Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Law Society of Scotland

Introduction

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The Society's Planning Law Sub-committee welcomes the opportunity to consider and respond to the call for evidence from the Scottish Government's Local Government and Communities Committee on the *Planning (Scotland) Bill*.[1] The Sub-committee has the following comments to put forward for consideration.

General comments

As with the Planning etc. (Scotland) Act 2006, the current Planning (Scotland) Bill ('the Bill') takes the form of amending legislation. Throughout the Bill, there are multiple amendments to the same sections. As a result, the Bill is difficult to follow. We consider this to be contrary to the intention to involve the public in both the consultation and planning process.

The Bill is of a skeletal nature with much detail to be set out in regulations. This makes it difficult to understand the full impacts of what is proposed by the Bill. In key areas of the Bill, particularly the scope of the gatecheck provisions, the relationship between the National Planning Framework (NPF) and Local Development Plans

[1] http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107221.aspx

(LDPs), and the structure of the proposed infrastructure levy, there is insufficient clarity on how the new system will operate. We consider that this lack of clarity may be a disincentive to investors and developments.

Response

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

We are not in a position to conclude whether the Bill will produce a planning system that balances the need to secure appropriate development with the views of communities and protection of the environment. We consider that the Bill has the potential to produce such a planning system, however, it must be noted that the Bill deals with planning at a very high level. As referred to above, much detail is lacking within the Bill and is anticipated to follow in secondary legislation. The impact upon the planning system will be largely driven by both the content of regulations and by the decisions and actions of those involved in delivering the provisions.

We note the intention to focus on community empowerment and engagement with the planning process. However, the Bill's provisions appear to contain insufficient detail for delivery of this. We consider that there needs to be stronger reconciliation between national policy and local communities. The proposed move to a longer planning cycle of 10 years at local level may result in national policy and local plans becoming 'out of sync' with each other. The effect of the proposed changes to Section 3A of the Town and Country Planning (Scotland) Act 1997 ('1997 Act') is that once the NPF has been published, Ministers must consider whether to revise it within five years. However, if they do not revise it at that point the next revision to the NPF might not take place for a further 10 years. That means that in practice the first NPF that is approved after the Bill comes into effect might remain in force for 15 years without revision. We question whether this was truly Scottish Government's intention.

The NPF will form part of the development plan and replace Strategic Development Plans (SDPs) and so will have an enhanced role. Given the enhanced role of the NPF, we question it will be subject to sufficient scrutiny. There is no public examination process and it is questionable as to whether 90 days of Parliamentary scrutiny is an effective substitute. We suggest that some degree of independent assessment, such as with orders made under the Transport and Works Act 1992, may be appropriate to ensure public confidence in the transparency of robust community engagement in the process and so meet a key policy objective of the Bill. There is a lack of clarity surrounding the link between the NPF and the LDPs which is of concern. The Bill is not sufficiently clear as to how situations of incompatibility between the NPF and LDP will be dealt with, and at what point, given that the

gatecheck pre-dates the preparation of the LDP. The Bill states at Section 3(3)[2] that the LDP is to "take into account" the NPF. In our interpretation, this does not mean that the NPF and LDP have to be consistent. The Bill does not set out any parameters within which an LDP must operate and appears to envisage situations where an LDP would be "incompatible" with the NPF. In that scenario, the LDP would prevail since it had been prepared later. This is a radical departure from the current provisions where an LDP which falls within an area covered by a higher level plan must be "consistent" with that plan.

Section 7(3) of the Bill seeks to introduce provisions about the amendment of LDPs[3]. The use of the terms "take into account" and "have regard to" are particularly vague. It is not clear whether one requirement is of greater significance than the other. We anticipate that any potential significant conflict between the NPF and LDP would be picked up during the gatecheck process however this is not clear from the terms of the Bill.

We do note that in reality, there is little prospect of local authorities departing from the NPF, at least to any significant extent. We recognise that there is a need for flexibility in approach to the NPF and LDP link given the move to a 10 year cycle for LDPs. Consideration requires to be given as to whether flexibility is found within primary legislation itself, which may give rise to uncertainty, or whether the flexibility should fall within the NPF itself. However, we consider that the provisions surrounding the preparation of LDPs may cause confusion. New arrangements proposed within the Bill appear somewhat weak compared to the current overarching duty for the LDP to be consistent with higher level plans.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

We are unclear how the provisions of the Bill itself would result in higher levels of new house building. As this was a key area highlighted in the Scottish Government's *Places, people and planning* consultation[4] and it appears to be an important policy objective, we are surprised that there is no explicit reference to promotion of new homes in the Bill. For example, provision of affordable housing is not referred to in the proposed new Part 5 on Infrastructure, nor is it referred to in the proposed amendments to the 1997 Act, Section 75. We appreciate that house building might

[2] Which seeks to amend section 16 of the Town and Country Planning (Scotland) Act 1997.
[3] By addition of section 20AA to the Town and Country Planning (Scotland) Act 1997.
[4] http://www.gov.scot/Resource/0051/00512753.pdf

be a focus of the NPF and so the potential for the higher levels of house building will largely be dependent on the provisions of the NPF as well as the details of the evidence report gatecheck process.

Planning authorities will be required to produce an 'evidence report' which encompasses prescribed matters as the first stage in preparing a LDP. This will be submitted to the Scottish Ministers. All evidence reports will be the subject of a gatecheck assessment by a person appointed by the Scottish Ministers, most probably one of the Scottish Government reporters, to assess whether the report contains "sufficient information to enable the planning authority to prepare a local development plan".[5] It is not clear what constitutes "sufficient information" as the Bill gives no broad parameters in this respect, although it may be that the intention is to have a focus on house building, and other policy objectives, in the Regulations. We deal with our concerns in respect of the gatecheck process at question 12.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

Strategic planning is an essential element of the planning system currently fulfilled in the four city regions by Strategic Development Plans (SDPs). We consider that the ending of SDPs will potentially result in a vacuum which will not be sufficiently filled by the establishment of proposed regional partnerships. That is because the regional partnerships will operate on an informal basis. In the absence of clear-cut statutory duties and functions we have concerns that such partnerships will not be effective. The perceived benefits of flexibility must be balanced against a requirement to deliver. There is no mechanism for deciding disputes when the partners may be unable to agree.

One of the recommendations of the *Independent Review of Planning*[6] which has not been taken up in the Bill was the establishment of a national infrastructure agency. Such an agency may be able to assist partnerships in the identification of strategic infrastructure needed to support new development.

We note that in terms of the regional partnership model, there is a duty placed by Section 1 of the Bill[7] upon key agencies to co-operate with the preparation of the

[5] Planning (Scotland) Bill, Section 3(4).
[6] http://www.gov.scot/Resource/0050/00500946.pdf
[7] Which seeks to insert a new subsection 3A(11) into the Town and Country Planning (Scotland) Act 1997.

NPF however we are not convinced that this will ensure efficient working of the partnerships.

We consider that there is a strong need for clear transitional provisions and guidance to ensure that there is no hiatus in developing planning following the ending of SDPs.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

Please see our answer to question 1 regarding our concerns about the link between the NPF and LDPs.

The changes proposed by the Bill have the potential to achieve this aim in respect of local authority priorities and the needs of communities but the potential to meet the needs of developers is less clear-cut. We can see that specific duties on planning authorities to have regard to community planning in general, and to the Local Outcomes Improvement Plans (LOIPS) and Local Place Plans (LPPs) in particular, in preparing LDPs should result in the alignment of these various plans and priorities. In turn, this should mean better use of public resources.

The inclusion of the NPF in the development plan is to be welcomed as is the potential streamlining effect of incorporation of the Ministers' policies in the NPF rather than having them embedded and often repeated in the LDP. The enshrinement through this mechanism of the Ministers' presumption in favour of sustainable development is also welcomed. As referred to above, we have some concerns that the LDP need only have regard to the NPF and need not necessarily be consistent. This may cause tensions if the NPF includes housing targets which are disregarded by planning authorities.

We comment in our answers to questions 1 and 12 that it is our perception that both the gatecheck process and the NPF as set out in the Bill appear to exclude third party involvement and an explanation for this exclusion is not provided in the Policy Memorandum. As the gatecheck will be a critical step in the process, it is important for all stake holders to be involved and have their say at this stage as well as the later examination. This also applies to preparation of the NPF.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

We are concerned about the significant front loading required in this aspect of the Bill. It is questionable whether local authorities have both the personnel and the financial resources to carry out the necessary preparation work required for a Simplified Development Zone (SDZ). The Bill is unclear on whether planning authorities will seek to recover the costs of SDZs from developers.

In addition, we question whether sufficient safeguards are in place in terms of the provisions about SDZs. As the Bill stands, there is no independent check on the SDZ provisions, although consultation is required. The scheme is to be decided upon by a hearing of the relevant Council. We consider that it would be appropriate to have an independent reporter to examine the provisions, for example a Planning and Environmental Appeals Division (DPEA) reporter could carry out this role.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

We consider that these provisions, if used appropriately, could well be used to enable communities to influence and promote development. The provisions of section 9 of the Bill[8] are short, with the detail to be set out in regulations. While we appreciate that it is not the intention to heavily regulate this area, it is not clear what constraints, if any, there will be in the preparation of LPPs, including requirements for publicity, consultation and objection.

As with other provisions of the Bill, the status of LPPs is unclear. In the preparation of LDPs, planning authorities are to "have regard to"[9] LPPs. This contrasts with the planning authority having to "taken into account" the provisions of the NPF. As referred to above, this distinction is not clear. If an LPP is not accepted by a planning authority, the plan will not be incorporated into the LDP and so will simply fall. It is also noted that LPPs within a local authority area may be conflicting, for example, if prepared by different interest groups. It is not clear if or how these will be reconciled.
It will be crucial that community bodies who wish to prepare LPPs have access to suitable advice as necessary from a range of professionals. We anticipate that the preparation of LPPs will be driven to a large extent by community groups' motivation and ability to access advice and assistance as required to support them in the

[8] Which seeks to insert a new Schedule 19 into the Town and Country Planning (Scotland) Act 1997.
[9] Planning (Scotland) Bill, Section 9(2).

preparation of a plan. We consider that there are delivery models set out in the Community Empowerment (Scotland) Act 2015 which could be replicated here.

The financial memorandum indicates that there will be no separate costs to planning authorities from the inclusion of LPPs in LDPs.[10] We question whether the process will be truly cost neutral for planning authorities. LPPs do not automatically become part of the LDP. We note that there is a possibility of LPPs emerging during the 10 year lifespan of the LDP. It is unclear as to whether the planning authority will need to decide what position to take on such LPPs as they emerge. If they do not do so, how will the authority decide what weight to attach to them in planning applications? It appears likely that there is a cost element which is not being acknowledged.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

The proposed changes may assist to some extent. It is noted that many breaches of planning control are inadvertent or come about through a genuine disagreement on the legal position. Increased penal measures will not assist in resolving these issues and may go as far as discouraging engagement with planning control.

We acknowledge that currently many local authorities are reluctant to undertake direct action. This may be due to difficulties faced in recovering the costs of taking action. The ability to make charging orders and to tie the expenses of direct action to the land owners may ensure that the some of the most serious breaches of planning control can be remedied. This may encourage those who do not engage with local authorities to resolve breaches of planning control to do so.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

We note that the Bill gives wide-ranging powers to introduce an infrastructure levy but gives little clarity over how the levy will operate. We consider that this will be a significant concern for developers and may be a disincentive for investors who want certainty as to how such a system will operate.

[10] Planning (Scotland) Bill Financial Memorandum, Paragraph 60.

The levy appears to be similar in concept to the proposed planning gain supplement and previous development land tax regimes which were unsuccessful. There is a question as whether the infrastructure levy is truly an infrastructure tax or rather a land value tax. Both the financial and policy memorandums accompanying the Bill seem to point towards the levy being a land value tax.

From the provisions of the Bill[11], it appears that the levy may be nationally set. This may reduce some of the difficulties faced in England and Wales, where the levy was set locally, resulting in high set-up costs and little return. The provisions allowing planning authorities to waive or revoke the levy may be seen as future proofing. Authorities in less affluent areas may be under pressure to waive the levy in order to encourage investment. Related to this, the provisions in terms of Schedule 1, section 14 of the Bill are of particular note. This appears to provide for levies to be collected at a local level then remitted to Scottish Government. It is noted that the Government may thereafter seek to redistribute funds to local authorities. This may result in levies collected in economically rich local authority areas being redistributed to fund local authorities that are not so affluent.

The practicality of the levy is not clear. Even if provisions are invoked for the setting and implementation of an infrastructure levy, it will be necessary to test the viability of the levy. Considerations will need to be given as to whether the levy will be collected upfront or retrospectively. If it is to be collected in advance of planning permission being granted, this is likely to be a significant disincentive to developers who may experience difficulty in obtaining borrowing on the basis of a promise of receiving planning permission post-payment. If collected retrospectively, it is appreciated that this may cause cash-flow problems for local authorities in funding infrastructure projects. It is not clear how the levy will be utilised for infrastructure projects not being undertaken by local authorities but rather by outside organisations such as Transport for Scotland or Scottish Water.

We are concerned about the extent to which the levy will relate to funding of local and regional infrastructure, particularly when provisions remain for section 75 agreements. Section 75 agreements currently operate within a controlled framework where there requires to be a relationship between the payment being made and the development of infrastructure. The provisions for the infrastructure levy do not appear to suggest such a clear link or indeed any link.

[11] Schedule 1, part 5.

We have a concern regarding the connection between the infrastructure levy and section 75 agreements. There is a clear potential for double charging where section 75 agreements are in place. It is not yet known how this will be avoided.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

We are supportive of the requirement for compulsory training for local government councillors in planning matters. Planning is a legislative process and it is important that the local policy decision-makers understand fully the foundations of their decision making.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

We consider that the proposals should achieve this aim. The concepts of performance management, best value, benchmarking and shared best practice all form part of the modern public sector working environment. National recognition of improved performance should assist planning authorities to continue to improve and should promote public confidence in the system. We do note however that the Planning (Scotland) Act 2006 contains provisions on the matter of performance management yet these were not taken forward. We question why this matter is being considered again at this stage.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high–performing planning system the Scottish Government wants? If not, what needs to change?

We consider that there should be flexibility in fee charging to reflect local circumstances and local economic trends. We consider that a balance should be struck to ensure that discretionary charges are reasonable and proportionate and neither places an undue burden on developers nor an undue burden on local council tax payers.

12. Are there any other comments you would like to make about the Bill?

We seek to comment on a number of other matters within the Bill.

We consider that there is a significant difficulty with the transitional provisions in the Bill. There is an extremely long lead-in time which may result in a hiatus in policy framework. In terms of the Bill[12], all SDPs will cease to have effect on the publication of the new NPF. This may lead to a policy gap in the development plan in former SDP areas. We note that a new NPF is not due to be prepared until 2020. Given the new relationship between the NPF and LDPs there is a risk of policy hiatus if planning authorities delay plan-making until the new NPF is in place. There may need to be transitional provisions to allow aspects of the current SDPs to remain in force following publication of the new NPF.

There was similar hiatus when the development plan process changed under the 2006 Act and some planning authorities held off making new plans until the new regime was in place. Clear transitional provisions and guidance are required to ensure that this does not happen again. We consider that the terms of the current Act, which requires Scottish Ministers to publish an NPF, review it after five years, and thereafter, not to prepare a new NPF for a period of 10 years, may not be what is intended by the legislation.

With regard to the abolition of statutory supplementary guidance, it is not clear from the Bill itself if it is intended that all the material currently contained in statutory guidance will move to be contained within the NPF or the LDP. It would seem to be at odds with the aim of simplifying plans to put such detail into the LDP. We do note that some planning authorities currently have substantial volumes of statutory guidance which results in considerable complexity. There will however presumably remain a need for detailed information on a variety on matters, for example local design guidance and guidance on affordable housing. The financial memorandum accompanying the Bill predicts savings from the abolition of statutory guidance.[13] This fails to acknowledge the potential use of non-statutory supplementary guidance. In the event that non-statutory guidance remains in use then the assumed cost savings may not materialise.

While up front examination of key issues by the gatecheck process is welcome, we consider that the Bill has a number of issues in respect of these provisions. The procedure for gatecheck is unclear. The status of and planning authority process for preparation of the evidence report is not clear; for instance, is it envisaged that the evidence report would require planning committee approval before submission or is it, at the discretion of the planning authority, capable of being prepared and submitted by delegation to officers? If the examiner carrying out the gatecheck,

[12] Schedule 2, Part 1, Paragraph 5.
[13] Planning (Scotland) Bill Financial Memorandum, Paragraph 42.

hereafter 'examiner', is not satisfied with the evidence report, the planning authority then has to prepare a revised report which is subject to further assessment. The Bill does not provide for the examiner to make binding recommendations, as is currently the case with LDPs. At this stage, the nature of the relationship between the gatecheck process and LDP examination are uncertain. If considerable weight is to be placed on the gatecheck process in terms of assessing high level issues and setting housing land requirements, it may be of assistance for the examiner to be able to make binding recommendations to the planning authority. We do recognise that this may not be feasible at an early stage if the gatecheck process is designed to set a framework for planning authorities to develop the LDP rather than to set formal binding requirements. In the event that there are not binding findings at the gatecheck stage, parties may still require to have their views on gatecheck issues considered at the later examination stage, as well as any changes in circumstances being dealt with.

The role of third parties in the gatecheck process is unclear, if indeed there is to be a third party role at the gatecheck stage, other than confirmation in the evidence report that the planning authorities have had regard to LPPs and LOIPs. The policy memorandum accompanying the Bill states that regulations will set out detailed procedures "including consultation requirements".[14] However, the regulation making powers set out in section 3(4) of the Bill[15] make no reference to consultation on the evidence report. The provisions only seem to envisage consultation with third parties and key agencies at the time when the LDP is published. If the gatecheck is to effectively determine key issues, such as the housing land requirement, then it is essential that third parties have an opportunity to participate in that process in an effective manner. The examiner will face an extremely difficult task it they do not have evidence of any conflicting views or balancing issues. Examiners may not have sufficient local knowledge or the powers to obtain evidence to contribute to their consideration of the report. It would be inappropriate for examiners to 'search' for evidence themselves. We do not see how the gatecheck process will work without proper opportunities for consultation and representation on the evidence report prior to it being submitted for examination.

The provisions about the gatecheck process appear to lack robustness. In the Bill, there is a lack of firm tests for the examiner to consider. For example, it is not clear what weight is to be attached to consistency with the NPF. As referred to in our answer to question 1 above, we anticipate that any significant conflict between the NPF and the proposed LDP would be picked up at gatecheck stage. In respect of

[14] Planning (Scotland) Bill Policy Memorandum, Paragraph 48.
[15] Which seeks to insert a new section 16A into the Town and Country Planning (Scotland) Act 1997.

housing, we anticipate that the gatecheck process will contain sufficient detail of the numbers of proposed houses, but not individual allocation of housing. Against this background, we note that the examiner could be being asked to sign-off on a decision by a local authority which may involve departure from the NPF, without having details of site specific housing allocations.

The gatecheck process appears to be particularly uncertain and bureaucratic. Section 3(6) of the Bill[16] only requires the planning authority to "have regard" to the evidence report when preparing the proposed LDP. This makes the status of the gatecheck findings unclear. There seems to be a significant gap between the gatecheck process and final approval of LDPs. It is recognised that there may be a need for a degree of flexibility to cater for changes of circumstances, which may be what is envisaged in the Bill, however, it is not clear that this is achieved. The provisions of Section 3(4) of the Bill suggest that the gatecheck stage is a one-off and there could still be lengthy debate at approval stage on matters, for example, if a local authority plans to deliver fewer houses than meet the demand and needs as assessed at evidence report stage. Clarity around this matter would be of assistance.

One area where we do foresee potential difficulties is in respect of generalised problems of land supply and the addition of land sites post-examination stage. Given the change to a 10 year plan, there are likely to be an increase in cases in which such issues arise at post-gatecheck stage. We note these matters on the background of our comments above that we anticipate that the gatecheck stage will not include detail on the individual allocation of housing. Under the current provisions, there is not a clear mechanism for the allocation of additional sites in the event of a shortfall in supply. Reporters may recommend that any shortfall in the housing land requirement be addressed by way of an early review of the plan or preparation of supplementary guidance. In the future, examiners may be reluctant to allocate new sites without a community engagement and consultation process. This does not sit well with the removal of statutory guidance or the longer plan duration. It appears necessary for a system to be in place for examiners to make such allocations, however the terms of the Bill do not include such provision.

The final examination however will afford fewer options for resolution of any issues arising in the LDP. Perhaps there would be a greater degree of certainty if the planning authority was required to prepare the proposed LDP in accordance with the recommendations of the gatecheck, subject to limited exceptions where this is justified. Arrangements will require to be carefully considered to ensure sufficient

[16] Which seeks to amend Section 18(1)(a) of the Town and Country Planning (Scotland) Act 1997.

flexibility is afforded where required, but to ensure that the gatecheck process meets the intended aim of simplifying the procedure. For the gatecheck to be of any purposeful value, the later examination and approval of LDPs requires to remain sufficiently robust but not be overly onerous given the nature and extent of the later examination process.

In respect of the provisions concerning schemes of delegation, we note that the responsibility upon the planning authority could be made clearer by stating at section 16(2) of the Bill, which concerns the insertion of 43A(7) into the 1997 Act, the wording "where a planning authority make a decision in terms of subsection (6) they must…"

It is noted that the Bill contains provisions which would allow departure from the clear link between payment being made in terms of a section 75 agreements and the development of infrastructure. The provisions in the Bill[17] seek to introduce a new section 75(1A) into the 1997 Act. This appears to follow on the back of the decision in *Elsick Development Co Ltd* v *Aberdeen City and Shire Strategic Development Planning Authority*.[18] This case presents a difficulty for planning authorities if they seek to collect contributions retrospectively from phases of completed development, as opposed to collecting the contributions in advance of any particular phase being completed. The provisions of the Bill, however, appear to have the result of decoupling financial payments from particular infrastructure developments. This may be seen as a backward step in what has been reasonable successfully provision of section 75 agreements. We suggest that the wording of this section is reconsidered to maintain the requirement for a link to the planning purpose but allow flexibility in the timing of collection of the contribution.

The arrangements for planning permission in principle (PPP) are also of concern. Currently, from the date of PPP being granted, developers have a three year period in which to submit applications for approval of matters specified in conditions (AMCs) and two years from the date of approval of AMCs to implement their plans. New provisions mean that there will simply be a period of five years from PPP being granted to implement plans. This may not always be feasible due to the time taken to discharge AMCs. Could AMCs be sought after the five year period? Legislation on AMCs lacks clarity. There are issues as to what is to be considered as an AMC. It does not appear that these changes will fix these fundamental problems with AMCs. We note the rationale behind the change may be to push development forward however we consider greater balance is required.

[17] Section 19(2).
[18] [2016] CSIH 28.

We note the removal of 'directions' and move back to 'conditions' in relation to time limits on Planning Permissions and welcome this. Where a Planning Permission is issued without a condition setting a time limit, the Bill states that it is "deemed" to be granted subject to such a condition. Section 17(5) of the Bill allows for appeals to be lodged against such deemed conditions. Section 42 of the 1997 Act should also be referred to in this section to make it clear that applications to the planning authority can be made in relation to "deemed" as well as "actual" conditions.

The extension of Local Review Bodies (LRBs) is a significant concern. There does not appear to be any research to support the extended remit and concerns remain at both their impartiality and decision making consistency across the country. Extending LRBs to cover certificates of lawfulness does not seem to be a logical choice. Such applications are primarily a matter of law and are not an obvious choice for LRBs who, even with further training, may not be well equipped to make a decision on such matters. There is also the potential for conflict with related enforcement notices where appeals will be determined by Scottish Ministers. On this point of conflict there are currently difficulties where developments involving listed buildings may require both planning permission and listed building consent. Currently, the planning application may be delegated and go to the LRB but a related listed building consent appeal would go to Scottish Ministers. This does not appear logical and perhaps the Bill provides the opportunity to rationalise the system.

In terms of third party rights of appeal, we note that any such provisions are excluded from the Bill. We support such exclusion for the reasons given in the policy memorandum.

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