

# **PLANNING ETC. (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Planning etc. (Scotland) Bill introduced in the Scottish Parliament on 19 December 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 51-EN.

### **THE BILL**

2. The Bill seeks to achieve the Scottish Executive's Partnership Agreement commitment to improve the planning system to strengthen the involvement of local communities, speed up decisions, reflect local views better and allow quicker investment decisions. In doing so, various parts and sections of the Town and Country Planning (Scotland) Act 1997 will be repealed and replaced. It also introduces provisions to enable the creation of business improvement districts in Scotland.

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

3. The primary objective of the Bill is to modernise the planning system to make it more efficient and give local people better opportunities to influence the decisions that affect them. It will do this in four distinct ways. First, it will make the planning system fit for purpose by introducing a clearer sense of priority and allowing different types of application to be addressed in different ways. This will make the planning system better able to facilitate delivery of the sustainable growth that Scotland needs. Secondly, it will ensure that the planning system is more efficient by establishing new requirements for the production of development plans that are at the heart of an efficient system that provides certainty for users, and are kept up-to-date. Thirdly, it will be an inclusive system where local people can be more involved in the decisions that affect them and their communities. Fourthly, it seeks to ensure that those making policy will promote development in the most sustainable locations.

4. The contents of the Bill are summarised below.

- Part 1 of the Bill makes provisions for the National Planning Framework. This part enhances the role and status of the NPF to make it a more powerful instrument for securing delivery of national policies and programmes.

- Part 2 of the Bill will replace the existing provisions in the 1997 Act relating to development planning. The central policy objective is to reinforce the primacy of development plans. Plans are critical instruments for providing clear visions of how our cities, towns and countryside areas should evolve. They must take a long-term view, identify sufficient land to meet the key needs of economic growth and housing development, protect important natural resources and historic environments, and form the core documents against which planning applications are measured for determination.
- The Bill will contain provisions designed to ensure that in the future, development plans are more relevant and kept up-to-date; local people will be more involved in their preparation; and that there is a more simplified process for examination and approval. In addition, the Bill will make provision for plans to be targeted on key spatial issues and, crucially, focused on delivery and outcomes.
- Part 3 of the Bill amends selectively the existing provisions relating to development control in Part III in the 1997 Act. The objective is to improve the operation of the development control process (renamed development management), so that planning applications are not unduly delayed, particularly where they relate to straightforward developments.
- Part 4 deals with changes required to planning control to enable better enforcement of unauthorised development, presently covered by Part 6 of the 1997 Act.
- Part 5 of the Bill deals with amendments to Part VII, Chapter I: Trees, of the 1997 Act. The amendments will streamline certain statutory procedures in relation to the protection of trees, while ensuring that existing protections are maintained or in some cases, strengthened.
- Part 6 deals with the introduction into the Bill of provisions relating to the correction of errors in decisions.
- Part 7 makes provisions for auditing and supporting the performance of planning authorities.
- Part 8 makes provision for modernising various aspects of the financial provisions currently set out in the 1997 Act.
- Part 9, Business Improvement Districts, introduces provisions to allow local businesses to invest collectively in improvements to the area they operate in. The Partnership agreement commitment was “to work with local authorities to establish Business Improvement Districts in Scotland”. There was no deadline for establishing BIDs, however the Executive gave the date 1 April 2007 as an indication dependent on securing a suitable legislative vehicle. It was agreed that the Planning Bill was the appropriate legislative vehicle to achieve this commitment.
- Part 10 sets out the policy for amendments to miscellaneous and general provisions.

## **Background**

5. The commitment to modernise the planning system is rooted in the belief that it is no longer serving Scotland well. Many users of the system have complained that it is over-bureaucratic, slow to respond to commercial and economic needs and unpredictable in its

outcomes. Community and voluntary groups often see the planning system as complex, intimidating, unresponsive to environmental or social concerns and lacking in transparency.

6. There are some clear indicators of failings in the planning system. 70% of local plans are more than 5 years old and around 20% are over 15 years old. This has led to uncertainty for all applicants for planning permission as well as local people. Inquiries are becoming more complex and slower to conclude.

7. The Scottish Executive's aims in modernising planning are to ensure that the system will facilitate rather than obstruct high quality appropriate development; protect the country's historic and natural environment and provide the basis for sustainable economic growth. The changes to the planning system will place up-to-date, relevant development plans at its core. These will:

- Provide a clear vision of how cities, towns and countryside areas should evolve, and which areas require special protection;
- Involve all interests in their preparation;
- Undergo Strategic Environmental Assessment, so that issues of sustainability and environmental impact are fully integrated into the process from the outset;
- Be the core document against which applications are assessed for determination.

## **Consultation**

8. The Planning Bill is the culmination of a series of consultations and discussions with stakeholders which started in 1999 with the issue of a consultation paper *Land Use Planning under a Scottish Parliament*. The responses to this began the wide ranging discussion on the future of the planning system. The Scottish Executive's first strategic document *Programme for Government*, published in autumn 1999, set out key milestones for each portfolio. Planning was initially included in the Environment portfolio, where there were two commitments:

- Improve the operation of the planning system to make it more positive and proactive; and
- Consult during 2001 on proposals to modernise the planning system, including: the overall planning framework; more public involvement in the planning process; and better quality development in urban and rural Scotland.

9. The first of these was carried forward into the second session of Parliament, while the second was achieved through the publication of two consultation documents in 2001.

10. The first of these consultation papers was published in June 2001 – *Review of Strategic Planning*, followed by *Getting involved in Planning* in November 2001. The findings of these were published in 2002. From *Review of Strategic Planning*, the Scottish Executive announced a series of changes aimed at modernising the planning policy framework, with the overall intention of establishing a plan-led system.

11. The consultation paper *Getting Involved in Planning* contained a review of the existing arrangements that enable people to become involved in planning issues. Following on from this

paper, the Scottish Executive published the White Paper, *Your Place Your Plan – A White Paper on Public Involvement in Planning* in March 2003. This White Paper set out how the Scottish Executive intended to improve public involvement in planning, and in particular the handling of planning applications.

12. *Getting Involved in Planning* also raised a number of issues relevant to the work of the Scottish Executive Inquiry Reporters Unit. A further consultation paper was published in June 2003 – *Modernising Public Local Inquiries – A Consultation Paper*. This paper considered the changes required to the public local inquiry system in order to make appeal inquiries more accessible and less intimidating.

13. In April 2004, the Scottish Executive published two further consultation papers, which reflect some of the outcomes of *Your Place Your Plan*. These were *Making Development Plans Deliver* and *Rights of Appeal in Planning*.

14. *Making Development Plans Deliver* took forward the proposals for reforming development planning as set out in *Review of Strategic Planning: Conclusions and Next Steps*. The aim of this consultation was to set out the detailed arrangements for strategic planning along with a set of proposals to modernise local plans. These two consultation papers revealed that there was a clear consensus on the need for improved development plans to direct and manage change in an efficient and transparent way.

15. The frustration with the perceived inequalities in the planning system led some people to call for third parties to be given a right of appeal against planning decisions. The Scottish Executive made a commitment in the 2003 Partnership Agreement to carry out a detailed examination of the issues involved through public consultation. The consultation, *Rights of Appeal in Planning*, assisted the Scottish Executive in considering whether to introduce a third party right of appeal.

16. In December 2004, the Scottish Executive published a consultation paper on *Tree Preservation Orders* that set out a number of specific proposals for changes to the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 1975. The proposals provided for improvements to the effectiveness of TPOs and to simplify what is seen as an overly complicated system.

17. In June 2005, the Executive launched the White Paper *Modernising the Planning System*. This White Paper sets out the way forward for Scotland's planning system.

## **DETAILED POLICY PROVISIONS**

### **PART 1 – NATIONAL PLANNING FRAMEWORK**

#### *Policy Objectives*

18. Scotland's first National Planning Framework (NPF) was published in April 2004. It has been well received and its strategic role has also been generally accepted. The Scottish

Executive intends to build on its success by enhancing its role and status to make it a more powerful instrument for securing delivery of national policies and programmes. The NPF will also play a key role in ensuring sustained co-ordination of policies with a spatial dimension, integrating and aligning strategic investment priorities and indicating where inter-regional choices need to be made.

19. The second NPF will be published in 2008, providing a strategy for the sustainable development of Scotland in the period to 2028. It will set out the Executive's strategic development priorities more precisely and it will play a key role in providing the national context of development plans, planning decisions and the ongoing programmes of the Executive, public agencies and local authorities.

20. The NPF will complement other top-level strategy documents such as the *Framework for Economic Development in Scotland* and *Smart, Successful Scotland* and reflect the Executive's priorities, actions and targets for sustainable development. It will address the key challenges of building a strong and competitive knowledge economy, strengthening and renewing infrastructure, promoting urban and rural regeneration and managing demographic change.

21. The NPF will support the role of Scotland's cities as drivers of the economy, addressing spatial planning issues of national importance which cut across city region boundaries. As a key aspect of the Executive's proposals for modernisation, the second NPF will place more emphasis on implementation than its predecessor. The NPF will identify responsibilities and outputs for locally-delivered services and facilities in key policy areas such as health, education, affordable housing and waste management.

#### *Alternative Approaches*

22. The overarching policy intention is to identify national strategic priorities and facilitate development which supports these. It is intended to use the NPF to create a stronger national context for both development plans, and for the determination of planning applications. One alternative approach considered was that the National Planning Framework should remain a non-statutory document. There was, however, a strong body of opinion that, building on the success of the first NPF, the next version should have a more formal and explicit role, which would be best set out in legislation.

23. It was also considered important that the Parliament should have some key role in the development of the NPF, appropriate to the status of the document. Opinions have varied on the nature of this role, with some bodies calling for an explicit approval procedure, and others suggesting a more advisory function. Given that the National Planning Framework is principally a statement of policy rather than a piece of legislation, it was decided to ensure that, while final decisions should rest with Ministers, Parliament should be given a formal right to express its view, which Ministers would have to take into account.

#### *Consultation*

24. Proposals for the National Planning Framework were set out in the White Paper *Modernising the Planning System*, June 2005. There was very widespread support for a stronger role for the NPF in setting out a long-term and strategic vision for the development of Scotland.

There was also strong support for a more open and consultative process for its preparation, with a wide range of suggestions as to how the process could be amended.

## **PART 2 – DEVELOPMENT PLANS**

### **SUSTAINABLE DEVELOPMENT**

#### *Policy Objective*

25. The White Paper, *Modernising the Planning System*, identified the need to ensure that development is sustainable as one of the four key principles upon which the modernisation programme is built. As the White Paper states, Scotland's future depends on development that is sustainable, in environmental, economic and social terms. As revitalised development plans will be at the heart of the modernised planning system, there should be an explicit requirement for those plans to be prepared with due regard to the principles of sustainable development.

#### *Alternative approaches*

26. It could be said that existing statutory and administrative provisions combine to require planning authorities to have regard to sustainable development in the performance of their planning functions. Scottish Planning Policy 1: the Planning System, published in November 2002, to which planning authorities must have regard, states that one of the primary objectives of the planning system is "to set the land use framework for promoting sustainable economic development". The duty of Best Value, introduced by the Local Government in Scotland Act 2003 also incorporates a duty on each local authority "to discharge its duties under this section in a way which contributes to the achievement of sustainable development". Scottish Ministers consider, however, that the link between development planning and sustainable development is so important that a clear statutory relationship should be established.

27. Some consultees argued that there should be an overarching statutory purpose for planning. It would, however, be too great a risk to introduce a provision in relation to individual planning applications, as it would be difficult to determine with legal certainty, whether or not the developments proposed were sustainable.

#### *Consultation*

28. The issue of a statutory definition for planning was raised in the consultation paper *Land Use Planning under a Scottish Parliament*, published in January 1999. Many respondents wanted to see the term sustainable development enshrined in legislation, but there was less agreement about how it should be defined. There was also little support for giving NPPGs (now SPPs) a legal basis. The Royal Commission on Environmental Pollution (RCEP) also raised these issues in its 23<sup>rd</sup> Report- *Environmental Planning*, in 2002, and suggested that there should be a clear expression of purpose in the Planning Acts.

29. In *Options for Change*, September 2003, Jeremy Rowan Robinson set out various options for tackling this issue. These include-

- Putting a general statement on promoting sustainable development in the Bill, similar to that in the new Planning and Compulsory Purchase Act 2004, and requiring planning authorities to have regard to further guidance issued by Scottish Ministers.
- Stating in the Bill the nature of the balance between the elements of sustainable development (something that has been avoided in other recent legislation) and again relying on guidance from Ministers.
- Avoiding any reference to sustainable development in legislation, and relying only on key objectives set out in SPP1, as above.
- Providing in the Bill a power for Ministers to issue statutory guidance on the purpose of the planning system, which shall include guidance on the achievement of sustainable development.

30. The White Paper, *Modernising the Planning System*, contains a chapter of the role of planning in relation to sustainable development, and a significant number commented on this issue in response. There was a substantial body of opinion that supported some form of statutory reference to sustainable development.

## **STRATEGIC DEVELOPMENT PLANNING**

### *Policy Objective*

31. The policy objective is to abolish structure plans and to make provision instead for strategic development plans. In future, strategic development plans will concentrate on an overview of genuinely strategic issues which cross council boundaries, for specified groups of authorities.

32. At present, some development plans do not provide up to date or relevant guidance for directing land use change. The Bill makes provisions designed to ensure more rigorous management of the plan-making process, so all development plans are kept under review, and updated at least every five years or whenever required by the Scottish Ministers.

33. The move to strategic development plans marks a significant change in the style and purpose of plans at this level. The preparation process needs to be more open and efficient. The policy objective is for strategic development plans to be brief, clear and more focused than structure plans. The Bill provisions require the new strategic development plans to set out a clear vision and spatial strategy for development. The key factors which the Strategic Development Planning Authority (SDPA) must take into account in preparing a plan are set out.

34. The policy intention is for the strategic development plan to be a short, accessible narrative, expressed simply in words and images. As at present, a map to illustrate the spatial development strategy will form part of the plan.

35. The provisions require Strategic Development Plan Authorities (SDPA) to submit to Scottish Ministers their proposed strategic development plan boundary, along with a statement justifying the selection of that boundary, within three months of formation of the authority. Once the boundaries have been agreed, the area to be covered by the plan will be known as the

“strategic development plan area”. The boundaries will then be fixed for the purposes of preparing that plan. The boundary may or may not coincide with local authority boundaries.

### **Preparation and monitoring of a strategic development plan**

36. It is the policy objective to make the process of preparing plans clearer and more accessible. To address this, the Bill makes provisions for the preparation of development plans to be focused around two stages: early engagement around a report on the main issues, leading to the preparation of a proposed plan, to which formal representations can be made.

37. The purpose of early engagement is to draw out any alternative strategies so that they can be fully considered and environmentally appraised by the SDPA when drawing up the proposed plan. This engagement will be centred on the *main issues report*. The Bill provisions require that a main issues report shall be published. It is envisaged that the report will identify the key areas of change that will need to be addressed in the strategic development plan. This report should also include preferred general locations for development and nature of those developments and reasonable alternatives. The report will provide sufficient information to ensure that local people, the development industry and other interests understand the SDPA’s proposals and can give meaningful responses to the SDPA.

38. The Bill provides a power to designate ‘key agencies’ for development planning in secondary legislation, requiring them to engage in the process. These key agencies will be required to work with the SDPA in compiling the issues report. The intention is that these bodies provide, at an early stage, information critical to the delivery of the proposals within the development plan and ensure better co-ordination of spending and policy decisions. There is also scope for Scottish Ministers to require that other bodies are consulted by the local authority in preparing the plan.

39. The policy intention is that after this early engagement, the SDPA should seek to resolve concerns where possible, before publishing the proposed plan. Formal representations (letters of support or objection) may be made on the proposed plan. Again the SDPA should seek to resolve any objections, by examining and clarifying proposals or offering an amendment to the plan.

40. The SDPA will then publish the amended proposed plan together with a brief report describing the extent to which the consultation statement in the Development Plan Scheme has been met. Where there are no outstanding representations, the planning authority may proceed to the adoption stages. At this stage, amendments which significantly alter the plan’s aims or strategy should not be made. If major amendments are required, then the SDPA will be required to publish a second proposed plan and carry out a further round of consultation.

41. Major improvements in development plan performance require a raised profile for development planning and effective management of the process. The Bill provisions set out a requirement for a *Development Plan Scheme* to be prepared as a means of setting the programme for producing and reviewing local development plans and strategic development plans. It will be updated annually and publicised widely, as well as submitted to Scottish Ministers for information and comment, particularly in relation to the national issues that Ministers may

expect to see addressed in the plans. It will provide greater certainty and predictability about the timescales for plan revision. The policy objective is for the process of preparing strategic development plans to take place in parallel with the local development plan that will be produced by councils in all areas.

42. Previous Scottish Executive research has highlighted that many local people are unclear about the importance of the development plan and tend not to get involved in planning until a planning application is submitted that affects them directly. The policy intention is, therefore, to ensure that all interests are sufficiently well informed to participate in this stage of the decision-making process. For each development plan, Bill provisions require that the planning authority will be required to include in the development plan scheme, a consultation statement explaining how they will engage local people, including minority groups, and stakeholders in the process, outlining when this will take place and what can be expected. The extent to which an authority has fulfilled its commitments in the consultation statement will be tested at the examination stage.

### **Examination of the proposed strategic development plan**

43. To ensure that local people's voices are fairly heard, the Bill introduces a mandatory examination for strategic development plans where objections have not been resolved or withdrawn.

44. The reporter will first examine the planning authority's report on the consultation statement to assess the extent to which it has been met or exceeded. Where the reporter finds, through the report of the consultation statement, that appropriate consultation was not carried out, he or she may recommend that additional steps are taken to fulfil the requirements. Secondly, the reporter will assess independently the key issues around which there is debate.

45. In the interests of independence and transparency, the reporter will be appointed by the Scottish Executive Inquiry Reporters Unit (SEIRU) rather than the planning authority. The intention is that the planning authority and the Scottish Ministers will share the cost of the examination. The reporter will have discretion over the method of the examination, for each representation. It is expected that written submissions will be used for most cases, and inquiry procedures should only be required where there are complex, technical issues. As well as saving time, this reduces the need for individuals to engage with an inquiry process which many consider to be intimidating and drawn out, dominated by lawyers, planning consultants, and often to the disadvantage of local people.

46. Provisions require that the reporter will submit his/her recommendations to the Scottish Ministers. At the same time, the report will be published and those parties who made representations on the plan shall be notified of its publication, including the means of publication.

### **Proposed strategic development plan: approval or rejection**

47. After the examination process, the policy objective is to provide the Scottish Ministers with a power to approve or reject the strategic development plan or make any amendments they consider justified.

48. Where there has been no examination (by virtue of there being no representations) and the Scottish Ministers propose to modify the plan, provisions require that there will be a period in which strategic development plan authorities and individual authorities or any other interested parties may submit comments to the Scottish Ministers, before Ministers then proceed to approve, amend or reject the plan. In addition, where there has been no examination, and therefore no view on the adequacy of the consultation statement has been framed, the Scottish Ministers will take on this role and assess the consultation statement.

49. Scottish Ministers may wish to reject the plan where they determine that it is unacceptable. This could be where, for example, the plan does not accord with national policy in a significant respect.

50. There will be no further consultation on the final decision of the Ministers on the plan and their decision will be binding on the SDPA, subject to appeal to the Courts.

### **LOCAL DEVELOPMENT PLANS**

#### *Policy Objective*

51. Local plans will be replaced with local development plans. Local development plans will be prepared by each planning authority for all parts of its district, thereby covering the whole of Scotland.

52. To improve quality and consistency and to ensure that development plans are accessible to users, there will be greater prescription of the form and content of plans. One of the main aims is to ensure that the form and content of plans is fit for purpose. Policies should be limited to those necessary to deliver the plan's aims and support decision making.

53. The local development plan will be required to set out the detailed policies and proposals for development and use of land in the area concerned. Additionally, in those areas not covered by a strategic development plan, they will also set out the vision and spatial strategy for the area. As with strategic development plans the vision will be a positive statement on the future of the area, based on a thorough understanding of how the area functions, the challenges it faces and community requirements and priorities. The spatial strategy will translate the vision to a statement, setting out the council's intentions on the key areas of growth and stability and the priorities for all the different geographical areas. This can be achieved either as part of a single, area-wide local development plan, or within a set of local development plans covering the area.

54. To have an efficient planning system, the Bill provisions place a statutory duty on planning authorities to keep local development plans (as with strategic development plans) under review, and update them at least every 5 years, or whenever required by the Scottish Ministers.

Planning authorities will also be required to ensure that the local development plans are consistent with the strategic development (where present), take into account the National Planning Framework, other considerations that may be prescribed and other considerations that the planning authority considers to be necessary.

### **Preparation of the local development plan**

55. As with strategic development plans, the policy objective is to make the process of preparing plans clearer and more accessible.

56. To address this, the Bill makes provisions for the preparation of development plans to be focused around two stages: early engagement around a report on the main issues, leading to the preparation of a proposed plan to which formal objections or expressions of support can be made. It is intended that the procedures for the preparation of the local development plan will be broadly the same as for the strategic development plan, up until the end of the proposed plan stage.

57. The Bill provisions require the planning authority to have regard to representations made to them in respect of the main issues report, and to prepare and publish a proposed local development plan for consultation. Key agencies will be sent a copy of the proposed local development plan and be consulted on its content, as well as being required to engage in the process. There is also scope for Scottish Ministers to require that other bodies are consulted in plan preparation.

58. In addition, the intention is to require the planning authority to notify owners, occupiers and neighbours of new site specific proposals in local development plans – the detail of these new procedures will be set out in detail in secondary legislation. In this way, individuals who may be directly affected by proposals in the plan will be alerted to the opportunity to make an informed representation at an early stage.

### **Post-proposed plan stage**

59. In moving to adopt a local development plan, the policy objective is for the planning authority to consider all representations received and seek to negotiate with objectors, making changes to the plan to accommodate comments, wherever possible.

60. As with strategic development plans, the policy intention is that an examination of the proposed plan must be held if there are objections to the plan which have not been withdrawn. If there are no objections, the plan will go forward without examination. Where there are no objections and the planning authority wants to amend the plan significantly for some reason, it will need to prepare a second proposed plan and carry out further consultation.

### **Examination of proposed local development plan**

61. Where objections remain unresolved, a reporter will undertake an examination of the objections, weighing arguments from all participants before reaching conclusions and recommendations. The first task will be to assess the level of public consultation and where the

reporter finds that appropriate consultation was not carried out, a recommendation may be made that additional steps are to be taken. The reporter will also be assessing the extent to which the plan conforms to national policy and the strategic development plan, where appropriate.

62. To increase transparency and fairness, the reporter will be appointed by the Scottish Ministers rather than by the planning authority. The reporter will conduct the examination and recover costs from the planning authority. He/she will determine whether to respond to each representation by a full inquiry, a hearing or considering written submissions.

63. The reporter will then publish a report of his/her recommendations, copying it to the planning authority, publishing it and notifying those who made representations of its publication.

64. To promote greater confidence in the system and reassure those who have not participated in the plan making process, the policy objective is to limit the scope of the planning authority to depart from the reporter's recommendation. The criteria against which a proposed departure will be judged will be set out in secondary legislation.

### **Adoption of local development plan**

65. Planning authorities will be required, as at present, to notify Scottish Ministers of their intention to adopt the LDP. Provisions are designed so that the authority cannot adopt the LDP until 28 days (with the right for Ministers to extend the period as required) has expired from the date Scottish Ministers were notified of the authorities intention to adopt the plan have elapsed. This allows Ministers to consider the plan and the amendments.

66. If no examination has been held, then Scottish Ministers will receive the plan directly from the planning authority after the proposed plan stage. Ministers will in this case, be required to assess the report on the consultation statement.

67. For both routes (i.e. with and without examination), Ministers will notify the planning authority that they agree to the adoption of the plan. If they are not content, they may direct the authority to amend the plan before allowing it to be adopted (current provisions s.17(4)). Ministers may also direct that the plan shall be submitted to Ministers for their approval (current provisions s.18 of the 1997 Act).

### **Action Programmes**

68. The policy intention is to provide greater certainty that the policies and proposals in the development plan will be delivered. In order to achieve this, an action programme is to be prepared alongside each plan.

69. The Bill provisions include a duty on planning authorities to prepare an action programme alongside each development plan. This document will set out actions required to implement each of the plan's policies and proposals. The action programme will state what is to be done, who is responsible and when it will be achieved. It will be monitored and updated to reflect completed work and revised timescales and published at least every 2 years. This will

help to create a climate of certainty for the users of the system. The planning authority will be required to consult certain bodies in finalising the action programme.

### **Supplementary Guidance**

70. Currently, supplementary guidance is not statutory. This has resulted in many authorities including detailed policy guidance in the local plan. This is inconsistent with the modernisation agenda where plans will be shorter, better focused on key spatial issues and clearly structured. Statements made in supplementary guidance also carry less weight than those in the development plan in determining planning applications and appeals, and are usually considered as material considerations.

71. In future, we want local development plans to focus on the general policies and proposals and for supplementary guidance to have a statutory basis. The scope of supplementary guidance will be focused on a particular planning policy or locality-specific issue. This will allow simpler arrangements, tailored to meet particular circumstances.

72. The Bill makes provision for planning authorities to produce statutory guidance which will supplement the local development plan. The provisions are designed to ensure that detailed guidance is provided alongside the local development plan rather than contained in it. Examples of the subjects that could be dealt with in supplementary guidance are master plans, development briefs, detailed design guidance and other detailed policy guidance to support development plan policies and proposals.

73. Supplementary guidance is intended to develop planning policies contained in a development plan in greater detail, so its preparation must follow the adoption or approval of that plan by the planning authority. Supplementary guidance will be subject to prescribed procedures for public consultation and approval to ensure that there is adequate engagement, including that of equality groups, around its content.

### *Alternatives approaches*

74. Both consultation papers, the *Review of Strategic Planning (RoSP) 2001*, and *Making Development Plans Deliver (MDPD)*, 2004 outlined alternatives in relation to development planning and further options were raised in response. The key debate around alternatives related to:

75. Coverage of SDPs – One alternative considered was to abolish strategic development plans, and for Scotland to be covered by unitary development plans. Other alternatives focused around which areas should be covered by strategic development plans. It was considered that the issues in the four largest city regions were such that co-ordinated planning was required across local authority boundaries in these areas. Elsewhere, it was considered that local development plans were adequate.

76. Sanctions and incentives for DP preparation and review - alternatives considered in MDPD that would have implications for the Bill were:

- (a) Limiting the primacy of the development plan for decision making after a set period following adoption/approval – there was some support from respondents to this suggestion, particularly from business and development interests who were keen to encourage the preparation of up-to-date development plans. In addition it was suggested that there should be deemed consent for applications within 6 weeks of registration, where there is no up-to-date development plan. Many planning authorities and other groups, however, saw potentially damaging effects in these options, in that parts of the plan might still be relevant to decision-making regardless of the plan's age, and the loss of primacy would result in a policy vacuum, which may have unintended consequences. It was suggested that delay tactics might be used by some parties to force the primacy of the plan to be limited to help a particular position on a development proposal. In practice, the weight attached to up-to-date and relevant material considerations would increase as the development plan become older so it was considered, on balance that this was not an effective way to support planning authorities to produce plans more quickly and effectively.
- (b) Removing the right to charge fees on planning applications after a set period following adoption/approval – there was little support for this suggestion, principally as this would unfairly disadvantage the planning authority and might be counter-productive to the aim of speeding up plan preparation.
- (c) Linking good performance with additional resources – there was much support for this suggestion from a range of parties. It was considered inappropriate, however, to make a direct connection between performance and additional resources as these might not be ring-fenced to provide assistance to the development planning team, or even the planning department. There were also concerns that such a scheme could be open to abuse through the misrepresentation of performance indicators. It is possible, however, that other ways to reward good performance can be found without requiring changes to legislation.

77. Retain consultation draft – some consultation responses felt that the option to consult on draft policies and proposals was still valuable and necessary. The need to retain the consultation draft stage was examined, particularly in light of requirements for Strategic Environmental Assessment under the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004. It was considered, however, that early, targeted consultation on a main issues report, looking at the key issues that have arisen since the last plan was adopted/approved, would provide greater flexibility for planning authorities to carry out consultation that was appropriate to the issues and the audience. In addition, the proposed plan stage would provide a formal opportunity for all parties to comment on the detailed content of the plan.

78. Scope for planning authorities to depart from reporters' recommendations – The consultation *Getting Involved in Planning* suggested that the scope to depart from reporters' recommendation should be limited. While the majority of respondents were in favour of the proposal, only 48% of local authorities expressed support. The need for a degree of flexibility to depart from the recommendations was accepted, for example, to deal with errors that are made. It was considered, however, that in the interests of fairness and transparency for those participating in the examination, the approach towards the reporters' recommendations should be strengthened. Therefore, in *Your Place Your Plan* and subsequently in *Modernising the*

*Planning System*, it was announced that the proposal should be pursued and the Bill provides powers to set out in secondary legislation the criteria against which departures will be judged.

#### *Consultation*

79. In June 2001, the *Review of Strategic Planning* (RoSP) consultation paper set out a series of proposals aimed at modernising the planning policy framework at the national level and putting in place a more effective set of development plans. RoSP proposed the removal of structure plans and their replacement with strategic development plans in the four largest cities. Other proposals included: the introduction of joint committees for the preparation of strategic development plans; the preparation of action plans (now called action programmes); mandatory public examination of strategic development plans; preparation of development plan schemes; and greater use of supplementary planning guidance.

80. RoSP drew on the result of a series of discussions and seminars with local authorities, agencies, professional institutes, voluntary organisations, transport operators and planning schools as well as private sector interest such as house builders and planning consultants. The consultation attracted widespread support. The *Conclusions and Next Steps to RoSP*, published in June 2002, confirmed Ministers intentions to remove structure plans and replace them with strategic development plans as taking forward many of the other proposals.

81. In April 2004, the *Making Development Plans Deliver* (MDPD) consultation paper set out proposals on the detailed arrangements for the preparation of the new strategic development plans and the new approach to development planning at a local level. To inform the consultation paper, discussions took place with a range of stakeholders including local authorities, business interests, public agencies and voluntary and community groups. In particular, two seminars were held in April and November 2003 to discuss issues and opportunities, and a project with Highland and South Lanarkshire Councils trailed a number of proposals for improving development plans as the councils were preparing their new local plans. Following the publication of the consultation paper, an intensive programme of engagement with stakeholders took place, visiting local authorities, agencies, environmental groups, house builders and professional bodies to discuss and debate the proposals. Again there was widespread support for the proposals, the conclusions of which were announced through the publication of the White Paper in June 2005.

### **PART 3 – DEVELOPMENT MANAGEMENT**

#### **Meaning of Development - Mezzanine Floors**

##### *Policy Objectives*

82. Protecting and enhancing town centres is a key consideration which underpins Government policy. Planning authorities are expected to reflect the primacy of town centres and promote comprehensive policies and proposals for sustaining them, both through development plans and development control decisions. Out of town retail and commercial leisure developments can be detrimental to the viability of local shopping centres and the use of mezzanine floors by supermarkets enabling them to sell non-food items has contributed to further damage to town centres in recent years.

83. The installation of mezzanine floors is viewed as a planning loophole permitting retail development without appropriate controls. If developers want to build a mezzanine level inside a building, they can do so at present without planning permission, unless there are conditions in their existing planning consent which expressly forbid it. Accordingly, substantial internal floor space can be developed without an opportunity for local people to say how it will affect their community, or for planning authorities to consider the effects on road traffic and the established pattern of retailing.

84. The amendment to the Act will not prohibit any further internal expansion of retail stores; it will simply ensure that it is treated as development within the meaning of the Act. Any proposals will be brought within the scope of the planning system. Local planning authorities will be able to set their own policies in their local development frameworks to allow or restrict such developments. This provision will also be in line with a plan-led system.

#### *Alternative approaches*

85. The only alternative approach was to make no change to the current provisions that allow construction of mezzanine floors..

### **Meaning of Development – Marine Fish Farming**

#### *Policy objectives*

86. The Bill contains provisions relating to the regulation of marine fish farming. The provisions will have the effect of extending controls over marine fish farms within planning legislation, and extending the powers for regulating marine fish farms to territorial waters.

87. The Water Environment and Water Services (Scotland) Act 2003 (WEWS) gives the Scottish Ministers the power to extend planning controls to marine fish farming over transitional and coastal waters i.e. out to the 3 nautical mile limit. However, the policy intention is that planning controls for fish farms should extend over the territorial sea i.e. to the 12 mile limit. At present, the Zetland County Council Act 1974 gives Shetland Islands Council powers to grant works licences in territorial waters adjacent to Shetland. These provisions have been used to regulate marine fish farm developments. If planning controls were to be limited to coastal and transitional waters, this would lead to two control regimes in waters adjacent to Shetland - a planning control regime out to the 3 nautical mile limit with a works licence regime continuing to operate for the remaining waters out to the territorial limit. Extending planning controls to the 12 mile limit would do away with a dual control regime which would otherwise exist and deliver one mechanism of control throughout Scottish territorial waters.

88. In addition, the WEWS Act was amended during its Parliamentary process to include provisions that, when commenced, will introduce various amendments to the Town and Country Planning (Scotland) Act 1997. However, it also includes provisions relating to order making powers which for reasons of clarity and consistency are better placed in planning legislation than being enacted through the WEWS Act. The Bill also contains provisions to enable National Parks to be given responsibility for marine fish farms in designated marine areas.

### *Consultation*

89. In November 1997 the then Scottish Office Minister Lord Sewel announced, as part of HM Government's response to the Report of the Scottish Salmon Strategy Task Force, the intention to introduce planning controls over marine fish farming.

90. In the consultation paper *The Extension of Planning Controls to Marine Fish Farming* published in 2000, the Executive announced that proposals to extend planning controls over marine fish farming would be introduced through primary legislation. The intention was that this would include fish farm developments in marine waters from the low water mark to the 12 mile territorial sea limit. Only a few respondents commented on this particular proposal, and of those who did only one believed it was excessive for the new powers to apply to the full 12 mile limit.

## **Hierarchy of developments for purposes of development management**

### *Policy Objectives*

91. Currently, planning applications are dealt with under Part III of the 1997 Act with detailed procedural provisions set out in the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 (GDPO). The policy intention is that the Scottish Ministers will be able to designate different types of development as coming within a particular category of the hierarchical framework, in secondary legislation.

92. Applications for proposed developments identified as falling within one of the designated categories (national, major, local and minor) will, during the development management process, be subject to different procedures for submission, processing and determination depending on the category in which they fall. The aim is to allow for a more proportionate approach by focusing engagement and scrutiny on the more complex development management issues, while at the same time seeking to streamline and speed up those processes, where possible.

93. Under the new hierarchy for planning, public bodies will be able to prioritise better the way in which they use resources more effectively; facilitate national political debates about infrastructure; devolve local decision making; involve local people more effectively; and encourage development that is sustainable.

### *Alternative Approaches*

94. The only alternative approach was to make no change to Part III of the 1997 Act.

### *Consultation*

95. The proposals for a planning hierarchy were set out in the White Paper *Modernising the Planning System*, June 2005 and had not been subject to previous consultation. It is proposed that planning applications should be processed by the planning system in different ways depending upon whether they raise issues of national, major, local or minor importance. There were many comments, both about the hierarchy as a whole and the particular levels within it.

## **Initiation and completion of development**

### *Policy Objective*

96. The Scottish Executive has considered ways in which pro-active enforcement can be given a higher profile by local authorities in order to strengthen public confidence in the planning system and address the general perception that planning enforcement measures can take a long time to produce any action.

97. The Bill introduces a requirement for developers to notify the planning authority of their intention to start development and, when completed, to inform the authority by notice of its completion. Additionally where an application discloses development is to be carried out in phases, or the planning authority considers it to be appropriate, a condition of consent will require developers to give notice of the completion of each phase. Planning authorities will then be able to monitor compliance with planning conditions throughout the development process and to identify and address any breach of planning control at an early stage.

### *Alternative approaches*

98. The only alternative approach considered was to make no change to the existing provisions.

### *Consultation*

99. The proposal to introduce start and completion notices was set out in the White Paper, *Modernising the Planning System*, June 2005 which received very strong support.

## **Applications for planning permission and certain consents**

### *Policy Objectives*

100. At present, each planning authority has its own range of planning application forms. The Bill gives Scottish Ministers the power to prescribe standard application forms, including forms for advertisement consent, listed building consent and consent under a tree preservation order. The introduction of standard application forms will establish consistency in planning application forms across Scotland, which in turn will assist users of the planning system and has the potential to reduce delays arising from incomplete applications. It is envisaged that the introduction of standard application forms will require consequential amendments to the GPDO 1992, following consultation by the Scottish Ministers.

### *Alternative approaches*

101. The only alternative approach considered was to make no change to the existing provisions.

### *Consultation*

102. The introduction of the standard application form was raised as a proposal in the consultation paper *Getting Involved in Planning* in 2001. The White Paper *Your Place Your Plan* in 2003 identified overwhelming support from all respondent groups for this proposal. The

proposal was subsequently raised in the White Paper *Modernising the Planning System* in June 2005.

## **Variation of planning applications**

### *Policy Objective*

103. At present planning applications are the subject of discussion and negotiation between the applicant and the planning authority. As a result, variations may be made to the application after the initial notification of the application to the community. In the past this has caused some disquiet. Variations are frequently made in response to consultations and as part of the process of ensuring the best development for the site. Responsible planning authorities already make arrangements for re-notification where significant alterations have been made, so that views can be taken into account.

104. It is the intention to place variation of applications on a statutory footing by making it clear that an application can only be varied with the agreement of the planning authority. Secondary legislation will define the circumstances and period within which variation is permissible, and will link to guidance on the notification of applications.

105. These provisions will make it clear that where variation would result in a substantial change to the development for which permission was originally sought, a new application will be necessary and also that there is no scope to vary an application, as considered by the planning authority, after an appeal has been lodged.

106. Similar provisions are also included for planning applications which are referred to the Scottish Ministers and called in for their decision.

### *Alternative approaches*

107. The only alternative approach considered was to make no change to the existing system.

### *Consultation*

108. This is a minor change and has not been subject to consultation.

## **Development already carried out**

### *Policy Objective*

109. The policy objective here is to build public confidence by introducing procedures that allow breaches of planning control to be dealt with effectively. Even where retrospective planning permission is applied for and granted, there is a public perception of unfairness, as often the suspicion remains that the developer may have been refused consent or had more rigorous conditions applied, had the development not been underway or even completed already.

110. Currently a request for retrospective planning permission does not constitute enforcement action. Where no enforcement action is taken against a development within 4 years, the development is deemed to be lawful, creating a loophole whereby a developer may choose to

ignore a request for a retrospective planning application and, unless the planning authority takes other action, simply wait for the development to become lawful. The Bill amends the Act so that a request to apply for retrospective planning permission by the appropriate planning authority will in future constitute enforcement action.

#### *Alternative approaches*

111. The only alternative approach considered was to make no change to the existing system.

#### *Consultation*

112. Enforcement issues were raised in the consultation paper *Getting Involved in Planning*, published in 2001, with respondents expressing concern that there should be more rigorous application of enforcement measures. Proposals for retrospective planning applications were set out in the White Paper *Modernising the Planning System*, June 2005.

### **Publicity for Applications**

#### *Policy Objectives*

113. Neighbour Notification is the formal means by which people with an interest in land or property are notified directly of a planning application relating to an adjoining site. The policy intention underlying these provisions is to strengthen public confidence in the planning system and encourage more effective public participation by transferring the responsibility for neighbour notification to planning authorities. The provisions in the Bill will also allow for more information about planning proposals and the planning process to be provided to neighbours with a notification to help people respond more effectively to planning proposals and provide for an extended period within which interested parties are required to submit representations relating to planning applications.

#### *Alternative Approaches*

114. The consultation paper *Getting Involved in Planning* set out proposals for modernising the neighbour notification system. The White Paper *Your Place Your Plan* then set out how the Executive would take forward these proposals. The majority of the proposals for neighbour notification were widely supported and it was decided that the Executive would implement these proposals. Two of the proposals were not widely accepted and it was decided by the Executive that these proposals would not be pursued. These proposals were:

- Planning authorities having flexibility in deciding how best to serve neighbour notification
- Retaining the duty to neighbour notify owners and occupiers but removing it for non-domestic lessees.

#### *Consultation*

115. The White Paper *Your Place Your Plan* confirmed the Executive's intention to transfer responsibility for neighbour notification in relation to planning applications from applicants to planning authorities. This was developed further in the White Paper, *Modernising the Planning System*, published in June 2005.

## **Pre-application Consultation**

### *Policy Objectives*

116. The policy objective is to strengthen public participation in the planning system and, in particular, to allow interested parties to express their views on a development proposal before an application is submitted to the planning authority. The categories of development considered appropriate for pre-application consultations will include:-

- Proposals for major developments;
- Proposals for developments that require an Environmental Impact Assessment; and
- Proposals for developments defined as large scale “Bad Neighbour” development which represent a significant departure from the development plan.

### *Alternative approaches*

117. The only alternative approach considered was to make no change to the existing system.

### *Consultation*

118. The White Paper *Modernising the Planning System*, June 2005, gave a commitment to introduce a statutory requirement for developers to engage in pre-application consultations with local people.

## **Public availability of information as to how planning applications have been dealt with**

### *Policy Objectives*

119. At present the planning system does not specify the form and content of decision notices, nor does it require planning authorities to provide a record of how a decision was reached. There have been concerns expressed by members of the public about access to the terms of a decision notice, understanding how a decision was reached and whether their views and other material considerations played a role in determining the outcome of the application.

120. To address this, the Bill provisions include a requirement to publish a decision notice including the terms of the decision, any planning conditions and the reasons for the Council’s decision and for those conditions. A further power is included to allow Ministers to expand that list in secondary legislation. It also includes requirements to put that notice on the planning register, along with details of the other issues involved in determining the application.

### *Alternative Approaches*

121. The only alternative approach considered was to make no change to the existing system.

### *Consultation*

122. This issue was raised in the consultation paper *Getting Involved in Planning*, published in 2001. The White Paper *Your Place Your Plan*, published in 2003, identified the widespread support for this proposal, which was seen as important in making the planning system more

open, transparent and accountable. This proposal was detailed further in the White Paper *Modernising the Planning System*, June 2005.

## **Keeping and publishing lists of applications**

### *Policy Objectives*

123. Planning authorities are currently required to produce weekly lists of planning applications that are submitted to them and then pass the list on to Community Councils. Such lists are often used more generally for providing information on applications before the authority. The form, content and availability of such lists are currently provided for in secondary legislation which will be amended to meet the new policy objectives for this provision.

124. The purpose of requiring planning authorities, by law, to produce these weekly lists is to improve the public's awareness of planning applications. Parties who are interested in development proposals in an area should be able to access information on relevant planning applications easily and this proposal will assist in achieving this.

125. Therefore, in order to bring consistency to the use of weekly lists and the public's ability to access such lists, the Bill contains provisions for regulations to be made specifying content, advertising and availability of lists, and including allowing publication on the internet.

### *Alternative Approaches*

126. The consultation paper *Getting Involved in Planning*, 2001, raised a number of options to raise public involvement in development management through the advertisement of planning applications. One option was to give local authorities the ability to decide themselves how best to publicise planning proposals locally. This was not well supported as retaining a degree of standardisation was seen as important and therefore this proposal was not pursued.

### *Consultation*

127. The issue of weekly lists was raised in the consultation paper *Getting Involved in Planning*, published in 2001. The White Paper, *Your Place Your Plan*, published in 2003, identified almost universal agreement that the use of weekly lists was a good thing. Proposals for the changes described above were contained in the *Modernising the Planning System* White Paper, published in 2005.

## **Pre-determination hearings**

### *Policy Objectives*

128. This area of policy seeks to support greater inclusion by introducing procedures for enhanced scrutiny of controversial applications, particularly those that are considered contrary to the development plan. This supports the plan-led system by putting the emphasis on greater engagement at the planning application stage, for applications that do not conform with the development plan. Both pre-application consultations and hearings are proposed, along with notification to Scottish Ministers, to ensure these proposals are properly discussed and scrutinised.

129. The policy objective is to strengthen public participation in the planning system. Planning authorities will be required to hold hearings as part of the determination process for the following categories of applications :-

- Applications for major and local developments which are significantly contrary to the development plan ;
- Applications for development that requires an Environmental Impact Assessment ; and
- Applications for developments defined in secondary legislation as large-scale “Bad Neighbours”.

*Alternative approaches*

130. The only alternative approach considered was to make no change to the existing system.

*Consultation*

131. The White Paper *Modernising the Planning System* indicated the Executive’s intention to introduce measures to promote the greater use of hearings to allow the views of objectors and other interested parties to be heard before a planning decision is taken.

**Additional ground for declining to determine an application for planning permission**

*Policy Objectives*

132. There are concerns regarding the ability of applicants to apply repeatedly for similar developments on the same site. The Executive has recognised a need to strike the right balance between allowing repeat applications in order to make useful amendments to proposals, without allowing such repetition to be used to exhaust the system.

133. This policy objective allows planning authorities to decline to determine further similar applications where more than one previous, application for the same site has been refused by them, and there have been no changes to the relevant development plan policies or other material considerations. This does not require an appeal to be made and the decision upheld by Ministers. This will allow one repeat application so applicants can seek to address concerns raised by the first application, before the planning authority has the discretion to decline to determine further, similar applications.

*Alternative approaches*

134. The only alternative approach considered was to make no change to the existing provisions.

*Consultation*

135. This proposal was included in the White Paper *Modernising the Planning System*, published in 2005.

**Manner in which applications for planning permission are dealt with etc.**

*Policy Objective*

136. The policy objective is to give Scottish Ministers the power to:-

- direct a planning authority to impose conditions on the grant of a planning application in order to make the development acceptable and;
- provide that the planning authority shall not grant the planning permission unless it satisfies Scottish Ministers that it has taken the necessary steps to comply with the direction.

137. It is envisaged that this power will be used in situations where a planning authority has indicated that it is minded to grant planning permission but has been required, in terms of Directions, to notify Scottish Ministers of its intent. Currently, where an application is subject to such notification procedures, Scottish Ministers have the option of either clearing it back to the planning authority to determine as it sees fit, or calling it in for their own determination. They cannot impose, or require the planning authority to impose, conditions without calling in the application and determining it themselves.

138. The new power enables Scottish Ministers to clear back the application to the planning authority on the understanding that conditions will be attached, rather than having to call it in for their own determination, a process which currently results in a requirement to go through a public local inquiry, hearing or written submissions procedure to allow Scottish Ministers to attach the required conditions when granting consent.

*Alternative approaches*

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

*Consultation*

140. This is a minor change that did not require consultation.

**Requirements as to content of notice of planning authority's decision**

*Policy Objectives*

141. A planning application is not determined until a decision notice has been signed, and decisions should be notified as soon as possible after that. At present the planning system does not specify the form and content of decision notices, nor does it require planning authorities to provide a record of how a decision was reached.

142. There have been concerns expressed by members of the public about access to the terms of a decision notice, understanding how a decision was reached and whether their views and other material consideration played a role in determining the outcome of the application.

143. To address this, the Bill provisions include a requirement to publish a decision notice including the terms of the decision, any planning conditions and the reasons behind the council's decision and the imposition of the conditions. A further power is included to allow Scottish Ministers to extend the matters to be included in the decision notice in secondary legislation. It also includes requirements to put that notice on the planning register, along with details of the other issues involved in determining the application.

#### *Alternative approaches*

144. The consultation paper *Getting Involved in Planning* set out the policy behind this proposal which were widely supported. No alternative approaches were considered, except to make no change to the existing system.

#### *Consultation*

145. This issue was raised in the consultation paper *Getting Involved in Planning*, published in 2001. The White Paper *Your Place Your Plan*, published in 2003, identified the widespread support for this proposal, which was seen as important in making the planning system more open, transparent and accountable. This proposal was set out with further explanation as to how it will improve the system in the White Paper *Modernising the Planning System*, June 2005.

### **Local Developments: schemes of delegation**

#### *Policy objectives*

146. Many local developments will be consistent with the terms of the development plan and can be processed quickly by planning officers. The policy aim is to ensure that wide-ranging schemes of delegation are put in place, allowing officers to approve and refuse applications.

147. Planning authorities will be required to submit proposed schemes of delegation to the Scottish Ministers before the Council agrees the scheme. It is intended to set out detailed procedures on the form and content of the schemes and the preparation and adoption procedures in secondary legislation. The introduction of schemes of delegation will provide a clear, accelerated process at the local level for many small-scale developments that are not controversial and are in accordance with the development plan. Planning applications for local developments which do not fall within the terms of the scheme of delegation will go to the Planning Committee for a decision by Council Members.

148. Decisions that have been taken by delegated officials will be subject to review by the planning authority. Where an application is refused, the applicant will be able to require that the planning authority reviews their decision. The form and procedure for such reviews will be set out in regulations.

#### *Alternative approaches*

149. No alternative approaches were considered. Delegation to officers already operates successfully in most Councils and is an efficient way to deal with a proportion of the majority of the planning applications that are received.

### *Consultation*

150. This proposal was set out in the White Paper *Modernising the Planning System*, June 2005 and received sustained levels of support.

## **Call-in of applications by Scottish Ministers**

### *Policy Objectives*

151. The policy objective is to provide the Scottish Ministers with a specific power to withdraw or modify any Direction they have made, which has resulted in a planning application being called in for their own determination. This will assist in speeding up the system and will allow decisions to be made at the most appropriate level.

152. At present, a planning application may be called in because, for example, a statutory consultee has raised concerns about the effect of the proposal which are considered to be sufficient to warrant Ministers' intervention. Subsequent discussions between the consultee and the applicant may lead to a resolution of those concerns, with the result that there may no longer be a need for Ministers' intervention in the determination of the application.

153. This new power will enable Ministers to withdraw the Direction, thereby allowing the planning authority to grant planning permission. Without this specific power Ministers could be required to proceed to determine the application themselves, which could entail a public local inquiry, hearing or written submissions process, which would delay the decision.

### *Alternative approaches*

154. The only alternative approach considered was to make no change to the existing provisions.

## **APPEALS**

155. The Bill contains provisions designed to improve the quality, fairness and efficiency of the system of appeals to the Scottish Ministers against refusals of planning permission and against conditions imposed on planning permissions by planning authorities, as well as against their failure to decide applications within the statutory period.

### **Method of determination**

#### *Policy Objectives*

156. Under present provisions planning authorities and appellants can insist on an oral hearing of their case by means of a public local inquiry. The Bill enables Scottish Ministers to determine the most suitable means of determining each appeal, through written submissions, a hearing or an inquiry, or any combination of these.

#### *Alternative approaches*

157. The alternative approaches put forward in the consultation were:

158. **Option 1:** irrespective of the wishes of the main parties, the Scottish Ministers could decide, based on indicative criteria, whether an inquiry, a hearing or an exchange of written submissions should be used to determine the appeal;

159. **Option 2:** where a planning inquiry was requested by one of the main parties the Scottish Ministers could decide, on the circumstances of each case, whether an inquiry was necessary, and which matters needed to be heard at the inquiry, the balance being considered by a hearing or by written submissions; and

160. **Option 3:** appellants and the planning authority could be required to make submissions in support of a request for a planning inquiry. If not accepted, the case would be considered by an exchange of written submissions or a hearing.

#### *Consultation*

161. The qualification of the right to a planning inquiry was the subject of questions in the consultation on *Modernising Public Local Inquiries*, when three alternative approaches were suggested. Analysis of responses indicated broad support for some qualification of this right and there was no clear favourite with respondents expressing a preference for a mix of options.

### **Restricting the appeal to the matters considered by the planning authority**

#### *Policy objectives*

162. Under present provisions the Scottish Ministers, in determining an appeal, may allow or dismiss the appeal, and may also reverse or vary any part of the planning authority's decision, and may consider the application as if it had been submitted to them in the first place. In practice this has led to new issues being introduced to appeal proceedings, by appellants, planning authorities and others, which may not have been considered by the planning authority when examining the application, and may not have been evident to local people affected by the proposal. The Bill will restrict the matters to be considered at appeal to those which were before the planning authority, other than where the matter could not have been raised at that time or where there were exceptional circumstances causing the failure to raise a matter at that time. This will not alter the duty on the Scottish Ministers to have regard to all material considerations nor will it affect the right of appellant to raise such matters.

#### *Alternative approaches*

163. The alternative would be to leave the present provisions in place. However this would not be consistent with the general policy approach to development management in the Bill, which places emphasis on prior consultation and the provision of full information both in applications and decisions, so that the community and stakeholders have the opportunity to be fully engaged and are aware of the implications of planning applications from the outset.

#### *Consultation*

164. Proposals were set out in the White Paper *Modernising the Planning System*, June 2005.

## **Duration of planning permission and listed building consent etc**

### *Policy objectives*

165. The current system allows planning authorities to specify in a planning permission and/or listed building consent the period within which the permission allows development to be started. If the planning authority does not state the time period then a statutory period of 5 years within which a development must be started applies currently. The same is true of outline planning permission, except that if the planning authority does not specify a longer or shorter period, the statutory period is 5 years from the grant of outline planning permission or 2 years from the last approval of reserved matters relating to the outline permission.

166. The aim of the statutory time period is to retain a degree of flexibility as to when developers begin to implement a planning permission while addressing the concern that the 5 year period is too long, causing uncertainty over when or if the consent will be implemented.

167. While planning authorities will retain the ability to specify a particular period during which development must be begun, where they do not, the statutory period of 5 years is to be reduced to 3 years to lessen uncertainty surrounding implementation of permissions while allowing reasonable flexibility for developers.

### *Alternative Approaches*

168. The Executive did not consider other options as the concerns that have been raised are very specifically related to the statutory time limit.

### *Consultation*

169. This proposal is set out in the White Paper, *Modernising the Planning System*, published in 2005.

## **Planning permission in principle**

### *Policy objectives*

170. Currently, the system allows for the submission of an application for outline planning permission. There are, however, a number of ways in which this provision could be improved to strengthen the planning system. Therefore it is the Executive's policy intention to modernise the current process by which it is possible to establish that a development is acceptable in principle.

171. Under the present system, once outline planning permission has been granted, there are varying procedures employed for approval of reserved matters by different local authorities, and local people have no formal opportunity to comment on the details of the proposed development. It is therefore important to establish one procedure, and ensure the establishment of a right to comment on the detailed proposals.

172. The policy objectives are firstly, to allow applicants to seek planning permission, to establish the principle of development, without the need to provide full details of the development proposed. Secondly, it will replace the current procedures for obtaining outline

planning permission and seeking approval of reserved matters. The new policy will ensure that the opportunity is provided for consultation to take place, as the key details of a development that has been approved in principle are being submitted. This will include repeating the neighbour notification undertaken when the application for planning permission was originally submitted. Thirdly, it will resolve difficulties currently faced by planning authorities in determining what constitutes a valid application.

173. A planning authority will be able to grant planning permission in principle, attaching a specific set of conditions that will set out those matters of detail that must still be approved before development can commence. Applications for approval will then be subject to consultation procedures. A time period will be established, following receipt of an application, within which a planning authority can request further information, before registering the application. The time period will be defined in secondary legislation.

#### *Alternative approaches*

174. *Modernising the Planning System* sets out a proposal to allow a development plan allocation to have a similar status to outline planning permission, coupled with the removal of the right to submit a planning application for outline planning permission. The policy objective set out above has been refined in response to the comments received on the consultation to the White Paper, a number of which expressed concerns about the proposal to remove the opportunity to apply for outline planning permission.

#### *Consultation*

175. As noted above there was a proposal to remove the opportunity to apply for outline planning permission set out in *Modernising the Planning System*. This document was subject to public consultation between June and September 2005, and respondents expressed concerns about the removal of the opportunity to establish that a development is acceptable in principle.

## **Planning Obligations**

#### *Policy Objectives*

176. At present, planning agreements can be made under s.75 of the 1997 Act. Planning agreements are voluntary, drawn up by planning authorities and developer interests setting out what an applicant will deliver in relation to specific issues, either related to the nature of the development (e.g. opencast mines or quarries) or to associated infrastructure costs (e.g. roads, schools, community facilities and affordable housing) as set out in local development plan policies. Planning Agreements are used to restrict or regulate the development or use of land where the same outcome cannot be achieved by the use of planning conditions. If registered in the Land Register of Scotland or Register of Sasines, as appropriate, they are enforceable against successors in title.

177. One criticism of the system of planning agreements is that it is neither open nor transparent. The terms of an agreement are not always known publicly before decisions are taken on a planning application. Planning agreements have also been criticised for increasing delays in granting planning permission and for being hidden from public scrutiny. Our policy objective is to secure greater transparency, by placing a statutory requirement that all planning

obligations, both agreements and unilateral undertakings (which are to be introduced by separate provision) are registered on the planning register.

178. It is also the policy intention to expand the scope of existing legislation on planning agreements by introducing unilateral obligations in the Scottish planning system. Unilateral obligations are already possible in England and Wales, where they operate in the same way as planning agreements, but are often put forward by a developer for use at appeal hearings. This can be a useful means of resolving a stalemate in the negotiations, for example where there is a dispute with the planning authority over terms, or to address the terms of an objection. Unilateral undertakings may, for example, allow an applicant to enter into an obligation to deliver certain benefits, typically in relation to improved infrastructure, which can then enable the planning permission to be granted by a planning authority.

179. In addition, the legislation provides a means by which planning agreements and obligations may be modified or discharged under the planning system. This includes a right of appeal against a planning authority's failure to give notice of its determination of an application for modification or discharge of a planning agreement.

#### *Alternative approaches*

180. Although the current arrangements are working fairly well, the Executive recognises the need to look for improved operation of obligations and agreements. To achieve this change the Executive considered adopting the approach taken in relation to England and Wales in the Planning and Compulsory Purchase Act 2004. This moves away from negotiated agreements towards the use of a set of published tariffs to secure planning gain from certain categories of development. This was, however, considered insufficiently flexible to meet the requirements generated by an individual planning application.

#### *Consultation*

181. The provisions in the Bill were set out in the White Paper *Modernising the Planning System*, June 2005. The proposal here was to improve the framework governing such agreements, clarify their scope and permit applications to submit unilateral obligations. This attracted very high levels of support across respondent categories.

### **Good Neighbour Agreements**

#### *Policy Objective*

182. Good Neighbour Agreements (GNAs) can complement formal regulation by allowing a developer and a community to engage on how a development is carried out. GNAs can empower communities by giving them access to more information about a development, and facilitate communication between the parties to address issues of concern and avoid disputes. The White Paper, *Modernising the Planning System*, recognised the value of enabling local people to enter into arrangements with site operators for significant developments which provide them a role in monitoring how a development is carried out.

183. At present, such an agreement can be delivered as part of the planning process, for example by condition or through a planning agreement, but only planning agreements are

enforceable against successors in title. While community interests could be party to a GNA, the community cannot currently enforce the agreement against successors in title without significant expense and delay. The Bill provisions will enable a GNA to be binding on successors in title and facilitate enforcement by the community.

184. Good Neighbour Agreements will complement existing provisions for safeguarding community interests through the planning process. It is not envisaged that the scope of GNAs will extend beyond reasonable planning considerations or that they will seek to duplicate provisions more appropriately dealt with under mechanisms enforceable by the planning authority.

#### *Alternative Approaches*

185. Consideration has been given to delivering GNAs through existing planning provisions such as conditions or planning agreements, although these alternatives do not readily enable an agreement to be enforceable against successors in title by the community.

#### *Consultation*

186. There has been no specific consultation on GNAs but the White Paper, *Modernising the Planning System*, included a commitment to ensure that legislative or administrative provisions were put in place to implement good neighbour agreements.

## **PART 4 – ENFORCEMENT**

### **Temporary Stop Notices**

#### *Policy Objectives*

187. There is currently a power to serve a stop notice in association with an Enforcement Notice. However, this is a relatively slow and unwieldy process, with an associated risk that damage to amenity may continue for some time before the stop notice can take effect. An alternative - where a perceived threat is immediate and an enforcement notice has not been served – is for planning authorities to seek an Interdict through the Courts to stop the activity. However, this is still time consuming and relatively inflexible.

188. Temporary Stop Notices (TSNs) are introduced through the Bill to provide planning authorities with an immediate power to stop, for a period of 28 days, breaches of planning control, for example unauthorised development, or where there is a threat to amenity, such as through damage to buildings or the environment from the unauthorised activity. The policy intention is to strengthen public confidence in the effectiveness of the planning system in preventing damaging breaches of planning control.

#### *Alternative Approaches*

189. The only alternative approach considered was to make no change to the existing provisions.

*Consultation*

190. The proposal to introduce Temporary Stop Notices was set out in the White Paper *Modernising the Planning System*, June 2005.

**Enforcement Charter**

*Policy Objectives*

191. The policy objective is to require a planning authority to set out its policies with regard to the taking of enforcement action for the purposes of Part VI of the Act. These statements will set out how members of the public are to bring any apparent breach of planning control to the attention of the authority and will also set out how any complaint to the authority will be dealt with and the authorities procedures for dealing with it.

*Alternative Approaches*

192. The only alternative approach considered was to make no change to the existing provisions.

*Consultation*

193. The proposal to introduce Enforcement Charters was set out in the White Paper *Modernising the Planning System*, June 2005.

**PART 5 – SPECIAL CONTROLS**

**TREE PRESERVATION ORDERS**

*Policy Objectives*

194. The policy objective is to improve the protection of trees and make the procedures for serving and enforcing a Tree Preservation Order (TPO) more straightforward. The specific policy objectives are to:

**Require Planning Authorities to review TPOs regularly**

195. Trees and woodlands mature and change over time and TPOs can become inaccurate and difficult to enforce if they are not kept up to date. The Bill places a general requirement on planning authorities to monitor and review TPOs, but does not prescribe a specific review period.

**Allow protection of trees for cultural or historical reasons**

196. Under the existing legislation TPOs can only be served in the ‘interests of amenity’. Some historical or veteran trees can be seen as having low amenity value and for this reason are often not protected. The Bill therefore adds ‘cultural or historical significance’ as a reason for making a TPO.

### **Create a single procedure for making a TPO**

197. There are currently two ways of making a TPO, one which takes immediate effect and another which only takes effect once the TPO is confirmed. Confirming a TPO involves publicising the order, notifying the owner and those affected by the order, and then considering any objections. In practice, nearly all TPOs are made with immediate effect to avoid any damage occurring to a tree before the order is confirmed. The provisions in the Bill mean that all TPOs will take effect from a date specified in the order. Planning authorities will then have to confirm the order within 6 months of this date or the TPO will expire.

### **Increase protection for trees that are in imminent danger**

198. Occasionally trees can be under immediate threat and serving a TPO can take time. Damage sometimes occurs before a planning authority has had the opportunity to undertake all the necessary publicity and inform all the interested parties. The Bill therefore introduces a right of entry which would allow local authority officers to publicise immediately a TPO at the location of the tree, trees or woodland concerned. This means that anyone intending to undertake work on a tree will be aware of the TPO.

### **Require Statutory Undertakers to notify planning authorities if they undertake work on a protected tree**

199. Statutory undertakers, such as electricity operators or railway companies, are allowed to uproot, fell or lop trees protected by TPOs provided it is in compliance with their statutory duties. At present they do not have to notify the planning authority. The Bill now requires statutory undertakers to notify the planning authority allowing them to update their records and consider the need for replacement planting.

### **Extend protection to replacement trees**

200. When a local authority allows a protected tree to be felled they can require replacement planting. However, replacement trees are not automatically covered by the original TPO and are sometimes lost. The provisions in the Bill require that the TPO will remain in force for all replacement trees. However, planning authorities will still have powers to revoke a TPO should they wish.

### *Alternative approaches*

201. No alternative approach was considered other than to make no changes to the current system. There was overwhelming support for the proposals in the consultation paper and therefore the Executive decided to pursue the option of amending the current system to make it more open, transparent and easier to use.

### *Consultation*

202. The legislation relating to trees has changed little since 1975, and in 2002 research was commissioned to examine whether the TPO procedures in Scotland are still effective. The research report *The Effectiveness of Tree Preservations in Scotland*, published 2002, found that the TPO system is basically sound, and that a series of 'fine tunings' would provide an up-to-

date structure for protecting trees across Scotland. In December 2004, the Scottish Executive consulted on a number of specific proposals for changes to the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975.

## **PART 6 – CORRECTION OF ERRORS**

### *Policy Objectives*

203. The policy objective here is to give the Scottish Ministers the power to correct errors or omissions in a decision letter issued by the Scottish Ministers or by a Reporter. The power will, however, only be exercised where the approval of the applicant had been obtained.

204. At present decision letters are regarded as final and such errors can only be rectified by unopposed court challenge and re-determination. It is envisaged that the new power will be used in situations where a correctable error has been identified subsequent to the issue of a decision letter relating to a planning application that has been determined by the Scottish Ministers, or an appeal that has been determined by the Scottish Ministers, or by a Reporter acting on their behalf. This new power will help speed up the planning system and will ensure that decisions are dealt with more openly and transparently.

### *Alternative Approaches*

205. The only alternative approach considered was to not introduce these provisions into the Bill.

### *Consultation*

206. This is a minor change and therefore consultation was not necessary.

## **PART 7 – ASSESSMENT**

### **Assessment of planning authority's performance or decision making**

#### *Policy objectives*

207. Planning authorities are the principal agents of the planning system. The success or failure of the planning system largely depends on their performance. Ministers are concerned that planning authorities have so far struggled to meet the performance targets that have been set. This has added to the diminishing confidence in the planning system that the package of planning reforms is intended to address. In particular there has been severe parliamentary criticism on poor performance in relation to major applications. Even without the burden of future changes to the system, Ministers feel that action needs to be taken to provide both rigorous assessment of performance, and incentive mechanisms to achieve improvement.

208. The planning system is undergoing a fundamental change, and the burden of implementing most of the change will fall on planning authorities. This adds to the importance of ensuring that authorities can and are meeting the challenge of improving performance. Many of the reforms set out elsewhere in the Bill are designed to improve the quality both of plan-making and of decision-making. This increase in quality must be underpinned by a rigour in

implementation, in order to meet the commitment to speed up the system, allowing quicker investment decisions.

209. At present the Scottish Executive publishes annually each authority's development control statistics, and conducts a non-statutory programme of planning authority performance audits. It is intended that a more rigorous form of audit and intervention will:

- Stimulate authorities to give improvement in planning services more priority
- Provide the basis for sharing good practice
- Give Ministers the opportunity to intervene where performance failure is persistent; and
- Improve public confidence in the system.

210. Concerns have also been raised about patterns of decision-making in some authorities where officer recommendations are persistently overturned, or applications contrary to the development plan are regularly approved. Where such patterns occur, public confidence in the system can be undermined. The policy objective behind the provisions in the Bill is to give Ministers the discretion and power to investigate instances where concerns have been raised over the basis and rationale for decisions. This will make the system more open and transparent and build public confidence in the way decisions are made.

#### *Alternative Proposals*

211. No alternative approach was considered other than to make no changes to the current arrangements, which are not thought to be satisfactory.

#### *Consultation*

212. The targets which planning authorities are currently expected to meet, are set out in Scottish Planning Policy 1: The Planning System. Proposals for the framework of reporting, evaluating and supporting planning authorities were set out in the White Paper *Modernising the Planning System*, June 2005 and there was complete support for this measure from the respondents expressing a view on this issue. It was proposed in the White Paper that the Planning Bill will contain powers to allow Ministers to commission an investigation into cases where there is a persistent pattern of decisions that do not comply with development plan policies. Again, this was completely supported by the respondents expressing a view on this issue.

## **PART 8 – FINANCIAL PROVISIONS**

### **Fees and charges**

#### *Policy Objective*

213. Section 252 of the 1997 Act contains the existing provision which enables the Scottish Ministers to make provision for payment of fees of the prescribed amount to a planning authority by regulations. This relates to applications made to a planning authority under the Planning Acts

or any order or regulations made under them, for any permission, consent, approval, determination or certificate.

214. It is considered that the present powers to recover fees are not sufficient to cover costs and outlays incurred by planning authorities in monitoring the conditions attached to planning consents for minerals developments, or to implement variable fees for retrospective applications. Accordingly, the policy objective is to confer wider regulation-making powers which would enable the recovery by planning authorities of planning fees and charges in relation to any of the functions of a planning authority.

#### *Alternative Approaches*

215. Those responding to the 2003 consultation, *Monitoring and Enforcing Mineral permissions*, felt that section 75 agreements were often the best way to secure compliance with operating conditions, but where such agreements do not exist or are not working well, planning authorities should be able to carry out any necessary monitoring in relation to planning conditions, and recover such costs incurred from the operator/ developer.

#### *Consultation*

216. The Executive consulted on this proposal in October 2003 through its Consultation Paper, *Monitoring and Enforcing Mineral Permissions*. In the overview of responses to this consultation, published by the Executive in November 2004, Ministers committed to making the necessary changes to primary legislation, to allow planning authorities to recover the costs of such monitoring from operators/ developers.

### **Grants for advice and assistance**

#### *Policy objectives*

217. It has been identified that there are training needs and skill gaps that are hindering planners and other involved in planning, including elected members, in the effective delivery of their planning functions. To help tackle this issue, Scottish Ministers have established a Planning Development Budget of £2.25 million over this and the next 2 years. The fund will address the need for more training in order to reduce the skills gap and will also help support training needs and awareness raising following the extensive planning modernisation that will result from the Bill, in particular better engagement with communities and business.

218. Through the Bill, the main policy objective is to expand the power of the Scottish Ministers to provide funding for these purposes, and for any other purposes concerned with giving advice and assistance in relation to planning matters, to a range of organisations including planning authorities, voluntary organisations and education establishments.

#### *Alternative approaches*

219. The only alternative approach considered was to make no change to the existing provisions.

### *Consultation*

220. The Executive has established a Planning Development Budget of £2.25m over the next three years to 2007/08 and the money will be invested in support of modernisation and reform of the planning system. In particular, it will support local authorities in addressing skills and training needs with a view to improving performance. Detailed proposals for the funding are now being considered and developed in consultation with stakeholders. The proposal for the Planning Development Budget was set out in the White Paper *Modernising the Planning System*, published in June 2005.

## **PART 9 – BUSINESS IMPROVEMENT DISTRICTS**

### *Policy Objectives*

221. The overall aim of the policy is to increase economic growth and stability by enabling businesses to take forward their own priorities in the area they are located. It will assist towards the drive to regenerate and improve city and town centres in Scotland by providing additional funding towards agreed improvements. It will also encourage partnership working between the public and private sectors by providing an equal forum for businesses, local authorities and other public bodies to discuss mutually beneficial priorities.

222. In addition to the above it ensures that a fair system for privately-funded town centre improvement is put in place. The current approach to private sector funding of town centre improvement initiatives is voluntary. This leads to discontent amongst those who fund the improvements towards those who do not participate, and makes it difficult for projects to be undertaken on a consistent and sustainable basis.

### *Alternative approaches*

223. The previous voluntary approach has not worked as effectively as it could and it was clear that a more equitable approach had to be considered. The BIDs policy is well established in other countries, operating successfully in North America, South Africa, and Australia, amongst others. Over a dozen BID projects have also recently started in England. This provided a strong evidence base to demonstrate the types of benefits that can be secured from BID projects.

### *Consultation*

224. “*Business Improvement Districts - A consultation paper*”, issued in July 2003, sought views on how Business Improvement Districts (BIDs) might be implemented in Scotland.

225. Following the consultation, a working group was set up involving stakeholders from both the public and private sectors, to progress the introduction of BIDs in Scotland. All members of the Group agreed the terms of the final report which was submitted for Ministerial consideration. Ministers announced on 9 June 2005 that they accepted all the recommendations of the Working Group.

## **PART 10 - MISCELLANEOUS AND GENERAL PROVISIONS**

### **Further amendment of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997**

#### *Policy Objectives*

226. The overall policy intentions for listed buildings and conservation areas are in line with the wider efforts to streamline and modernise the planning system, with a view to making heritage protection more efficient.

227. The purpose of updating the Planning (Listed Building and Conservation Areas)(Scotland) Act 1997 (the listed buildings Act) is to introduce a number of improvements to the legislation related to the protection and enhancement of designated conservation areas and listed buildings, helping to make it more effective and efficient. The changes are technical and procedural in nature and are important in helping to deliver an improved system of managing change in the historic environment and enhancing the urban landscape. The policy objective is to:

- Provide scope to reduce the need for Scottish Ministers involvement in certain listed building consent cases in certain local authorities;
- Tighten controls over demolition works in conservation areas;
- Widen the scope for investing in conservation areas by ending the requirement to classify conservation areas as being “outstanding” for grant purpose.

228. By tightening controls over demolition works in conservation areas, the legal loophole that allows work to partially demolish buildings and structures in conservation areas without the need for Conservation Area Consent will be removed. This means that Conservation Area Consent will be required for both partial demolition and total demolition or destruction of buildings in conservation areas.

229. The policy objective is to ensure that Scottish Ministers have discretion to provide grant or loan assistance to *any* conservation areas, and not only those conservation areas that are, in their opinion, of “outstanding” architectural or historic interest. This will provide the potential for investment in the conservation and regeneration of any of the 600 or so designated conservation areas across Scotland.

#### *Alternative approaches*

230. The only alternative approach considered was to make no change to the existing provisions.

#### *Consultation*

231. Historic Scotland, acting as the Scottish Ministers, consulted on the proposal to remove the requirement for a conservation area to be designated as “outstanding” as part of a consultation on wider changes to the historic environment grants programme.

## **Repeal of section 45**

### *Policy objective*

232. Section 45 of the 1997 Act relates to provisions contained in the Chronically Sick and Disabled Persons Act 1970 that require those developing certain types of buildings to which the public have access (as specified in the 1970 Act) to make appropriate provision for disabled members of the public in their access to, and within, the building, and in parking and toilet facilities. Currently, section 45 requires a planning authority to draw the attention of the developer to these provisions when granting planning permission.

233. The amendment in the Bill to the 1997 Act, which has the effect of introducing a standardised application form of planning application, will mean that developers will be required to provide a statement detailing how issues relating to access to the development for the disabled have been dealt with. As a result, the Executive considers that section 45 is no longer required and therefore it has been repealed.

### *Consultation*

234. In December 1997, The Disability Rights Task Force (DRTF) was set up to consider how best to secure comprehensive, enforceable civil rights for disabled people. In December 1999, DRTF published the report "From Exclusion to Inclusion" covering a wide range of issues and setting a challenging agenda for ensuring civil rights for disabled people. One of its recommendations was that the U.K. Government should consider the future role in England and Wales of section 76 of the 1990 Act, which required planning authorities to alert developers to certain statutory disability access requirements. It proposed that developers should be alerted to disability access legislation at the earliest possible opportunity in the planning process.

235. Following consultation in April 2000, the Executive published its response to the DRTF report in January 2001 and noted that it would do likewise in relation to section 45 of the 1997 Act.

## **Appeals under section 130**

### *Policy Objective*

236. The policy objective is to enhance planning enforcement by limiting the ability of developers to delay compliance with planning regulations through appeals against enforcement notices. The intention is that it should no longer be possible to obtain planning permission by means of an appeal against an enforcement notice. Linked to this is that enforcement procedures should not be used as a means to alter planning conditions.

237. The specific policy objective is to repeal the provision which enables retrospective planning permission to be obtained by default through the appeal process, so that using appeals to delay enforcement becomes a less attractive proposition.

### *Alternative Approaches*

238. The option of removing the right of appeal against enforcement notices altogether was investigated but that approach was considered inappropriate in view of requirements of the European Convention on Human Rights (ECHR), together with the recognition that on occasion planning authorities may have acted in error..

### *Consultation*

239. The proposal to examine the provisions for appeal against enforcement was set out in the White Paper *Modernising the Planning System*, June 2005.

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

### **EQUAL OPPORTUNITIES**

240. Having considered equality issues, it is assessed that the provisions of the Bill are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The Bill is central to the modernisation of the planning system, which is aimed at making it more efficient and giving local people better opportunities to influence the decisions that affect them.

241. Section 6 of the Bill deals specifically with access for disabled persons. Under subsection (3)(a) of new section 32 in the 1997 Act, regulations or a development order relating to applications for planning permission must require that certain applications are accompanied by a statement about how issues relating to access for the disabled to the development have been dealt with. As a consequence, section 45 of the 1997 Act, which requires planning authorities to draw the attention of applicants to the requirements of the Chronically Sick and Disabled Persons Act 1970, will become superfluous and will therefore be repealed.

242. We know from research that involvement in the planning system is not evenly spread across the whole community. Those who comment on or respond to planning applications are predominantly white and over 35. Of those who responded to a questionnaire about involvement in the planning system, 2% were from ethnic minorities (which is broadly in line with the minority ethnic population in Scotland).

243. The consultation paper "Getting Involved in Planning", published in November 2001, raised issues regarding the transparency, accountability and efficiency of the planning system, and ways of increasing public involvement and confidence in it. As a part of this workstream, research was commissioned which targeted a sample of Scottish communities to provide more information on the public's perception of the planning system and how they view their role in it. Included in this research was a programme of fieldwork to engage the public through interactive displays and community workshops. These were held in 6 representative local authority areas - Scottish Borders, Glasgow, Highland, North Ayrshire, Stirling and West Lothian. The sites for displays included Meridian, a black and ethnic minority women's information and resource centre in Glasgow, which had a better response rate than any of the other display sites used in Glasgow. Workshops were held in four of the six areas, but none were in inner city locations.

244. Subsequent to this, in March 2003 the Scottish Executive published *Your Place, Your Plan: A White Paper on Public Involvement in Planning*. This brought forward the Executive's proposals to strengthen and enhance public involvement at all stages in the land use planning system. Among its proposals was setting up a National Consultative Group, whose first meeting was held in Glasgow in February 2004, with two further meetings held in Dundee and Inverness in November 2004. These were arranged with support from the Scottish Civic Forum, with invited representatives from the CRE and the DRC. The reports of the second and third meetings, when published, set out how policy development had been influenced by the Group's deliberations.

245. In February 2003, the Executive published Scottish Planning Policy 3: *Planning for Housing*. It noted that planning authorities should continue to play a role through development plans, by identifying suitable locations for Gypsies/Travellers' sites where need is demonstrated, and setting out policies for dealing with applications for small privately-owned sites. The Executive are continuing to work with Gypsy/Traveller communities and their representatives together with their public sector partners to develop policies to eliminate discrimination and prejudice.

246. Since 2003-4, the Executive has also offered a grant (currently £100,000 p.a.) to Planning Aid for Scotland (PAS) to help implement the Scottish Ministers' public involvement agenda. PAS have included in this work the provision of planning information in community languages. In addition, the Executive is currently starting work on a Planning Advice Note on Community Involvement, which will include practical guidance on community engagement and reflect on which approaches for effective involvement suit different scenarios.

247. Having considered equality issues in relation to Business Improvement Districts, it is assessed that the provisions of the Bill are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. It is open to anyone to form a BID, as long as the appropriate steps are taken to engage with those who would be funding the improvements. In addition, equity and fairness are built into the policy by giving everyone who pays the levy a vote. The policy also allows local authorities to veto any proposals that would place an unfair financial burden on a particular business. Although these provisions do not relate directly to equality, they do help to ensure fairness and encourage wider involvement from across the business community.

## **HUMAN RIGHTS**

248. The Executive is satisfied that the Bill's provisions are compatible with the European Convention on Human Rights. Compliance with the Convention has been considered throughout the process of policy development and drafting.

249. Article 6(1) of the Convention requires that in determination of their civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal, established by law. Where a planning application is refused, the applicant has a right of appeal, either to the planning authority or to the Scottish Ministers. The Bill removes the applicant's current right to a hearing, and limits the introduction of further

information to exceptional cases. However, there will remain a right of legal challenge to the Court of Session, and in our view this ensures that the provisions are compliant with Article 6.

250. The Bill also gives planning authorities additional powers of entry in connection with carrying out implementation and enforcement of the planning system. These powers relate to the serving of temporary stop notices and tree preservation orders, and the enforcement of planning obligations. The Executive consider that these measures are proportionate and do not breach Article 8 of the Convention.

251. Article 1 of Protocol 1 of the Convention guarantees peaceful enjoyment of possessions. The Bill which amends existing planning legislation seeks to continue to fairly balance the rights of the individual with those of communities and the wider public interest. The changes to the planning system resulting from the provisions in the Bill are intended to strengthen the involvement of local communities, speed up decisions, reflect local views better and allow quicker investment decisions. The Executive takes the view that the appropriate balance will not be affected by the changes, and therefore the Bill complies with Article 1.

252. The Executive is satisfied that the provisions in relation to BIDs are compatible with the European Convention on Human Rights. It is not considered that BIDs arrangements interfere with possessions or determine civil rights of individuals.

## **ISLAND COMMUNITIES**

253. The Bill is designed to improve the operation of the planning system throughout Scotland. The changes it brings about will convey similar benefits to island communities to those which will come to residents of the mainland. The three island councils will in future each only have to produce one development plan. Two of the island councils responded to the recent White Paper, *Modernising the Planning System* and were generally in favour of the proposals.

254. Although BIDs are traditionally used in cities and medium sized towns there are no barriers to their use in wider rural areas, including island communities. If businesses see a need and they are willing to fund this need, then BIDs can provide the means to do this.

## **LOCAL GOVERNMENT**

255. The Bill amends and extends the powers and duties of local authorities as planning authorities in carrying out their development planning, development management and associated functions.

256. There are built in protections in the legislation to ensure that any plans developed by a BID proposer take account of a local authorities plans for the area. A local authority will have a veto power which they can use under prescribed circumstances. This will ensure that local authorities are a meaningful partner in the BID development process.

## **SUSTAINABLE DEVELOPMENT**

257. The White Paper, *Modernising the Planning System*, identified the need to ensure that development is sustainable as one of the four key principles upon which the modernisation programme is built. As the White Paper states, although Scotland's future depends on development, this development must be sustainable, in environment, economic and social terms. As revitalised development plans will be at the heart of the modernised planning system, there is a need for an explicit requirement for those plans to be prepared with due regard to the principles of sustainable development. The Bill therefore places a duty on planning authorities to exercise their functions in relation to development planning with the objective of contributing to sustainable development. It also gives the Scottish Ministers powers to issue guidance to authorities on how such a duty should be undertaken.

258. BIDs can help increase the viability of a business by developing and enhancing its business environment, thus helping to create long-term sustainability. The introduction of BID areas can also feed into the wider regeneration aims of the local authority within which the BID is located.

*This document relates to the Planning etc. (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 19 December 2005*

# **PLANNING ETC. (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

ISBN 1-4061-1633-5



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