic context of the development plan area.

51. Further changes to the general provisions on development planning are largely consequential and technical in nature and include adjustments to the stage prior to adoption when the Scottish Ministers can choose to intervene and direct changes to the LDP where they conclude it is unsatisfactory. The objective here is to ensure that timescales and powers to direct are adequate and arrangements are unequivocal. This will contribute to the wider aims of greater certainty from the planning process as well as ensuring appropriate administrative arrangements.

### ***Consultation***

52. The independent review panel reported that all parties had become caught up in the process of preparing LDPs to meet the five-year review timescale, at the cost of facilitating its delivery. The panel recommended a change to a 10-year cycle with a streamlined preparation process, for plans which would set out a 20-year vision and focus on place rather than policy.

53. There was widespread support for the changes set out above, with many stakeholders agreeing that a longer timescale would be beneficial, calling for the removal of Main Issues Reports, and agreeing that alignment with community planning is essential. Many consultees emphasised the importance of the proposed 10-year review timescale being flexible, and called for provision to be made for plans to be updated between cycles, with a full review being allowed to be progressed earlier where a local authority decides it is required.

54. Whilst the independent panel suggested that plan examinations could be removed from the process, many consultees supported the role of the independent reporter in the process and called for this scrutiny to be retained. Discussions with stakeholders has also shown extensive support for the additional stage of a gatecheck, to help frontload this scrutiny and support a collegiate approach to plan making.

### ***Alternative approaches***

55. Some focused alternatives that have been raised and considered include making the link with community planning two-way, so that the LDP is also reflected in wider community empowerment. In practice, it is not expected that such a connection may make a practical

difference to the provision for development planning to take into account the local outcomes improvement plan.

56. The alternative for other aspects of these changes would be to retain the current arrangements. Over time, this would mean that development plan preparation, rather than implementation, would continue to account for a significant share of planning authority and consultee resources, with outcomes remaining largely uncertain. The opportunity to reduce conflict and achieve stronger corporate, community and stakeholder buy in to the plan would be lost.

#### **Section 4 – Supplementary guidance**

##### ***Policy objectives***

57. Clarity can also be improved by removing the existing provisions for supplementary guidance, so that each local authority has a plan that can be found in a single document rather than across an extensive and often complex series of technical statutory documents. Supplementary guidance has become unwieldy in terms of volume and the wide range of policy themes covered by supplementary guidance, creating some confusion and concerns over transparency as to the development of the policy context within any LDP.

58. Section 4 of the Bill will repeal the current provisions for statutory supplementary guidance. Through the Bill, key policies will be more clearly set within the development plan, consisting of the NPF and the LDP, and so will be subjected to full consultation and scrutiny and an integral part of the strategy and proposals. There will still be scope for non-statutory guidance or advice to be a material consideration in the determination of planning applications. This repeal will also remove a substantial tier of process and policy-writing in authorities' development planning teams, so freeing up resource to focus on delivery of the development plan. It will further support the objective of greater collaboration and improved engagement in development plans, by improving transparency and avoiding a growing problem of over-consultation.

##### ***Alternative approaches***

59. The only alternative option was to make no change to the existing provisions, and so retain the existing provisions for statutory supplementary guidance to sit outwith the development plan. This would result in continuing complexity and inconsistency in practice. Further conflict and dispute around supplementary guidance would be expected. No change would also result in continuing pressure on resources, not just for local authorities but also for the Scottish Government and consultees. Instead, by removing statutory supplementary guidance, key policy areas can be addressed clearly in the development plan, either in the NPF or in the LDP.

##### ***Consultation***

60. The independent review panel, in recommending steps to simplify the plan preparation process, suggested that complexity could be reduced by removing or limiting the scope to produce supplementary guidance. The panel recognised that this guidance had been adding to

the complexity of development plans and that, while there had been some positive examples, there had been concerns about transparency and need for greater scrutiny of policy developed through this route.

61. Through the consultation, views were mixed across and within stakeholder groups. Some felt that supplementary guidance should be retained, whilst other respondents (largely businesses) felt that it should be removed. Many considered that the information contained in supplementary guidance would need to be included elsewhere, either in the LDP or in national policy. The Scottish Government anticipates that concerns about the coverage of specific or technical policy areas would be addressed by future changes to the content and status of the SPP as well as being offset by the benefits of their inclusion, upfront in the LDP.

## **Section 5 – Key agencies**

### ***Policy objectives***

62. The development plan provisions contain a number of requirements to involve key agencies, and to place duties on key agencies to participate, in the preparation and consideration of the development plan. Key agencies are defined in The Town and Country Planning (Development Planning) (Scotland) Regulations 2008 and include public bodies such as Scottish Natural Heritage, the Scottish Environment Protection Agency, regional transport partnerships and health boards. Section 5 of the Bill adds further scope, so that the definition of key agencies for these purposes can be widened through regulations; for example to include private sector organisations, such as private infrastructure providers. This reflects the wide range of partners involved in supporting and delivering development, and the collaborative approach to development planning and informing investment choices.

### ***Alternative approaches***

63. The only alternative option was to make no change to the existing provisions.

### ***Consultation***

64. The independent review panel recommended having a structure requiring all key infrastructure providers to cooperate in delivering the LDP, including the existing key agencies but extending to other bodies including those responsible for delivering electricity, heat, telecommunications and digital networks.

65. The consultation showed strong support for improving the influence of planning on infrastructure investment and delivery. Many argued that this could make a significant difference by overcoming barriers to development. Whilst the existing role and contribution of key agencies was acknowledged, the importance of recognising that responsibility for infrastructure lies beyond those who are already designated as key agencies, was also raised by consultees.

## **Section 6 – Delivery programmes**

### ***Policy objectives***

66. Current arrangements require an action programme to be prepared to accompany the LDP. At present action programmes can lack detail and do not result in a shared commitment that the actions they set out will be delivered. The intention is to significantly strengthen the role of action programmes by changing them into delivery programmes that are agreed by the local authority as a whole, kept updated and reviewed regularly. Specifically, section 6 of the Bill makes provision for the local authority chief executive and full council to sign off the delivery programme, thereby raising awareness and corporate commitment to its content.

67. The wider programme of planning reform includes actions to improve skills and share best practice in delivery programmes. This change is viewed as central to achieving the overall objective of giving an assurance that the commitments set out in a plan will be delivered, closing the gap between proposals in a plan and development on the ground.

### ***Alternative approaches***

68. The alternative to these changes would be to retain current arrangements for action programmes. This would mitigate against the aim of strengthening the development plan as a whole and providing greater certainty that the commitments it makes will lead to outcomes and development on the ground.

### ***Consultation***

69. The independent review panel found that action programmes are not realising their full potential, despite the potential role they could play in ensuring that plans lead to positive outcomes, including delivery of housing to meet identified needs. They expressed concerns about the lack of influence that action programmes appear to have and underlined the need to retain them to improve the impact of the development plan.

70. There was widespread cross-sector support for a strengthening of action programmes. Some stakeholders were concerned that only changing the name of action programmes would have limited effect, and so provisions for them to be agreed by the local authority on a corporate basis will help to address these concerns.

## **Section 8 – Development plan**

### ***Policy objectives***

71. Section 8 of the Bill amends the meaning of the statutory development plan to include the NPF and the LDP. It will give clarity that, in the event of any incompatibility between the NPF and the LDP, then the most recent will prevail. In practice it is expected that the Scottish Ministers will continue to use discretionary powers to ensure that compatibility between the national and local level is achieved.

### ***Alternative approaches***

72. The alternative would be no change to current arrangements, including retaining the SDP as part of the development plan. Removal of the SDP tier of the development plan will reduce confusion or conflict that can be caused by having both strategic and local development plans in place which have been produced to different timescales and which may therefore contain some contradictions. Whilst strategic and local alignment will still be important, the provisions will provide a more streamlined landscape of plans that reduce delay and duplication.

### ***Consultation***

73. The independent review panel recommended that the role of the Scottish Planning Policy should be expanded to reduce the need for policy to be repeated in development plans. By forming part of the NPF and by giving the NPF statutory weight as part of the development plan, this recommendation would be achieved.

74. Many consultees agreed that this change would help to simplify and streamline the framework of development plans in Scotland. Some expressed reservations about the extent to which national policy could respond effectively to local circumstances. Provision will be made in regulations relating to the LDP ‘gatecheck’ for local policy departures to be made from national policy where evidence of the need for local discretion can be provided. In addition, the future drafting of the NPF will seek to ensure that distinctions are made between policy areas which are appropriate for a nationally consistent approach, and those areas which require greater local discretion.

## **Section 9 – Local place plans**

### ***Policy objectives***

75. The Bill introduces a new right for communities to produce plans for their places, with scope for these to become a part of the development plan. The aim is to significantly enhance engagement in development planning, effectively empowering communities to play a proactive role in defining the future of their place. Throughout the review of planning, many stakeholders as well as the independent review panel emphasised the importance of giving a firmer commitment to early and effective engagement in the process. It is critical that planning reflects the views and aspirations of the communities it seeks to serve. Equally, it is important that local place plans (LPPs) support, rather than undermine, the LDP, and provisions have been designed to avoid reducing the capacity and willingness of communities to play a part in designing the wider LDP.

76. In practice, it is expected that there is a significant opportunity to link LPPs with wider locality plans that emerge in some areas as a result of the Community Empowerment (Scotland) Act 2015. As with the wider provision on aligning the LDP with local outcome improvement plans, this could create efficiencies, reduce duplication and prioritise resources to areas where there could be particularly significant benefits for communities and inclusive growth.

77. The intention is for the process for preparing plans to be defined largely by the capacity and preferences of the communities themselves, rather than introducing a fixed procedure. The

approach seeks to minimise processes and complexity and avoids creating an additional tier of development plans in an effort to support the wider streamlining of the process. The provisions are designed to avoid assigning the task of preparing the LPP to a particular organisation, such as a community council, in recognition that a range of different approaches and organisations could be relevant for different areas.

78. Where a community body has prepared an LPP, it can submit the LPP to a planning authority. In all cases, LPPs are effectively an expression of the community's view about the future development of its place, set within the wider planning context. The local authority will need to have regard to the LPP when preparing its LDP, either through an amendment or to inform a future review of the plan.

79. Where the LPP leads to the amendment of the LDP, it would be required to be subject to the same procedure as other elements, including independent examination where it is viewed by the Scottish Ministers as a significant change. The link with this provision is critical to ensure the reliability and certainty of the development plan, as well as improving transparency and providing an opportunity for conflict to be fairly and effectively resolved at an early stage in the planning process.

### ***Alternative approaches***

80. The alternative would be to not introduce this new provision, continuing to focus engagement on the statutory development plan at the level of a LDP. This would mean that there is less clarity and scope for locally-led initiatives to have a direct route into the development plan.

### ***Consultation***

81. The independent planning review panel recommended the introduction of local place plans. Its view was that communities should be empowered to bring forward their own plans, and those plans should form part of the statutory development plan. The recommendation was based on evidence gathered by the panel that suggested that more can and should be done to involve people in planning. The panel also recommended that communities should go beyond making plans to play an active role in their delivery. Their recommendation also reflected the panel's view that third party rights of appeal should not be introduced on the basis of their preference to use time and effort to secure early, positive involvement.

82. There has been widespread support for this provision with many communities and individuals supporting the panel's recommendation. However, more detailed discussion with stakeholders has also shown there is a need for attention to be paid to the form that LPPs should take. The initial consultation proposed a model for change which many viewed as complex and unwieldy, and this led to development of provisions which simplify the model and allow for much greater local flexibility.

83. Many stakeholders felt that LPPs should not be allowed to undermine or subvert the aims of the LDP. As a result, rather than allowing any such plan to alter the LDP, the Bill provides that the standard procedure for plan review or amendment should be followed to ensure full transparency and, where required, robust and independent scrutiny.



## **Part 2 – Simplified development zones**

### ***Policy objectives***

84. As part of the overall strategy to manage the delivery of their development plans, planning authorities can take a much more proactive lead in planning and consenting the future development of their areas, to make their places more attractive to investors, and also to take a keener interest in how new development will shape their places.

85. Section 10 of the Bill will introduce new powers to designate simplified development zones, which are similar to, but will improve on, existing provisions for simplified planning zones. These will support more effective delivery of development through zoning of land, frontloading of scrutiny and aligning of consents. The simplified planning zone provisions will remain in place for now, while there are current simplified planning zone schemes still in existence; however section 11 of the Bill will prevent new schemes from commencing under those current powers.

86. A simplified planning zone scheme grants planning permission for specified types of development within an identified zone, removing the need for an application for planning permission for any development within the scope of the scheme. There have been, to date, very few simplified planning zones in Scotland although more use of the mechanism has been made in recent years. Planning authorities have a duty to consider, and keep under review, which parts of their areas it would be desirable to create simplified planning zones for, but there is a lack of clarity in how this has been carried out. Greater use can be made of this zoning approach, to produce a supply of ‘development ready’ land by the planning authority proactively setting out, and giving authorisation for the type of development it would wish developed, subject to any conditions. This will allow developers to come forward with the greater certainty of consent having been secured upfront, and so able to raise necessary finance and get on site earlier. This does however require legislative changes to improve the attractiveness and efficiency of designating areas as these zones.

87. The Bill’s provisions for simplified development zones will build on the principles behind those current provisions, making the procedures for putting in place a scheme more straightforward and enabling schemes to be progressed in a wider range of circumstances. These new provisions will also expand the scope of consenting by these schemes, beyond planning permission to include wider consents. Reflecting this more expansive mechanism for early consenting of development, it is being rebranded as ‘simplified development zones’.

88. Zoning of land in this way has the potential to unlock significant areas for housing development, including by alternative delivery models such as custom and self-build. Simplified development zones could also support wider objectives including business development and town centre renewal. They will allow planning authorities to plan; front-loading consideration of design, infrastructure and environmental matters at an earlier stage in the planning process and so placing authorities in a position of leading the planning of high quality places, rather than reacting to applications put before them. They sit very well with the principles of masterplanning of an area, so delivering pre-approved consents for development that has already been carefully planned, and been subject to engagement with the community and statutory consultees.

89. Simplified development zones can support the delivery of LDP strategies and particular local priorities, by providing upfront approval of planning permission for development that has been subject to community consultation and so supporting investment in those planned developments. Linking to the LDP in this way can also allow efficiencies in assessment; for example by the strategic environmental assessment covering the issues the simplified development zone might raise. There does need to be sufficient flexibility to respond to emerging economic events or policy, and to consult on and make a simplified development zone at any time, so the Bill allows for doing that. The new schedule 5A (Part 3) of the 1997 Act, to be inserted by section 10 of the Bill, will ensure the process includes strong engagement through publicity, consultation and pre-determination hearings.

90. Section 54 of the 1997 Act prevents simplified planning zone schemes from being designated within certain categories or descriptions of land; for example within conservation areas, approved green belts and national scenic areas. Having these restrictions set in the primary legislation has limited the opportunity to make reasonable changes – for example special protection areas are not included – so to be more responsive the new schedule 5A (Part 1) of the 1997 Act, to be inserted by section 10 of the Bill, includes a power to set any restrictions through regulations. Some of these restrictions have significantly limited the benefits which can be realised from this zoning mechanism, and so hampered the attractiveness of making schemes, and some of these could perhaps be lifted. For example, enabling simplified development zones within conservation areas could make a significant difference in supporting town centre investment and regeneration. Making schemes in previously restricted areas would not risk a loss of standards for development amenity or protection of the environment; rather it will allow planning authorities to proactively set out their intentions for development and the standards required.

91. The potential for benefits coming from the front-loading of planning permission can be expanded further in relation to the range of consents sometimes needed to be able to commence development; so bringing greater certainty to investors that their development can happen. The new sections 54B and 54C of the 1997 Act, to be inserted by section 10 of the Bill, will also enable simplified development zone schemes to authorise road construction consent, listed building consent, conservation area consent and advertisement consent in circumstances where it would be appropriate to do so – also subject to any conditions, limitations and exceptions as specified in the scheme.

92. One of the concerns with the current provisions has been the potential for cost to planning authorities in making schemes, for developments which will no longer need planning applications and so no longer attracting an application fee. A future review of planning fees (see paragraph 126 below) will seek to introduce powers to allow discretionary charging, which will allow planning authorities to recoup costs of preparing schemes where they consider that would be appropriate.

93. There is significant potential for simplified development zones as an effective tool in leading and facilitating development through front-loading the planning process. Opportunities to radically reposition planning as a leader and an enabler of development should not be lost. The Bill introduces a more determined approach to considering and progressing schemes. The new schedule 5A (part 2) of the 1997 Act, to be inserted by section 10 of the Bill, will require planning authorities to periodically report on how they have considered making schemes. It also

introduces a duty for authorities to consider making schemes on request, with requirements to refer decisions and scheme proposals to the Scottish Ministers; also including some scope for Ministers to call-in schemes or to direct that schemes be made or altered.

### ***Alternative approaches***

94. The only alternative approach was to make no changes to the existing provisions. That would retain the limitations on the powers for simplified planning zones, so addressing only planning permission and retaining the current restrictions which prevent, for example, designating zones within conservation areas. Issues raised by stakeholders to the effect that making a simplified development zone scheme should not bypass environmental and other considerations, or should not lead to a reduction in design quality of development, are addressed through the procedures for designating a scheme closely mirroring the application process and scrutiny.

### ***Consultation***

95. The independent review panel recognised that simplified planning zones could incentivise development by creating greater certainty and flexibility, and considered that they should be rolled out across Scotland. The panel recommended that the simplified planning zone concept be rebranded and evolve into a more flexible and widely applicable mechanism which identifies and prepares areas to make them ‘investment ready’. The panel also recommended relaxing some current restrictions on simplified planning zones.

96. Through the consultation, there was general support for this, qualified with some concern that zoning should not bypass requirements for environmental and other assessments, nor that it should lead to any reduction in design quality of places within the zones. Communities wanted to ensure that zoned areas would be well serviced by infrastructure and fully consulted on. Development industry and business sectors recognised that zoning could streamline the planning process and provide additional certainty for industry. Planning authorities had been concerned about the resources needed to establish zones, if these could not be recouped due to an absence of planning application fees.

### **Part 3 – Development management**

97. Development management is the process of deciding whether to grant or refuse planning permission and other related consents. People seeking to invest in development need to be able to bring forward their proposals with confidence of fair and efficient handling and decision-making. Communities, individuals and organisations who may have opinions on development proposals must have a meaningful opportunity to contribute their views, adding value to planning considerations without hindering efficient decision-making.

98. The Bill provisions relating to development management will contribute to the wider objectives of supporting the delivery of the good quality development Scotland needs, particularly through improved efficiency, more constructive early engagement with communities and more local decision-making.

99. In addition to the more substantive changes explained below, the Bill makes a number of minor and technical changes which will bring greater clarity and effectiveness to the processes involved in applying for and making decisions on development proposals. These include:

- Section 14 – Discontinuing the current requirement to charge applicants a fee (separate from the application fee) and subsequently recover costs for publication of public notices in local newspapers will remove some delays or blockages on deciding planning applications. Those costs can be included in the calculation of future application fee levels.
- Section 15 – Removing the requirement for certain planning application decisions to be made by full council after pre-determination hearings by committees will remove some delay from the decision-making process and improve administrative efficiency, while also enabling those decisions to be made by the appropriate, trained planning committees.
- Section 20 – Widening the scope of decision-making options in relation to applications for the modification or discharge of planning obligations – enabling an application to be granted in part or subject to amendments – will bring greater flexibility for applicants and planning authorities to agree solutions.

## **Section 12 – Pre-application consultation**

### ***Policy objectives***

100. Effective early engagement is a key focus of the review of planning. Section 12 of the Bill makes some changes to the provisions for pre-application consultation (PAC) with local communities on planning applications for national or major developments to ensure they are appropriate, effective and not unnecessarily onerous. These changes will require that a valid planning application must be submitted within 18 months from the date of the proposal of application notice to which it relates, so that the PAC will have been sufficiently recent when the planning application is subsequently lodged that the outcomes from that consultation will still be relevant. To enhance the quality of reporting of PAC engagement, the Bill also enables the content of the PAC report to be specified in regulations (Scottish Government Planning Circular 3/2013<sup>3</sup> on development management procedures currently suggests minimum content). Sometimes, where a proposed development has already been subject to PAC and a minor material change to the proposal necessitates the submission of a new planning application, that subsequent application is also subject to the PAC requirement, causing delay to the proposal and a re-running of the previous engagement activity. This is because the 1997 Act restricts regulations to specify only the ‘classes of development’ for which PAC is required; i.e. national and major developments. The Bill will widen that to enable the regulations to also clarify the circumstances in which PAC is not required.

### ***Alternative approaches***

101. No alternatives to these provisions were considered for the Bill; although a further change to the regulations is intended, in line with existing provisions in the 1997 Act, which will require more than one public event as part of the PAC to allow for feedback to the local community before the application is submitted. The regulations could also be amended to require additional

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<sup>3</sup> <http://www.gov.scot/Publications/2013/12/9882/0>

PAC activity in relation to major developments which have not been allocated in the LDP, and so have not been subject to the level of scrutiny required through the LDP preparation.

### ***Consultation***

102. The independent review panel recommended that the quality and effectiveness of PAC should be significantly improved. The panel reflected on community dissatisfaction with PAC and suggestions of it taking the form of a ‘tick box exercise’, and suggested a requirement for at least two community consultation events would bring opportunities for fuller dialogue, negotiation and feedback.

103. The consultation recognised that involving people more fully at an early stage is essential. It proposed a number of changes and posed several questions around PAC to enhance and improve this part of the process, including aspects which do not require new primary legislation such as stronger consultation on sites not allocated in the development plan and a mandatory additional public meeting to provide feedback to communities. These will be taken forward separately. There were suggestions in consultation responses from across sectors that more could be done to clarify requirements and to promote good practice in PAC, which feature both in the Bill’s provisions and in the Scottish Government’s intentions for supporting improvements in practice.

## **Section 16 – Schemes of delegation**

### ***Policy objectives***

104. The Planning etc. (Scotland) Act 2006 (the 2006 Act) and subsequent secondary legislation introduced new requirements, under section 43A of the 1997 Act, for the delegation of certain decisions of planning authorities to officers of the authority. Section 43A also introduced a related local review procedure to replace the applicant’s right of appeal to the Scottish Ministers in cases so delegated. The body conducting the review (‘the local review body’) is a committee of the planning authority. These section 43A schemes of delegation relate to applications for planning permission for local developments, and also to applications for approval required by conditions attached to planning permission for local developments. The principles behind this previous change are that decisions of local significance should be made at a local level, and that straightforward planning application decisions be made quickly by officers.

105. The Bill will keep more decisions at the local level through further delegation of decision-making and further movement of appeal decision-making responsibilities from the Scottish Ministers over to local review bodies, where developments are of a minor nature or of localised impact. Section 16 of the Bill will add further types of application to the scope of the section 43A schemes of delegation, for officer decision, and consequently to be subject to local review where appropriate. Those additional application types are for: (i) display of advertisements; (ii) certificates of lawful use or development; and (iii) prior approval under a development order (relating to certain permitted development rights).

106. The Bill also gives applicants a choice where they have not received a timely decision on both their delegated planning application and on their subsequent local review. Rather than

the current automatic refusal, with the only option in those circumstances being to make an appeal to the Scottish Ministers, they could choose instead to wait longer for a decision by the local review body. This will allow flexibility and can reduce unnecessary appeals.

107. The terms of existing planning authority schemes of delegation still lead to a substantial number of applications for minor local developments being taken to committee for decision, with a subsequent right of appeal to the Scottish Ministers. To encourage some level of consistency in handling small-scale applications, and for greater subsidiarity of decision-making, guidance will be issued by the Scottish Ministers on schemes of delegation, and new section 43AB of the 1997 Act, to be inserted by section 16 of the Bill, will require planning authorities to have regard to that guidance. That section will also enable the Scottish Ministers through regulations to require, where necessary, a planning authority to modify its scheme of delegation before adopting it.

### ***Alternative approaches***

108. An alternative considered had been to introduce a nationally consistent approach to schemes of delegation, so as to ensure more planning applications would follow the route to local review rather than appeal to the Scottish Ministers. However, that was considered to be too much of a rigid imposition on how authorities would choose to handle applications before them, which would not account for differing local circumstances; for example a small-scale residential development may be handled differently between predominantly urban or remote rural or island authorities.

109. There are further appeal rights to the Scottish Ministers under the 1997 Act which relate to actions by planning authorities in serving notices requiring specific actions to be taken or for operations to cease; such as enforcement notices and section 179 ‘amenity’ notices. Given the requirements being placed on owners, lessees and occupiers of land or property by planning authorities in serving these notices – often to cease operations or trading, or to reverse or remove development carried out – it is appropriate in these circumstances that appeals should continue to be made to the Scottish Ministers.

110. There have been long-standing requests to introduce a ‘third party’ or ‘equal’ right of appeal’ into the planning system, to enable persons other than the applicant for planning permission to make an appeal against the merits of a decision of a planning authority. This is not included in the Bill; it is far more appropriate and more constructive to have stronger early engagement, involving people in the shaping of their areas, as provided for through the changes to development planning, the introduction of LPPs and more effective pre-application consultation. A third party right of appeal would increase delay and uncertainty through to the end of the planning process, running counter to the whole thrust of the Bill and wider review of planning in streamlining and front-loading the system. It could discourage investment and could be used to block or delay development which is needed in the public interest, including new housing.

### ***Consultation***

111. The independent review panel noted that local review bodies had been generally welcomed as an important part of improving local accountability, and that greater consistency in

their operation was required, which could be supported through training and national standards. The panel also recognised the arguments pursued both for and against an equal right of appeal. As a recommendation, the panel advised that it was not persuaded that such a right of appeal should be introduced. It noted *“Effective planning depends on building positive and productive relationships. The evidence shows that a third party right of appeal would add time, complexity and conflict to the process, and have the unintended consequence of centralising decisions, undermining confidence and deterring investment. We believe that using time and resources to focus on improved early engagement would provide much greater benefits.”*

112. Through the consultation, there was strong support, particularly from civil society, for more decisions being made by local review bodies, although there were also some concerns about the way in which local review bodies operate. The Bill’s provision requiring mandatory training for elected members will ensure appropriate training for members of local review bodies. Some respondents were disappointed that there was no proposal to introduce an equal or third party right of appeal. Others strongly supported the reasons for not doing so.

## **Section 17 – Duration of planning permission**

### ***Policy objectives***

113. The purpose for this change is to simplify and clarify the duration of planning permission, and particularly for planning permission in principle, including for approval of matters specified in conditions (the proposal details) after grant of planning permission in principle. This will result in clear expiry dates for planning permissions where development is not started timeously. The current provisions on duration of planning permission in principle (section 59 of the 1997 Act) are confusing and uncertain, based on the timing of applications and decisions for approval of matters specified in conditions and timescales for re-application if there are refusals. The current arrangements leave too many variables in a complex system.

114. The current provisions also require that the duration of a planning permission be set by direction, rather than as a condition of the permission. A consequence of this is that applicants sometimes seek to extend their planning permissions by making an application under section 42 of the 1997 Act, in effect to seek a new planning permission with different conditions to the previous permission, to change perhaps one condition unrelated to the duration so as to secure a new permission and start the clock again. There are sometimes circumstances where it would be in the interests of the proper planning of an area for a planning permission to be extended to facilitate the delivery of planned development; while equally there may be good reasons why unimplemented permissions should lapse without extension. Any process for considering this must be fair and transparent.

115. Section 17 of the Bill will bring greater clarity to the duration of planning permission before an unimplemented permission will lapse; and also enable greater flexibility and transparency around the scope and process for extending the duration where appropriate. It will require a condition to be attached to set the duration of a planning permission (section 58 of the 1997 Act) as a default three years from the date of the permission, and of a planning permission in principle (section 59) as a default five years. Development would need to commence within those timescales or the permission would lapse. The longer period for planning permission in

principle reflects the additional work to be done and further consents to be obtained post-approval.

116. By using a condition, applicants will be able to make applications transparently under section 42 for a new permission with a different condition on the duration; in effect to extend the permission. To support certainty for applicants and communities, and also to restrict the number of section 42 applications, the Bill will enable a different duration period (whether longer or shorter) than the default three or five years, to be set by condition on the planning permission. This flexibility will allow the planning authority to set an appropriate duration period at the outset, in a way that is clear to everyone, and so be able to better manage the development of their areas. It is intended that the Scottish Government will support these changes with guidance relating to the appropriate use of duration conditions.

117. The Bill also removes the default framework for time periods for making applications for approval of matters specified in conditions. This was proving confusing and in some cases put development at risk, especially in relation to phased development. The Bill however ensures that planning authorities will have the flexibility to use conditions on a permission to set time periods for approving details as appropriate to the particular development proposal.

### ***Alternative approaches***

118. The only alternative option was to make no change to the existing provisions. That would have retained current confusion about when a planning permission in principle would lapse, and would also enable the practice to continue of using an application to change a different condition as a means to secure a new planning permission with a new duration period.

### ***Consultation***

119. This is a technical area and responses were limited and mixed on the consultation question regarding the prospect of enabling the duration of planning permission in principle to be flexible and able to be amended post-approval. From those who commented, most business and industry respondents were in favour of this flexibility, most policy and planning respondents were not and the civil society respondents were quite evenly split. Points raised by those opposed to a facility to amend duration periods included that there should be a set period only rather than scope to roll consents forward through subsequent changes, adding some uncertainty, and that such an option may not support a focus on development delivery. The Scottish Government anticipates that its future guidance would seek to ensure a focus is maintained on deliverability of the development when considering duration of planning permissions.

## **Section 18 – Completion notices**

### ***Policy objectives***

120. Closely related to the provisions around duration of planning permission and the flexibility afforded to planning authorities to facilitate and manage more closely the timescales for delivery of development, the Bill will also enable some streamlining of the process by which authorities can serve completion notices. These notices can be used where development has commenced, meaning that the planning permission cannot lapse, but where that development has



not been completed within a reasonable period. Examples could include where a development is being carried out in phases and later phases are not being progressed timeously; or where very minimal activity has taken place on a development site to the extent that development is considered to have commenced but where there is no sign of further development activity.

121. Planning authorities can serve completion notices in defined circumstances, where the development was started but not completed by the time the duration of the permission has expired, and may require completion of the development within a period of not less than 12 months. The effect of non-compliance is that the development, or parts of it not carried out, will no longer have planning permission. This can be a very useful tool to planning authorities in pursuing the delivery of development or in clarifying the likelihood of future development in their areas; perhaps also freeing up other sites for development.

122. Existing provisions require that completion notices can only take effect if confirmed by the Scottish Ministers, and where anyone served with the notice has exercised a right to be heard if wanted. Section 18 of the Bill will make some changes with the purpose of simplifying the process, by removing the need for unopposed completion notices to be referred to the Scottish Ministers for confirmation and also, where notices are opposed, to give the Scottish Ministers greater management control of the process for gathering any information before deciding whether or not to confirm the notice.

### ***Alternative approaches***

123. The only alternative option was to make no change to the existing provisions, in which case the power to serve completion notices would remain in place but without this streamlining of the confirmation process. The change is brought forward in support of the greater certainty that can come from planning authorities managing duration of planning permission, by making it easier for them to pursue completion of consented development.

### ***Consultation***

124. These technical, process-related changes were not specifically subject of the consultation, but rather are linked to other changes to managing the duration of planning permission.

## **Part 4 – Other matters**

### **Section 21 – Fees for planning applications etc.**

#### ***Policy objectives***

125. Scotland's planning services must be effectively resourced to ensure they efficiently support a high-performing planning system that will deliver on a more ambitious, enabling agenda. Income from planning applications does not currently meet the costs of delivering development management services, and there is a need to move towards full cost recovery to be able to appropriately fund the reformed planning system. The Royal Town Planning Institute in Scotland (RTPI) published a background paper in 2015, *Progressing performance: Investing in Scotland's Planning Service*<sup>4</sup> (Thomas Fleming), drawing on research carried out by Heads of

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<sup>4</sup> [http://www.rtpi.org.uk/media/1496196/performance\\_and\\_resources\\_-\\_final\\_-\\_october\\_2015.pdf](http://www.rtpi.org.uk/media/1496196/performance_and_resources_-_final_-_october_2015.pdf)

Planning Scotland (HOPS) in 2013 and 2014 into the overall costs of the planning system and the level of cost recovery achieved from fees for development management. Figures provided by HOPS indicated that in 2015, planning fees covered only 63% of the cost of handling applications.

126. Current provisions in section 252 of the 1997 Act enable the Scottish Ministers to make provision for the payment of fees to planning authorities of the amounts prescribed by regulations. The existing provisions limit the scope of charging only to planning authorities, and the fee levels are set nationally, with no scope for local choice. Section 21 of the Bill makes several changes to broaden these regulation-making powers to ensure required flexibility is available: for example by enabling some discretionary charging for service provision, under which authorities may also in some circumstances choose to reduce or waive fees. It will also enable fees to be charged by the Scottish Ministers in respect of their functions within the planning system.

127. The changes would also enable a higher fee to be set for retrospective planning applications. The purpose of this would be to discourage breaches of planning control and poor behaviour by those who know the system well and flout the rules; but with the flexibility to not penalise those who were genuinely unaware of the proper procedures.

128. The maximum planning fee levels were increased through amendment regulations earlier in 2017. Further stakeholder engagement and a detailed public consultation exercise will be carried out following the Bill, to develop and finalise proposals for new fees regulations relating to the decision-making aspects of the planning process, with a view to moving those aspects towards full cost recovery by planning authorities. These regulations will be built around the resource implications arising from the finalised changes to the planning system led through the Bill and subsequent secondary legislation.

### ***Alternative approaches***

129. The detailed proposals for charging will need to be considered in light of the finalised shape of the reformed planning system. The Bill's provisions anticipate aspects of the system for which fees may be charged in future, to ensure it is appropriately resourced.

130. Consideration had been given to including scope for the regulations to enable agencies to charge for their services through their role in the planning system. However, this has not been taken forward on the basis that agencies are already provided with core funding which has been set in relation to their statutory roles.

131. The only other alternative would be to not make changes to the current system, and so not widen the scope for charging and aligning fees to match costs. This would not meet the policy intention of effective resourcing of a planning system focused on delivery.

### ***Consultation***

132. The independent panel recommended that planning fees on major applications should be increased substantially, so that the service moves towards full cost recovery; also noting the link

to improving performance and that planning authorities must accept the requirement to invest in the resourcing of their planning services. The independent panel also suggested consideration be given as to whether fees for retrospective applications should be substantially increased to provide a more effective deterrent.

133. From the consultation, there was agreement across sectors that planning is currently under-resourced, with many suggesting that fee increases should be ring-fenced to resource more effective planning services and improved performance. The consultation paper had set out a range of options for which additional fees could be charged; including discretionary charging, fees for appeals and local reviews, charging for central government and agency services and higher fees for retrospective applications. Views were mixed on these options, and will need to be looked at again and consulted upon in more detail in developing the new fees regulations.

## **Section 22 – Fines: increases and duty of court in determining amount**

### ***Policy objectives***

134. Effective enforcement of planning control is crucial to confidence and public trust in the planning system as a whole. Those who carry out development must comply with the requirements of planning legislation and with the terms of any consent. The Bill will apply greater leverage in encouraging compliance. A broad range of enforcement powers are already available to planning authorities. A breach of planning control is not, in itself, a criminal offence. But failure to comply with the terms of an enforcement notice, after it takes effect, is an offence. Within the range of powers available, there are a number of provisions in the 1997 Act under which failure to comply can mean the person responsible may be subject to a fine on summary conviction or, in some cases, conviction on indictment. The maximum fine applicable on summary conviction specified in the 1997 Act varies according to the particular enforcement power relied on. The levels of fine have not been amended since the coming into force of the 1997 Act, and section 22 of the Bill will now do that. Fines are also often set significantly below the current maximum possible. In addition to increasing the maximum level, the Bill's provisions include requirements for the court, in setting the amount of a fine, to have regard to any financial benefit to the convicted person accrued as a result of the breach of planning control for some offences where this requirement was not already in place.

### ***Alternative approaches***

135. The only alternative option was to make no change to the existing provisions.

### ***Consultation***

136. The consultation asked whether penalties should be increased for non-compliance with enforcement action. There was strong support for doing so, particularly from civil society and from policy and planning respondents. Those within the business sector and development industry who disagreed were of the opinion that existing enforcement powers were adequate but under-used.

## **Section 23 – Liability for expenses under enforcement notice**

### ***Policy objectives***

137. The policy intention is to reduce the financial risks associated with a planning authority's use of existing powers (section 135 of the 1997 Act) to enter land and take direct action to ensure compliance with an enforcement notice or an amenity notice, and to thereafter recover the expenses of doing so from the owner or lessee, so making it more attractive for authorities to utilise their direct action powers. Existing debt recovery methods have not always been sufficiently effective, and so there is an apparent reluctance among planning authorities to take direct action due to the potential exposure of the authority to up-front payment of ultimately unrecoverable costs. Recent research *Planning Enforcement in Scotland*<sup>5</sup> concluded that “*direct action, although a highly valued means of resolving breaches, is now comparatively rarely used as the capital costs and risk of non-recovery are considered to be too significant*”. Section 23 of the Bill will introduce new powers enabling a planning authority to register a charging order in the Land Register of Scotland or to record such notice in the Register of Sasines as appropriate, requiring payment to be made to secure discharge of the order on the property.

138. This is consistent with similar charging powers which already exist under other legislation relating to building standards, civic government, housing and listed buildings and conservation areas.

### ***Alternative approaches***

139. The only alternative option was to make no change to the existing provisions.

### ***Consultation***

140. The independent review panel recognised that there was already a wide range of powers and options available to respond to breaches of planning control, but acknowledged concerns about planning authorities not taking enforcement action and resource constraints limiting enforcement activity. The panel recommended that the Scottish Government should work with local authority enforcement officers to identify and remove any barriers to the use of enforcement powers.

141. There was strong support from civil society and from policy and planning respondents for strengthening enforcement powers, and also that adequate resourcing of enforcement teams was required to back this up, including the ability for planning authorities to recover costs. Those within the business sector and development industry who disagreed with the strengthening of enforcement powers considered that existing powers were adequate but under-used, while noting concerns about resourcing what is perceived to be a service under pressure.

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<sup>5</sup> <https://beta.gov.scot/publications/planning-enforcement-scotland-research-report/>

## **Sections 24 and 25 – Training for taking planning decisions**

### ***Policy objectives***

142. The policy intent is to ensure members of planning authorities who will sit on planning committees or on local review bodies will have been sufficiently trained in planning matters to confidently make sound decisions that are rooted firmly in clear planning principles and policies. This will support public trust in the planning system. Planning authorities currently arrange training for their members, although this is non-mandatory and can differ in content between authorities. Section 24 of the Bill provides for regulations to set out the training requirements and to specify a requirement for attendance and/or completion of an examination by members of planning authorities before they may be involved in the making of planning decisions by their authority. Section 25 of the Bill allows for arrangements which could ensure continuity of the planning service where, due to members not having completed training, an authority is unable to complete its decision-making responsibilities.

### ***Alternative approaches***

143. The alternative option would be, as at present, to have no statutory requirement for training of members of the planning authority, and to rely on this being carried out on a voluntary basis. The Bill's provisions will however ensure quality and consistency in training programmes, and ensuring all members involved in making planning decisions will have completed it.

### ***Consultation***

144. There was strong consensus across all sectors that training of members involved in a planning committee or local review body should be mandatory.

## **Section 26 – Performance of planning authorities**

### ***Policy objectives***

145. Planning is often criticised for being too cumbersome and overly bureaucratic in its operation. The review of planning maintains a very clear focus on improving the overall performance of the planning system, and in better directing resources to ensure a high-performing planning service. Planning authorities hold the primary responsibility for effective management and efficient delivery of the service. The redesign of statutory development planning and development management processes alone will not guarantee the necessary improvements in effectiveness of the planning system. The Bill and subsequent secondary legislation will be supported through a range of actions to embrace different working practices, develop skills of those who deliver planning services and direct resources to where they can have the most positive impact. The Bill will increase scrutiny of the full extent of planning authority performance; in how authorities carry out their functions and deliver their services, on the quality of their decision-making and on the outcomes for their areas. This involves a package of three broad measures introduced by section 26 of the Bill:

- Statutory requirement to produce annual performance reports,
- Appointment of a national planning performance co-ordinator,

- Powers to conduct assessments of planning authorities' performance and to pursue improvements.

146. Since 2012, authorities have, on a voluntary basis, completed annual reports under the Planning Performance Framework, designed by HOPS. The framework involves authorities' self-assessment of a wide range of aspects of their roles and services. In addition, planning authorities also report on their performance against a number of 'key markers', as devised by the High Level Group on Planning Performance, co-chaired by the Scottish Government and COSLA. The Scottish Government also publishes, quarterly and annually, each planning authority's development management statistics, with a particular focus on decision-making timescales. The new section 251A, introduced by section 26 of the Bill, will place a requirement for annual performance reports on a statutory footing, with their form and content and the process for producing reports to be set in regulations once the full shape of the reformed planning system has been clarified in legislation.

147. Planning authorities currently have access to support on performance, for example through the work of the Improvement Service and through peer review opportunities. The more formal, statutory role for a planning performance co-ordinator in the new section 251B will be to monitor performance and to support improvements, for example through the sharing of good practice. A key strand of this will be ensuring that feedback is effectively gathered from users of the planning system. The co-ordinator will also report regularly to the Scottish Ministers on performance standards and progress with improvements, both nationally and in relation to individual authorities.

148. The 2006 Act introduced provisions enabling the Scottish Ministers to commission performance assessments and to intervene in relation to planning authorities' performance. Those provisions would have formalised previous non-statutory audits carried out by the Scottish Government; however they were not commenced while authorities progressed the development of the Planning Performance Framework, including the production of service improvement plans. Concerns about matters such as efficiency and patterns of decision-making in some authorities have continued. With performance improvement being such a key driver of the review of planning, the new sections 251C to 251G, introduced by section 26 of the Bill, now provides for the assessment of planning authorities and for Ministers to be able to recommend, and potentially to direct, performance improvements. In comparison to the uncommenced provisions at sections 251A-251D of the 1997 Act (inserted by section 30 of the 2006 Act), the Bill's provisions will be more flexible with an ability to tailor the scope of assessment, the process and actions to the specific matters required for investigation and potential improvement.

### ***Alternative approaches***

149. The only alternative approach considered was to make no changes to the legislation other than to commence the existing provisions at sections 251A-251D of the 1997 Act; however the Bill's provisions will allow for greater flexibility in managing assessments under the reformed planning system. It would not be a satisfactory option to continue with an informal approach to performance management, given the thrust of the Bill and the wider review of planning.

### ***Consultation***

150. The independent review panel supported positive intervention in cases of continuing poor performance, proposing independently-defined solutions or reinstatement of performance auditing by the Scottish Government or another party.

151. Through the consultation, there was strong support for a focus on monitoring quality of decisions and outcomes, as well as time-based performance standards. There was also support for 360° feedback from service users, provided there would be implementation of lessons learned. Responses from the development industry particularly reflected that increases in application fees would have to result in improved performance and consistency in advice and decision-making, to provide greater certainty in the process. The Bill's provisions will be used to pursue improvements as appropriate across service standards and quality of decision-making.

### **Part 5 – Infrastructure levy**

#### ***Policy objectives***

152. The provision of necessary infrastructure in the right places and at the right time is vital to the delivery of development. The intention behind the infrastructure levy is to help raise funds for infrastructure provision so that necessary services and amenities can enable land to be developed, or to deliver infrastructure that is needed to serve the additional growth within an area. It is proposed that the levy be designed to capture a proportion of land value uplift, so that that there can be public benefit from the value created by planning decisions and public sector investment.

153. New development benefits from infrastructure previously installed. Meanwhile current use of section 75 planning obligations to support infrastructure provision is limited only to infrastructure required as a direct consequence of the proposed development; a position underlined by a recent judgement of the Supreme Court. An infrastructure levy can support the provision of infrastructure and services which will benefit and incentivise the delivery of development across a wider area, and help to unlock sites planned for development.

154. The aim is for the levy to be transparent so that it is clear who is liable to pay and that the charge liability is known up front. The aim is also to provide greater certainty for local authorities in securing these contributions. There are also other potential benefits, in terms of spreading the cost of infrastructure more widely across geographic areas, and ensuring that the majority of development which utilises existing infrastructure capacity makes a contribution to the cost of its installation or its future replacement, thereby creating a fairer system.

155. The Scottish Government commissioned and published research<sup>6</sup> to assess the options for an infrastructure levy and to consider the detailed design of the preferred option(s) which emerged. Although the research has been thorough and informed by expert input, further work is required to define a model which is both practical and meets the objectives of capturing a proportion of land value uplift while taking account of market circumstances and development

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<sup>6</sup> <https://beta.gov.scot/publications/research-project-identify-assess-options-introduction-infrastructure-charging-mechanism-scotland/>

viability. This work will be taken forward through thorough further research and expert input, stakeholder engagement and discussion, along with full consultation at an appropriate stage, ensuring costs and benefits are fully evaluated and understood.

156. Section 27 of the Bill enables the introduction of an infrastructure levy once its development is complete, through a power to establish the detailed provisions in regulations. While work on the levy model is ongoing, section 27 includes clarity that it will be payable to a local authority relating to developments within its area to fund, or contribute to infrastructure projects. The intention is that the levy will be both collected and spent locally, with the potential for authorities to pool the resource for joint-funding of regional-level projects.

157. Guiding the development of the mechanism, schedule 1 of the Bill sets out what is intended to be within the core structure of the levy model. It is expected that the regulations defining the structure of the levy will include: clarifying how the levy is to be calculated, who will be liable to pay (and in what circumstances); options for local exemptions and discounts; method of collection and dealing with late payment or non-payment; ability to appeal a levy decision; aggregating and spending levy income; and dealing with consequential impacts of the levy on other aspects of legislation.

158. Section 29 of the Bill includes a definition of infrastructure for the purposes of clarifying what may or may not be funded through the levy. Reflecting a changing world, scope is provided in section 30 to modify that definition through regulations to ensure it stays relevant in future.

159. The development and introduction of an infrastructure levy will be complemented by a review of the policy relating to planning obligations. This will include clarity about the appropriate use of section 75 planning obligations and their relationship to the levy, to allay concerns about potential excessive or double charging and risks of impact on development viability.

### ***Alternative approaches***

160. The only alternative option for the Bill was to not include these provisions. That would retain section 75 planning obligations (and their limitations) as the primary mechanism for securing infrastructure contributions. The Scottish Government intends to review its current circular relating to planning obligations. However, this would be a more limited intervention in comparison to the introduction of an infrastructure levy.

161. Other approaches could be utilised to capture land value uplift. However, it is not proposed that they would be dealt with through planning legislation. In addition, no other mechanism has been sufficiently considered or developed to be a viable alternative. The infrastructure levy research proposed a model showing how it might be able to work in practice. However, additional work and consideration is required to test the detailed design further.



### **Consultation**

162. The independent review panel recognised the limitations of section 75 planning obligations and recommended that options for an infrastructure levy which would capture a proportion of land value uplift should be defined and consulted upon.

163. Through the consultation, there was general support for the principle of an infrastructure levy, but also different views on the form it should take and the types of development that should be covered and so liable to pay. Cross-sector support was on the basis that funding infrastructure beyond individual sites was critical in supporting development in Scotland, and broad agreement that there was a need for infrastructure funding to go beyond the scope of section 75. Many agree that a levy could help to enable infrastructure and public sector providers to plan for long-term growth and invest more strategically, rather than in piecemeal fashion. Public sector respondents were concerned that the amount raised might be limited, while businesses were concerned about the possible impact on viability of projects, and that the levy could be used to replace central funding for infrastructure. These and other views will inform further development of detailed technical options for consultation, prior to any regulations being brought forward.

### **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

#### **Equal opportunities**

164. An Equality Impact Assessment (EQIA) has been carried out and will be published shortly on the Scottish Government website<sup>7</sup>.

165. The EQIA concludes that the Bill's provisions are neither directly nor indirectly discriminatory on the basis of age, disability, gender reassignment, gender, sexual orientation, race, or religion and belief. Research on the Barriers to Engagement in Planning was commissioned and its recommendations have helped to inform the provisions of the Bill.

166. The EQIA considered the potential impacts of the Bill on each of the protected characteristics. The evidence gathered and associated data indicated that the overall Bill provisions will have a positive impact on equality issues. No changes to the provisions were made as a result of the assessment, but matters were identified for further consideration in the implementation of the resultant Act. Specifically, it was recommended that future development plan preparation is informed by appropriate engagement and robust evidence, linked with a more robust national development framework, given concerns expressed specifically about the accommodation needs of protected characteristics groups including gypsy/travellers and about accessible housing for disabled people.

167. The Bill provisions will strengthen processes, engagement and participation in the planning system overall. The provisions in the Bill are largely enabling, giving powers and duties to the Scottish Ministers, local authorities and public bodies, and all these bodies are subject to the public sector equality duty under the Equality Act 2010.

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<sup>7</sup> <https://beta.gov.scot/policies/planning-architecture/reforming-planning-system/>

## **Children and young people**

168. The Bill provisions aim to ensure that a wide range of people have an equal opportunity to be involved in planning. The changes proposed through the Bill, as well as actions as part of a wider programme of planning reform, aim to respond to the recommendation of the independent planning review panel that children and young people have better opportunities to get involved in place and development planning.

169. The Scottish Government undertook a Child Rights and Wellbeing Impact Assessment of the wider policy intention to promote enhanced engagement in the planning system through the review of planning. This assessment found that the provisions on LPPs would have a positive impact on the participation of children and young people. It also found that the provisions for enhanced engagement, including the requirement to use methods that will secure the engagement of children and young people in the process, will have a positive and direct impact.

## **Human rights**

170. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

171. The principles derived from the Universal Declaration of Human Rights and other international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, have been considered and taken into account during the preparation of the Bill. This includes the recognition that everyone has the right to participate in and exert control over decisions affecting their lives, wellbeing and human rights, as well as access to information relating to decision-making processes.

172. The Bill introduces new rights for communities to prepare a plan for their place. It also makes further improvements to consultation duties with a view to ensuring that engagement in the system is meaningful and inclusive.

173. Article 1 of Protocol 1 of the Convention guarantees peaceful enjoyment of possessions. The Scottish Government is of the view that, by making these changes, the Bill continues to fairly balance the rights of the individual with those of communities and the wider public interest.

## **Island communities**

174. The Bill will apply to all communities across Scotland, including island communities. No differential impact on island communities is anticipated for the majority of the Bill provisions.

175. An ‘islands-proofing’ assessment of the impacts on islands communities was undertaken, in collaboration with planning authorities who are part of the Strategic Islands Group. The output from the assessment will be published on the Scottish Government website.<sup>8</sup>

176. The assessment highlighted a number of opportunities to ensure that changes to the planning system as a whole are proportionate and sufficiently flexible to allow special islands circumstances to be taken into account.

177. This helped to inform the wording of several provisions within the Bill, for example the infrastructure levy and local development planning. Some of the recommendations will be used to inform the approach to subsequent secondary legislation and policy – a key example of this will be further island-proofing of future iterations of the NPF. The role of the gatecheck stage of the examination of LDPs will also play a key role in reflecting island-specific issues, there are opportunities to build on good practice as LPPs are developed and scope to build on existing experience of sharing specialist skills. Permitted development rights are a further area of interest that will benefit from the experience of island planning authorities to inform the scope to support rural and island economies.

### **Local government**

178. The Bill amends the duties and powers of local authorities as planning authorities in carrying out their development planning, development management and associated functions. The principle of proportionality and recognition of the need to ensure adequate resourcing of the planning system have been taken into account in each of the provisions described in this Policy Memorandum.

179. The Scottish Government continues to work with COSLA, SOLACE, HOPS and the RTPi on planning performance through the High Level Group on Planning Performance. This group will continue to play a critical role as provisions set out in the Bill are taken forward.

### **Sustainable development**

180. The Scottish Government undertook a strategic environmental assessment (SEA) of the Planning Bill proposals as required by the Environmental Assessment (Scotland) Act 2005. An Environmental Report<sup>9</sup> was published alongside the Scottish Government’s Position Statement<sup>10</sup> on the planning review in June 2017.

181. The assessment concluded that there are no likely significant direct effects arising from the proposed changes to the planning system. There is potential for indirect positive effects arising from the proposed changes, particularly those that aim to increase transparency, community engagement, public participation and scrutiny at all stages of decision-making. In addition, aspects of the proposed changes including the introduction of a ‘gatecheck’ to help frontload development plan examinations, were also viewed as having potential to strengthen environmental consideration at the plan and project level. The assessment also found that there

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<sup>8</sup> <https://beta.gov.scot/policies/planning-architecture/reforming-planning-system/>

<sup>9</sup> <http://www.gov.scot/Resource/0052/00521889.pdf>

<sup>10</sup> <http://www.gov.scot/Publications/2017/06/1061>

may be both positive and negative secondary effects arising from improved delivery of development and infrastructure. Whilst there will be potential for benefits if green infrastructure delivery is prioritised, other infrastructure developments can generate a range of environmental effects, both positive and negative, depending on their planning, design, siting and context. Examples of impacts associated with construction activities and development work include increased levels of noise, dust and vibration; disturbance from construction traffic; temporary visual impacts; sealing and loss of soil; increased sedimentation and soil erosion; potential for increased flooding and water pollution; and fragmentation or loss of habitats, amongst others.

182. The assessment found that existing mechanisms are in place within the planning system to identify and manage the potential for adverse environmental impacts arising from proposed development, with the siting and design of development proposals being critical in avoiding or mitigating adverse effects; particularly on biodiversity features and the potential for impacts on landscape and setting. Recommendations for mitigation were set out in the environmental report and will be considered further. This includes a commitment to the preparation of new guidance on the application of SEA and Habitats Regulations Appraisal to both LDPs and LPPs.

183. The Position Statement and the Environmental Report were open to consultation from 29 June to 11 August 2017. A total of 122 responses were received from a wide range of stakeholders. Overall, the comments received on the Environmental Report were supportive of the assessment process and of the findings set out in the Environmental Report. Some stakeholders considered that more detail was required on aspects of the proposals, such as on simplified planning zones, and the Scottish Government has responded by making additional information available online as the detail of proposals have been worked up.

**ANNEX: LIST OF ABBREVIATIONS**

COSLA	Convention of Scottish Local Authorities
HOPS	Heads of Planning Scotland
LDP	Local development plan
LPP	Local place plan
NPF	National Planning Framework
PAC	Pre-application consultation
RTPI	Royal Town Planning Institute in Scotland
SDP	Strategic development plan
SDPA	Strategic Development Planning Authority
SOLACE	Society of Local Authority Chief Executives
SPP	Scottish Planning Policy

*This document relates to the Planning (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 4 December 2017*

# **PLANNING (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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