The Planning (Scotland) Bill

I welcome the opportunity to make submissions about the estimated financial implications of the December 2017 Planning (Scotland) Bill ('the Bill') as set out in its accompanying Financial Memorandum (“FM”) and other related documents.

Qualifications and experience
I have been admitted as a solicitor for over 35 years. During that time my work in local government, central government and private practice has almost exclusively been in relation to planning and development related matters. I have attached my brief CV.

General comments
A major difficulty in assessing the costs and savings related to the provisions of the Bill is the lack of relevant, accurate and up to date financial information.

Even when relevant and accurate financial information is available it is not always readily intelligible. For instance the Audit Scotland 2011 “Modernising the planning system” report, at paragraph 99, notes:

“Over the six years to 2009/10, total spending on processing planning applications increased from £31.4 million to £41.5 million – a 17 per cent real terms increase. This has happened over a period when the number of applications has fallen. The reasons for this increase are not clear.”

A key recommendation of the 2011 Audit Scotland report “Modernising the planning system” was that planning authorities collect, monitor and report data on costs, staff and activity levels to help inform setting of planning fees and to help make decisions on how resources can be used effectively (including information about staffing and time spent on development planning and development management, broken down by activity and about other costs such as legal, committee and specialist support services). In 2013 Audit Scotland in its “Modernising the planning system – Impact Report” noted that major challenges remain among planning authorities about understanding the costs of handling planning applications but resolving these are key to establishing a funding model for assessing planning applications that can enable effective cost recovery.

The FM makes no reference to Audit Scotland materials. There is no relevant post-2013 Audit Scotland material. The FM refers to the 2015 RTPI paper “Progressing performance: Investing in Scotland’s Planning Service” which simply makes reference to an estimated “subsidy” to the cost of processing planning permission applications.

The FM notes that changes made by the Bill relate to service areas where costs are currently not separately identified or recorded. This suggests that Audit Scotland has been ignored.
FM omissions
The FM in its financial implications of the Bill fails to refer to the increased costs associated with considering “Local Place Plans” and enhanced pre-application consultation requirements. It also fails to take into account increased revenue for planning authorities arising from increased planning fees and charges and from the use of Charging Orders.

Section 9 Local Place Plans
Planning authorities will have to have regard to any relevant “Local Place Plan” in their preparation and monitoring of Local Development Plans and will have to consider the provisions of “Local Place Plans”, as a material consideration, in the determination of planning permission applications.

Section 12 Pre-application consultation
It is clear from the Bill’s Policy Memorandum that there will be additional requirements placed on developers in relation to pre-application consultation and those additional requirements will have a cost implication for developers.

Section 21 Fees for planning applications etc
The Scottish Government’s standard approach to setting charges for public services is full cost recovery. Section 21 of the Bill makes several changes to broaden current regulation-making powers and those powers will enable for example some discretionary charging for service provision and it will enable fees to be charged by the Scottish Ministers in respect of their functions within the planning system.

The FM notes, at paragraph 22, that the Scottish Government has indicated its intention to review planning fees following completion of the Bill, with a view to moving the decision-making aspects of the planning process towards full cost recovery by planning authorities, and expanding the range of activities for which fees may be charged.

The FM indicates, at paragraph 22, that an additional income (in the region of £36m) will be received annually just to make up the difference between the current annual costs of procession planning permission applications and the amount of fees received.

Section 23 Liability for expenses under enforcement notice
The planned introduction of Charging Orders is to improve planning authority debt recovery where direct action has been taken by a planning authority to ensure compliance with an enforcement notice or an amenity notice will deliver greater income.

Local Development Plan Examination costs
The FM, at paragraph 46, states that the total cost for Local Development Plan (‘LDP’) examinations is not expected to change significantly. The FM notes, at paragraph 49, that the agreement of housing supply and demand figures at national level may reduce the effort required in LDP preparation, leading to some savings or mitigation of increased costs. The FM also notes,
at paragraph 49 that as a result of the “gatecheck” assessment, the LFP examination at the end of the process is expected to be less onerous that at present as key issues will have been addressed at an earlier stage.

In my view there will be significant savings in relation to LDP examinations.

The enhanced National Planning Framework (‘NPF’) will, in general, include all policy material for the LDP and the NPF will include agreed national housing supply and demand figures (FM at paragraph 49).

The “gatecheck” assessment will resolve issues such as the amount of housing land required from the LDP, the capacity of the infrastructure of the area to accommodate future development and justified local policy departures from the NPF.

The expanded scope and content of the NPF will mean that proposed LDPs will be significantly slimmed down from the current versions of LDPs.

Presumably matters resolved at the “gatecheck” stage will not be the subject of further examination in response to LDP representations.

The above context suggests that as the LDP material is reduced the scope for LDP representation will be restricted and limited. I anticipate that, in turn, the number and length of LDP representations will significantly decrease and, in turn, the number of days for an LDP examination should be significantly reduced.

**Non-statutory planning guidance and advice**

The Bill’s Policy Memorandum recognises, at paragraph 58, that the current provisions for planning authority statutory supplementary guidance (‘SSG’) will be repealed but there will still be scope for non-statutory planning guidance or advice. It may well be that some matters currently covered by SSG will be addressed in non-statutory planning guidance or advice.

**Scottish Administration costs**

The costs of the Scottish Administration should be adjusted to reflect a decrease in income to DPEA as a result of fewer LDP examination days. I understand that the current DPEA charge is £400 per Reporter per day.

**Planning authorities’ costs**

Planning authority costs should be adjusted to reflect an increase in income from planning fees and charges and an increased income from Charging Orders. Planning authorities’ savings in LDP preparation and the LDP examination process should be recognised. Planning authorities’ costs in relation to the consideration of LPPs as part of development planning and as an element of the development management regime and in relation to non-statutory planning guidance and advice should be accounted for.
Developers' costs
“Developers’ costs” will ultimately be borne by the landowner, the occupier (owner or tenant) of the development or both the landowner and the occupier. Further a landowner may not sell land if a minimum price is not achieved.

The FM should be adjusted to reflect the increase pre-application consultation costs and the increased planning fees and charges.

Yours faithfully

John Watchman

1 http://www.gov.scot/Topics/Government/Finance/spfm/feescharges#top