Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Arqiva Ltd

Dear Sir/Madam

We refer to the above Call for Evidence.

Arqiva

Arqiva is a leading UK communications infrastructure company enabling a vibrant digital economy across the whole of the UK. We are behind the scenes and central to millions of vital connections in an always on, always connected nation.

Every day our infrastructure and associated services enable millions of people and machines to connect wherever they are through TV, radio, mobile and the Internet of Things (IoT).

We are an independent provider of telecom towers, with around 8,600 active licensed sites, and the only national provider of terrestrial television and radio broadcasting.

Our technology enables us to work with everyone from mobile network operators, such as BT-EE, Vodafone, O2 and Three to independent radio groups and major broadcasters, such as the BBC, ITV, Sky, Turner and CANAL+ to utility companies such as Thames Water.

We provide digital and satellite services and distribution for international clients in Europe, the U.S., the Far East and Australia, including Turner and Canal+ and the Al Jazeera Network.

At Arqiva, we are investing to ensure that the UK has the communications infrastructure it needs to thrive in an increasingly connected world. From carrying the BBC’s first television broadcast in 1936 to launching the UK’s national DAB radio and digital terrestrial television networks in the 2000s, we strive to continuously find ingenious and smarter ways to support our customers.

Our infrastructure is critical to Scotland’s existing and future Digital Economy and helping Scottish Government meet its ambitious vision to be a world-class digital nation by 2020, reflected in The National Planning Framework 3. Scottish Planning Policy sets out a national policy commitment to support advanced communications networks to support the Scottish economy.

Planning Bill

Arqiva is a significant user of the Scottish planning system and we have contributed significantly to planning changes that look to support Scotland’s digital economy and support better connectivity throughout the nation. We have contributed strongly, for
example, to revisions to permitted development rights that will help support electronic communications deployment.

As a whole, we recognise the Government’s intentions to better the Scottish Planning system and we generally support (or remain neutral) on most of the proposals within the Bill. However, we do have concern with Part 5 relating to the Infrastructure levy and how this might inadvertently impact on the delivery of essential communications infrastructure across Scotland if not properly considered.

**Infrastructure Levy**

We responded in March 2017 to the ‘Places, People and Planning Consultation’ by Scottish Government, flagging concerns to Proposal 14 which envisaged “a more transparent approach to funding infrastructure” including plans for a local levy to raise additional finance for infrastructure.

In response, we indicated that Arqiva was not opposed to such a levy to support new infrastructure, as the very nature of our business is the deployment, management and provision of critical communications infrastructure. However, we expressed our concerns that the levy would apply to ‘most’ development types which might also include electronic communications developments and infrastructure. We strongly considered that it would be unfair and disproportionate to levy the very businesses, like Arqiva, that provide such essential communications infrastructure. This would be counter-productive to the very aims of the levy and not in the public interest. On this basis, we urged that communications infrastructure providers, like Arqiva, should have exemption from the levy.

In June 2017, the Scottish Government published a Position Statement ‘Places, people and planning’, with Proposal 14 reaffirming the commitment to introduce an infrastructure levy, subject to further research.

In November 2017, the Government published its Stage 3 Final Report on the ‘Introduction of an Infrastructure Charging Mechanism in Scotland: research project’, led by Peter Brett Associates (PBA). In summary, the research report highlighted:

- Potential options for local or national type levy;
- The levy would apply to all developments but suggestion for certain ‘exemptions’;
- Charging based on options for land uplift, development extent or final development value;
- An “Infrastructure Growth Contribution” (IGC) - either centrally or locally coordinated;
- Levy potentially geared towards new net floor space for development **used by people** (other than for maintenance of the building or structure or for the operation and maintenance of equipment within the building or structure);
- Potential exemptions for buildings and structures that are not used by **such as** power station, bridge, tunnel, road and railway track.

Section 27 of Part 5 of the Planning Bill and associated Schedule 1 now set out the broad powers to provide for this infrastructure levy, which if introduced would be
brought forward in secondary legislation and Regulations. The Regulations will set out who is liable for what, types of development caught and those that might be exempted. Paragraph 6 of Schedule 1 sets out local exemptions and discounts that might apply within any new infrastructure-levy regulations which will:

(a) confer on local authorities the power to waive or reduce infrastructure levy in respect of development in their areas, and
(b) set conditions on the exercise of any power so conferred.

This would imply that the decision to waive or reduce any levy would be at local level unless the Regulations specifically set out exemptions that must be applied.

The Policy Memorandum which supports the Bill explains the policy objectives of Part 5 relating to the levy. It covers a number of considerations but it is pertinent that policy objectives include:

- The provision of necessary infrastructure in the right places and at the right time is vital to the delivery of development;
- The intention behind the infrastructure levy is to help raise funds for infrastructure provision so that necessary services and amenities can enable land to be developed, or to deliver infrastructure that is needed to serve the additional growth within an area.

The Memorandum explains that the levy requires further research and expert input, stakeholder engagement and discussion, along with full consultation at an appropriate stage, ensuring costs and benefits are fully evaluated and understood. **We wish to remain fully engaged with this further research and consultation.**

However, it is very important that if the levy forms part of the eventual Planning Act, then the Regulations that follow should look to reflect the research already carried out by Scottish Government. This should include the specific exemptions relating to buildings and structures that are not used by people, which should include electronic communications sites and infrastructure. The exemptions should also include buildings which might be occupied by persons involved with the operation and maintenance of equipment to deliver such services.

**Arqiva position**

With the above in mind, we reiterate that the extensive and advanced communications infrastructure that we own and operate and which we look to expand, are already vital to the delivery and support of new and existing development across Scotland and to support existing communities.

Our response to the ‘Places, People and Planning Consultation’ by Scottish Government which has set out much of the proposals within the Bill, encouraged the need for an “Embedding an Infrastructure first approach” and a need for a stronger commitment to deliver development from all infrastructure providers.

Arqiva has over 8600 active sites which are used for a whole range of wireless services and is committed to delivering new services. This is reflected in, for
instance, our contractual arrangement with DCC to deploy the smart metering network (SMN) across Scotland, but also small cell for 4G and future 5G. The range and diversity of Arqiva and its commitment to being a lead electronic communications infrastructure provider can be found here. This infrastructure first approach will be very important in supporting the DCMS and HM Treasury ‘5G Strategy’ for the UK as part of the Government’s Digital Strategy and the significant public benefits that are expected to flow from 5G. It will support Scottish Government’s Digital Strategy and Mobile Action Plan, to become 5G ready.

However, this strategy will only be successful if built on a strong economic case which will mean, for example, fit for purpose regulations, support and facilitation by the Scottish Government.

We strongly consider that it would be unfair and disproportionate to levy the very businesses, like Arqiva, that provide such essential infrastructure. This would be counter-productive to the very aims of the levy and not in the public interest.

We have considerable experience of imposing such a ‘levy’ from our previous involvement with the English Government. When part of the National Grid Group, we submitted joint representations and held meetings with HM Treasury between 2004 – 2007 in relation to the Planning Gain Supplement (PGS). The PGS was eventually dropped by the Treasury, but we made similar representation regarding the Community Infrastructure Levy (CIL) which followed in 2008.

We put forward several very compelling arguments to the HM Treasury which were accepted so that our (and other) infrastructure does not attract CIL and substantially falls within defined exemptions as set out in the current Community Infrastructure Levy Regulations 2010, as amended:

- buildings into which people do not normally go;
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;
- structures which are not buildings;
- development of less than 100 square metres.

We urge the Scottish Government to give proper consideration to similar exemptions and afford similar weight to the points put forward below and accepted by the English Government if the levy is introduced:

- With the only initial exemption in the CIL being minor household development (and we assume the Scottish levy may take a similar approach), the levy would have applied to the development required for ‘all forms of infrastructure’, including for roads, railways, schools and hospitals as well as for public infrastructure. We put forward that this would have been counter-productive to the very aims of PGS and CIL. We can see a similar concern with the Scottish levy and suggest again, that it would be counter-productive to levy the very businesses / industry that provide such essential infrastructure to local communities;
- The development of communications infrastructure does not generally result in a large windfall gain to the landholder and as a consequence any tax
liability would normally get pushed back onto the operator. At the time, we set out that the PGS / CIL would have therefore increased the cost of public projects by public agencies and those delivered by privatised utilities or other infrastructure providers like Arqiva. For example, the costs of Digital Television Switchover (DSO) which has dramatically changed viewing quality and content to the UK population, would have increased considerably by the amount of tax payable and the costs of administering such tax - and ultimately this would have been borne by the public and/or the public purse. So, we are concerned that if Scottish Government does not give careful consideration to a new levy, any benefits associated with new infrastructure would come with a sting, as the levy could entail greater costs to the public purse than might be first anticipated;

- Furthermore, the CIL would have imposed levy on the provision of new infrastructure, like the Mobile Infrastructure Project (MIP), which already required public intervention due to the unfavourable economics of delivering commercial mobile services to certain areas by the Mobile Network Operators (MNOs). The CIL would have simply imposed a double burden on such projects – the need for public intervention to deliver such infrastructure in the first place and then a further levy on that simply as it amounted to infrastructure. In nobody’s eyes would that have ever seemed logical and certainly not in the public interest;
- The development of communications infrastructure does not impose burdens or requirements on other forms of public infrastructure;
- The underlying objectives and basis for levying PGS or CIL did not therefore apply to this form of development, and it was important to ensure it was exempt. It is equally important to ensure that an exemption for communications infrastructure forms part of any Scottish levy;
- Such justification regarding the CIL was all the stronger given the adverse side affects such as the inflationary pressures that would result from increased costs of certain services and the potential for delaying or inhibiting the development of new and emerging technologies. Additionally, the current uncertainties of Brexit, possible Second Scottish Referendum, currency challenges and other world pressures, are likely to make the delivery of new communications infrastructure more expensive and more marginal in some areas of Scotland. The last thing required is a further levy that compounds this and tips the balance against network delivery and new connectivity such as the provision of new 5G services that will require thousands of new sites. Such a levy is therefore likely to be a barrier to new investment in communications infrastructure in Scotland rather than support it, if careful consideration is not given to this exemption point;
- In turn had the English Government chosen to introduce CIL for new communications infrastructure or infrastructure providers, there is a very real probability that in England, the level of new communications infrastructure deployment and network development would have been reduced or certainly many new services may have been delayed as commercial investment would have been penalised by the levy.

What is probably even more significant is that the delivery of communications infrastructure in Scotland, particularly more rural and peripheral areas like the Highlands and Islands, is very much recognised as a being economically marginal
and already expensive. Delivery costs for new services can be high due to several factors, including dispersed communities, geography and topography. Even where there has been public intervention to help deliver, for instance, new mobile communication services to the most remote of Scottish communities, such as through the Government’s Mobile Infrastructure project (MIP), the barriers and economics of delivering such communications services still remained unattractive and unduly prohibitive.

Indeed, the economics of delivering new communications infrastructure can be very marginal across many parts of Scotland and we reinforced this in our concern to another Scottish Government consultation on Net Economic Benefit and Planning in May 2016, which if introduced as initially worded, would have potentially also undermined the delivery of new communications infrastructure in more rural communities in Scotland. A particular point understood by Scottish Government’s own Digital Directorate.

Given all of this, we urge Scottish Government that it must follow the same path as English Government and not look to introduce the levy on new infrastructure and its providers such as Arqiva. As this would become a levy across both the delivery of public and private infrastructure which may already be economically marginal, then if imposed it is likely to have quite significant adverse impacts, particularly delivery to the more peripheral communities in Scotland. Communication infrastructure providers should be exempted from the infrastructure levy.

Our further concern is that Part 5 of the Bill on the levy suggests that permission to adopt and put in place a charging mechanism would sit with the planning authority/authorities i.e. they can choose those developments that might be exempt or not.

We are concerned therefore that if electronic communications infrastructure and providers like Arqiva are not exempted from any levy by specific wording in any Regulations, this would be left entirely at the discretion of local planning authorities. Like many providers, we deploy public infrastructure in every local authority in the UK and it would be unduly burdensome and unrealistic for us to monitor each and every local variant with a view to making representations on them all.

Such a regime could also result in great variation across Scotland that would be inconsistent and without rationale. Even in cases where a local authority might agree to a reduction or apply a value threshold, Arqiva and other infrastructure providers would still be left with a large administrative burden and this would be mirrored at local authority level with further unnecessary cost on the public purse.

Taking into account these factors, Arqiva considers that having regard to the aim of the levy and in the public interest, justification clearly exists for the levy to be disapplied, through specific exemption in the future Regulations, to certain categories of development. Legislation might logically include exemptions for development by or on behalf of:

- Privatised utilities or undertakings such as Electronic Communications Code Operators for the purposes of their networks;
- Government agencies such as Transport Scotland and SEPA;
- Other public bodies such as Health Care Trusts and ScotRail;
- Local government bodies such as Education Authorities, Highway Authorities and fire and police authorities;
- Statutory undertakers for the purposes of their undertaking.

We stress the importance that any exemptions must be clearly defined in Regulations to avoid uncertainty and / or challenge.

An alternative, but much less preferable approach would be to issue to local planning authorities Circular guidance that might support any Regulations, explaining the need to make such exemptions when introducing the levy in their areas.

We trust that you can accept our evidence is properly reconciled to the objectives of the levy likely to be introduced within the Bill and subject to secondary legislation. It has the particular benefit of avoiding an inconsistent approach towards all forms of public infrastructure and between different areas that could be counterproductive to the statutory aim of any levy and impose unnecessary costs on the public purse. Such an approach would also avoid the potential for local authorities being subjected to judicial review for introducing a levy in a manner that goes beyond its statutory purpose.

More importantly it is critical that such a levy is not simply counter-productive to its very aims and looks to penalise the very bodies and businesses, like Arqiva, that provide critical infrastructure to Scotland’s communities and which operate in the wider public interest.

Yours faithfully

Peter Hayne MRTP
Town Planning Manager
Arqiva