This short briefing has been produced to provide an introduction to town and country planning in Scotland. It describes the current legislative and administrative framework, and identifies the main agencies involved. It also highlights forthcoming developments in the Scottish planning system.

Further, more detailed, briefings on specific aspects of the Scottish planning system will be produced throughout the parliamentary session.
INTRODUCTION

The town and country planning system exists to guide the future development and use of land in Scotland for the long term public interest. It aims to ensure that new development and changes in land use happen in suitable locations. The Scottish Government sets out a vision for the Scottish planning system in the Scottish Planning Policy (Scottish Government 2014b) which states that:

“We live in a Scotland with a growing, low-carbon economy with progressively narrowing disparities in well-being and opportunity. It is growth that can be achieved whilst reducing emissions and which respects the quality of environment, place and life which makes our country so special. It is growth which increases solidarity – reducing inequalities between our regions. We live in sustainable, well-designed places and homes which meet our needs. We enjoy excellent transport and digital connections, internally and with the rest of the world.”

The Scottish Planning Policy defines four key outcomes which the planning system should aim to produce, these are:

- **A successful, sustainable place** - supporting sustainable economic growth and regeneration, and the creation of well-designed, sustainable places.
- **A low carbon place** - reducing carbon emissions and adapting to climate change.
- **A natural, resilient place** - helping to protect and enhance natural and cultural assets, and facilitating their sustainable use.
- **A more connected place** - supporting better transport and digital connectivity.

The Scottish Planning Policy also establishes seven core values that should underpin the operation of the planning system. These require the planning system to:

- Focus on outcomes, maximising benefits and balancing competing interests.
- Play a key role in facilitating sustainable economic growth, particularly the creation of new jobs and the strengthening of economic capacity and resilience within communities.
- Be plan-led, with plans being up-to-date and relevant.
- Make decisions in a timely, transparent and fair way to provide a supportive business environment and engender public confidence in the system.
- Be inclusive, engaging all interests as early and effectively as possible.
- Be proportionate, only imposing conditions and obligations where necessary.
- Uphold the law and enforce the terms of decisions made.

The planning system has three key elements, namely:

1. **Development Planning**: There are two types of development plan:

   - **Strategic Development Plans**: Strategic development plans set out a vision for the long term development of Scotland’s four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on issues such as land for housing, major business and retail developments, infrastructure provision and green belts/networks. A strategic development plan is drafted by a Strategic Development Planning Authority (SDPA), the membership of which is defined in statutory designation orders, e.g. the SESplan SDPA comprises the City of Edinburgh, East Lothian, Fife, Midlothian, Fife and Scottish Borders Councils. Each SDPA is under a statutory duty to publish and then update its strategic development plan at least once every five years.
SDPAs are required to publish, and update, a development plan scheme which outlines its programme for preparing and reviewing the strategic development plan and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each strategic development plan must be accompanied by an action programme, which must be updated at least once every two years.

- **Local Development Plans:** Local development plans cover the whole of Scotland and identify sites for new developments and set out policies that guide decision making on planning applications. Each planning authority (i.e. local authority or national park authority) is required to publish and then update local development plan(s) covering their area at least once every five years. In addition, planning authorities must publish, and update, a development plan scheme which outlines its programme for preparing and reviewing local development plans and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each local development plan must be accompanied by an action programme that must be updated at least once every two years.

In addition, planning authorities can produce supplementary planning guidance, which forms part of the development plan where it has met requirements on participation and adoption. Planning authorities may also publish other non-statutory guidance that does not form part of the development plan.

It is worth noting that strategic and local development plans were introduced by the Planning etc. (Scotland) Act 2006, although provisions allowing their development only came into force in late 2008. While the first round of Strategic Development Plans has been published, and work is underway on updated plans, some local development plans are still under development by planning authorities. Where this is the case, existing local plans (broadly similar to local development plans) remain in operation until they are superseded by new Local Development Plans.

More information on the development planning system can be found in Scottish Government Planning Circular 6/2013: Development Planning (Scottish Government 2013b).

2. **Development Management (formerly known as Development Control):** The development of land normally requires permission from a planning authority, normally the local or national park authority.

Some developments, for example changes to existing developments, such as certain house extensions are classed as “permitted development” and don’t need permission from the planning authority.

All proposed developments fall within one of the three categories of the hierarchy of developments, which can be described as follows:

i. **National developments:** Developments designated as of national significance in the National Planning Framework for Scotland

ii. **Major developments:** Nine classes of large scale development are defined as major developments in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009

iii. **Local Developments:** Any development which is not a national or major development is automatically categorised as a local development.
National developments are designated in the National Planning Framework, which is considered by Parliament to establish their need. Decisions on major developments will normally be made by Councillors of the relevant planning authority while local developments are likely to be decided by planning officers, under a scheme of delegation which devolves decision making powers over smaller scale developments from councillors to planning officers.

**What is a scheme of delegation?** Every planning authority is required to produce a “scheme of delegation” which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee.

Where an application sits within the hierarchy will influence how it is handled. For example, national and major developments are subject to a statutory requirement for pre-application consultation by the prospective developer.

Planning authorities are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. Material considerations include other national or local policies, e.g. the Scottish Planning Policy or Area Waste Plans, and letters of objection and support for the proposals.

In determining an application a planning authority can:

- Grant permission unconditionally.
- Grant permission subject to conditions.
- Refuse permission.

Where an authority decides to grant permission subject to conditions or refuses permission, the applicant has a right of appeal. If the decision was taken by elected members the appeal is to Scottish Ministers. If the decision was taken by a planning officer under a scheme of delegation the appeal is to the council’s Local Review Body.

**What is a local review body?** If a planning application for a local development is determined by an appointed person i.e. refused or granted subject to conditions, or where no decision is made within the specified time limit then the applicant can require that the decision be reviewed by a local review body. A local review body is made up of at least three elected members who were not involved in the original decision.


LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

This section briefly describes the key legislative and national policy documents which form the basis of the planning system.

Legislation: Two pieces of legislation govern the operation of the planning system:

- The Town and Country Planning (Scotland) Act 1997 (c.8): This Act is the basis for the planning system and sets out the roles of the Scottish Ministers and local authorities with regard to development plans, development management and enforcement. This Act was substantially amended by the Planning etc. (Scotland) Act 2006 (asp 17).

- Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9): This Act is mainly concerned with the designation and protection of listed buildings and conservation areas. This Act was amended by the Historic Environment (Amendment) Scotland Act 2011 (asp 3) and Historic Environment Scotland Act 2014 (asp19).

Policy: The Scottish Government sets out its key planning policies in four documents:

- The National Planning Framework for Scotland 3 (NPF3) (Scottish Government 2014a): sets out the Scottish Government’s strategy for Scotland’s spatial development for a period of 20 to 30 years. It also designates 14 national developments. Planning authorities are required to take account of NPF3 policies when drafting development plans and making development management decisions. NPF3 is accompanied by a regularly updated action programme and the Scottish Government provides updates on the implementation of NPF3. The National Planning Framework must be revised at least once every five years, although Scottish Ministers have the option of not revising it and issuing a written explanation as to why they have chosen not to do so.

- The Scottish Planning Policy (Scottish Government 2014b) sets out national planning policies which reflect Scottish Ministers’ priorities for operation of the planning system and for the development and use of land.

- Designing Streets (Scottish Government 2010) sets out national planning, architecture and transport policies as they relate to street design, while Creating Places (Scottish Government 2013d) sets out national policies on architecture and place making.

Circulars: Scottish Government planning circulars provide mainly procedural guidance and interpretation of legislation for local authority planners and other development professionals.

Advice: The Scottish Government produces a series of Planning Advice Notes (PANs) which provide advice, principally aimed at local authority planners, on good practice and other relevant information.

MAIN AGENCIES AND ORGANISATIONS

This section highlights the role of the major public organisations involved in the planning system.

Scottish Ministers: Scottish Ministers must approve strategic development plans before they come into force. Ministers do not approve local development plans, although they are normally only adopted following an examination in public conducted by a Reporter appointed by Scottish Ministers.
Scottish Ministers have a general power to intervene in any planning application. However, they normally only use this power, often referred to as calling-in an application, where it raises an issue of national importance.

Scottish Ministers also have a quasi-judicial role in the planning appeals process. For example, when the elected members of a planning authority decide to refuse planning permission or grant planning permission subject to conditions the applicant has a right of appeal to the Scottish Ministers within three months of the issue of the decision notice.

It is worth noting that major electricity generating stations, including wind farms, are approved by Scottish Ministers under the provisions of the Electricity Act 1989 and not the town and country planning system.

**Directorate for Planning and Environmental Appeals (DPEA):** Planning appeals to the Scottish Ministers are usually dealt with by a Reporter appointed by the DPEA. In most instances the appeal decision is made by the Reporter on behalf of the Scottish Ministers. However, in a small number of cases the Reporter does not issue the decision, but submits a report with a recommendation to the Scottish Ministers, who make the final decision. Most appeals are decided by means of written submissions. Scottish Ministers also appoint DPEA Reporters to hold development plan examinations into objections to development plans.

**The Court of Session:** If any party to a planning application believes that unfairness or a failure to comply with any requirement of the law prejudiced the decision of the planning authority, they may apply to the Court of Session within six weeks of the date of the decision. If the Court accepts that the decision-maker has acted unfairly, or has not complied fully with the law, it may quash the decision. However, the Court does not have the right to alter the decision; it can only refer the matter back to the decision-maker for re-examination.

**Local Authorities:** The Town and Country Planning (Scotland) Act 1997 designates local authorities as ‘planning authorities’ with a responsibility for producing, local development plans and handling most aspects of development management and enforcement. To varying extents, National Park Authorities carry out these functions in their areas.

**Strategic Development Planning Authorities (SDPAs):** There are four SDPAs, each of which are made up of a group of neighbouring planning authorities. Each SDPA is responsible for drafting a strategic development plan which covers one of Scotland’s four main city regions.

**Agencies:** Government and other agencies provide specialist advice to planning authorities on development planning and development management matters. Amongst others, these include Architecture and Design Scotland, Historic Scotland, Scottish Environmental Protection Agency (SEPA), Scottish Natural Heritage (SNH), Scottish Water and Transport Scotland.

**ONGOING DEVELOPMENTS IN TOWN AND COUNTRY PLANNING**

The Scottish Government’s [Programme for Scotland 2015-16](https://www.gov.scot/Resource/0053/00532968.pdf) (Scottish Government 2015a) states that the Scottish Government will review the planning system with a focus on delivering “a quicker, more accessible and efficient planning process, in particular increasing delivery of high quality housing developments”.

In September 2015, Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and Pensioners’ Rights announced (Scottish Government 2015b) the appointment of an independent panel to undertake a review of the Scottish planning system. The independent panel issued a call for written evidence on 19 October 2015, which posed a series of questions on the issues of development planning, housing delivery, planning for infrastructure,
development management, leadership/resourcing/skills and community engagement. The call for evidence closed on 1 December 2015.

An analysis of the written evidence (Scottish Government 2016a) submitted to the independent panel, prepared by Kevin Murray Associates and the University of Dundee, was published by the Scottish Government on 4 March 2016.

The independent panel published its final report, Empowering Planning to Deliver Great Places (Scottish Government 2016b), on 31 May 2016. The report made 48 recommendations to Scottish Ministers for changes to the planning system under six headings. The Scottish Government is now considering these recommendations and will publish its response in due course.

Further information on the review is available on the Scottish Government’s website.

The National Planning Framework for Scotland 3 was published on 23 June 2014. The Scottish Government is required to update the Framework every five years, i.e. by June 2019. This means that a new Framework will be developed, considered by the Scottish Parliament and formally published by Scottish Ministers during this parliamentary session.
SOURCES


The Hon. Lord Gill (General Editor), October 2002, Scottish Planning Encyclopaedia, Edinburgh: W. Green Sweet and Maxwell.


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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP.

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