24 May 2018

Dear Bob,

Thank you for the Committee's Stage 1 Report on the Planning (Scotland) Bill, published on 17 May 2018. I welcome the Committee's careful consideration of the Bill and the recommendation that the Parliament should agree the general principles of the Bill. I enclose the Scottish Government's response to your report.

Yours aye,

Kevin Stewart

KEVIN STEWART
Local Government and Communities Committee –

Stage 1 Report on the Planning (Scotland) Bill – Scottish Government Response

The Scottish Government welcomes the Local Government and Communities Committee stage 1 report on the Planning (Scotland) Bill and also welcomes the Committee’s recommendation that the Parliament agrees the general principles of the Bill.

The Scottish Government’s response is structured to reflect the key findings and recommendations set out in the Committee’s report.

The Scottish Government review of planning

13. We acknowledge the range of approaches and timescales over which the Scottish Government has consulted on its proposals for inclusion within the Planning (Scotland) Bill.

The Scottish Government welcomes the recognition the Committee has given to the range of approaches and timescales leading up to the introduction of the Planning (Scotland) Bill. We also commend the Committee on the efforts it made to involve stakeholders, including communities, in its scrutiny of the Planning Bill.

Planning is important to all of us – that is why we have taken an open, inclusive and collaborative approach throughout the review of the planning system. The independent planning review panel commenced its work in September 2015 and the review has continued since the panel reported in May 2016. The approach the panel took was highly participative, and extensive written and oral evidence from a wide range of stakeholders directly shaped their recommendations. Their report led directly to our subsequent proposals for planning reform, including the shape and content of the Bill as part of a wider programme of reform. We have therefore taken the opportunity to remind ourselves the outcomes that the independent panel sought to achieve in developing our response to the Committee’s recommendations and have referred to the panel’s recommendations where relevant below.

The Scottish Government would also highlight that the review of planning has gone beyond the formal consultation noted by the Committee in its report. Over the last two years the Scottish Government has worked intensively and collaboratively with a cross-section of interests including planning and other built environment professionals, the development sector, planning authorities, agencies and communities to develop our proposals for change. This response has also been informed by that work to help ensure that changes to the planning system will work in practice.

The purpose of planning

37. The planning system is uniquely placed to deliver a wide range of public benefits including a high quality environment, social development, cultural and artistic opportunities, connectivity and economic prosperity. We consider that it is important to have a clear and shared view of what the planning system is designed to achieve.
38. Since 1947, the purpose of planning has simply been (as reflected in the long title of the Bill), to make provision about how land is developed and used. The purpose to which land is developed and used has been left to policy and practice. It is well understood now, however, that the planning system is central to delivering not only outputs such as high quality environment, warm and secure homes and national infrastructure but also to helping fulfil climate change obligations, sustainable development goals, and wider human rights.

39. We note that by stating a purpose to planning there is a risk that it is so all-encompassing that it is ends up saying nothing at all. However, we are aware of examples from the Netherlands, Finland, Denmark and Germany where such a purpose has been effectively and succinctly articulated to provide an over-arching purpose of what a planning system should be seeking to achieve.

40. We also consider that a clear vision of what planning is to achieve will provide greater certainty to communities and developers supporting more meaningful engagement on planning applications, local place plans and local development plans.

41. We therefore recommend that a purpose of planning is included within the Bill. Such a purpose should reflect the ambition to create high quality places, to protect and enhance the environment, to meet human rights to housing, health and livelihoods, to create economic prosperity and to meet Scotland’s climate change goals and international obligations.

The Scottish Government recognises the extensive discussion held by the Committee on the purpose of planning and proposals for its inclusion in the Planning Bill. It is clear from the evidence that the Committee heard that there are many different views on what such a purpose should contain.

To date, the purpose of planning has been set out in policy, rather than primary legislation. For example, National Planning Framework 3 sets out clear outcomes for planning to work towards, and the next review of the policy will provide an opportunity to revisit this so that up to date and relevant priorities can be debated and included.

The planning system has a wide role to play, and it is important that any overarching description of its purpose in legislation should not restrict its role. As noted in the Committee’s evidence session on 21 March, introducing a purpose in legislation would have operational implications throughout the system and could be used to challenge planning decisions. The wording of a statutory purpose must therefore be carefully considered to ensure it does not prejudice the balancing of different interests and issues which is at the heart of the planning process. We are also mindful that the independent panel called for a system that was stronger, but also more flexible and better placed to respond to and reflect contextual change.

In light of the Committee’s views on the matter, the Scottish Government will consider further the best way in which to articulate the purpose of planning in legislation and will bring forward appropriate amendments at Stage 2.
Part 1: Development Planning

The National Planning Framework

63. The proposal to incorporate Scottish Planning Policy (SPP) into the National Planning Framework (NPF) is, on balance, a sensible idea and puts the SPP onto a statutory footing. We note, however, that there is no explicit statutory reference to the SPP in the Bill[i] and the intention to merge the two documents could be made more explicit. [i] We note that Section 1(2) of the Bill would expand the scope of the NPF to allow future versions of the NPF to include policies and proposals for the development and use of land.

64. The Bill provides that the new NPF would become part of the development plan for each planning authority, along with the Local Development Plan. This substantially increases the status of the NPF and concerns have been expressed that this creates greater central control and influence in the planning system.

65. The move to a 10 year cycle for reviewing the NPF better accords with development timescales, reducing the amount of time spent on preparing plans. It also means, however, that there is an increased likelihood of significant reviews needing to be made to reflect emerging policy issues and challenges.

66. We welcome the steps taken by the Scottish Government in this Bill to increase the time available for Parliament to scrutinise this Bill. Given the enhanced role to be accorded to the NPF, however, the Committee takes the view that the process of Parliamentary scrutiny must be significantly enhanced to include time for substantive engagement with the public. Provision for such enhanced scrutiny should be incorporated in the Bill and amendments brought forward to—

- require Parliament to be consulted on changes to the NPF

- remove limits to the timescales for Parliamentary scrutiny of the draft NPF (and any revisions) and give Parliament the power to establish such timescales as appropriate to the scope of the proposals according to normal Parliamentary business planning procedures

- require the draft NPF to be accompanied by a statement as to the process of engagement and consultation undertaken by Scottish Ministers in preparing the draft NPF as well as information on the impacts on equalities, human rights, children and young people, island communities and sustainable development (reflecting current reporting requirements for Scottish Parliament Bills)

- ensure that the final NPF reflects the views of Parliament as a whole rather than Scottish Ministers and has the standing to endure across successive governments. We recommend that the Scottish Government amends the Bill to enable the final NPF laid in Parliament to be amended by Parliament and, following any agreed changes, for the final NPF to be subject to Parliamentary approval.

67. We welcome the Scottish Government's commitment to bring forward amendments to the Bill at Stage 2 "to place procedures for significant amendments to the NPF on the face of the Bill" and its consideration of how to make appropriate arrangements for minor amendments. [35]
68. We request further information on how the Scottish Government will ensure that the NPF has "clear read across to funding arrangements".

69. Subject to the above amendments being brought forward we are content with the proposals to strengthen the NPF.

70. Finally, we suggest that the NPF should provide an opportunity to create greater coherence between a range of national policy areas such as climate change, energy, marine planning and transport. We recommend that Scottish Ministers consider how such greater coherence might be established within the NPF and be reflected in the Bill.

The National Planning Framework and Scottish Planning Policy

The Scottish Government welcomes the Committee’s recognition that putting the Scottish Planning Policy onto a statutory footing is a pragmatic idea. We agreed with the independent planning review panel that this has the potential to significantly streamline the system as a whole. As noted by the Committee, we have already made provision for this by incorporating policies into the provisions for the National Planning Framework. The Scottish Government believes there is no need to go beyond this by referring specifically to ‘the Scottish Planning Policy’ in the Bill. This is not a recognised statutory term, but simply a name given to national planning policies, previously published as a suite of separate policy documents under different names, and then collectively as the Scottish Planning Policy since 2010, and again in 2014 when the current Scottish Planning Policy was adopted. Our view is that the inclusion of an explicit reference to it in the legislation would mean this part of the legislation becomes outdated and irrelevant over time, and is also unnecessary.

However, the Scottish Government recognises the point made by the Committee that there is potential for confusion as we transition into a new system, and so we will look at how the spatial and policy elements of National Planning Framework 4 are appropriately signposted and explained when work commences on it later this year.

Timescales and process for review and scrutiny of the National Planning Framework

The Scottish Government welcomes the Committee’s support for a 10 year review period for the National Planning Framework. We believe this will improve confidence and long term thinking in the planning system, and better reflects timescales for strategic development and infrastructure delivery. In practice, it would be open to any administration to bring forward an earlier partial or whole review of the National Planning Framework, should changing circumstances mean that this is necessary or would be beneficial. We have also responded to stakeholder views, by making provision for updating the National Planning Framework between review cycles. As noted by the Committee we have recognised the need for Parliament to play a role in any substantial updates in our response to the Delegated Powers and Law Reform Committee.

The Scottish Government recognises that the Scottish Parliament has a crucial role to play in scrutinising the National Planning Framework, and to reflect this the Bill extends the period for this from 60 to 90 days. We are concerned about the impact that the Committee’s recommended move away from a fixed timescale towards an open-ended period for Parliamentary scrutiny would have on the planning system as a whole. In practice, planning authorities give consideration to the timing of national planning policy reviews when determining their own work programmes for local development plans. Investors and infrastructure providers have also emphasised the critical importance of achieving greater
certainty from changes to the planning system. Without at least an indicative timescale for
the adoption of National Planning Framework, planning authorities may lack confidence to
proceed with reviewing or adopting local development plans, generating significant delays or
leading to plans becoming out of date, leaving a weaker policy context for decision making.

Taking this into account and based on previous experience, the Scottish Government is of
the view that the proposed 90 day period is reasonable and proportionate, balancing the
need for additional time with the importance of clarity and certainty for the wider system.

Impact assessments

The impact assessments referred to by the Committee are largely existing legal
requirements or are expected to be in the future, for example as a result of the Islands Bill.
The additional requirement of an assessment of impacts on sustainable development is, in
our view, unnecessary. There is already a requirement for Scottish Ministers to exercise
their functions of preparing and revising the National Planning Framework with the objective
of contributing sustainable development as a result of section 3D of the Planning etc.
(Scotland) Act 2006.

Section 3C of the 2006 Act also sets out requirements for Scottish Ministers to report on
public involvement and conformity with their participation statement on publication of the
finalised National Planning Framework. The Scottish Government agrees that it would be
beneficial for any proposed National Planning Framework submitted to the Parliament to be
accompanied by appropriate supporting information including impact assessments and
information on engagement and consultation undertaken. This information could help to
inform Parliament’s scrutiny of the National Planning Framework.

The Scottish Government is therefore willing to bring forward an amendment for this
information to accompany the proposed National Planning Framework at the point it is
submitted to the Parliament for scrutiny, rather than at the end of the process as currently
required.

Parliamentary amendment and approval of the National Planning Framework

The Scottish Government does not agree with the Committee’s recommendation that the
final National Planning Framework should be amended by and approved by Parliament. The
National Planning Framework is not legislation, it is policy. The current and indeed any
future Scottish Government is entitled to bring forward policies as a matter of course. The
2006 Act already recognises the significance of the National Planning Framework in its
provisions for consideration of a proposed version by Parliament, and for Ministers to have
regard to any resolution or report of the Scottish Parliament or its committees. We believe
that these arrangements are fit for purpose.

Including formal procedures for amendments would also add further time and complexity to
the policy making process. Past experience has shown that the Parliament has influenced
the content of the National Planning Framework, for example by debating and voting for
additional national developments to be incorporated. The introduction of more procedure
using the approach which is taken to making legislation rather than policy is therefore, in our
view, disproportionate, and not necessary to enable Parliament to have influence over the
Framework.
The National Planning Framework deals primarily with land use and the projects it supports are funded through a mix of public and private sector investment. In preparing the National Planning Framework, the Scottish Government works across portfolios to ensure join-up and read-across to Government funding programmes. We announced in the Programme for Government, for example, that NPF4 will be aligned with the second Strategic Transport Projects Review. We have also established an Infrastructure Delivery Group, involving both public and private sector infrastructure delivery partners, to help strengthen the links between development planning at all scales and infrastructure investment. That group is expected to play a role in supporting the preparation of NPF4 to ensure it is aligned with infrastructure planning and investment. We also recognise that stronger join-up including with the Infrastructure Investment Plan will further strengthen the delivery of the National Planning Framework.

The National Planning Framework draws together policies and sets out a coherent spatial strategy. We believe this was achieved in the third National Planning Framework (NPF3) which fully explores the spatial consequences of marine, climate change, transport, energy, economic, environment, and many other policies – both in combination and in relation to ‘place’. The Committee has given examples of relevant areas to reflect in the National Planning Framework, but policies and priorities will change over time and so a provision that refers to specific policies for NPF to take into account runs the risk of quickly becoming out of date. We therefore do not consider it would be helpful to require this in primary legislation.

**Removal of Strategic Development Plans**

92. It is fair to say that views are mixed on the proposal to remove the statutory provisions relating to Strategic Development Plans (SDPs). To the extent that there is support, it is contingent on a commitment to continue with some form of regional spatial planning because, as one witness put it, "people and the natural environment do not obey strict political boundaries."

93. We note that there are significant concerns about the future of regional spatial planning, a discipline that has a long history in Scotland and has attracted interest and commendation from elsewhere. A number of the planning authorities that comprise Clydesplan wrote of their positive experience and the valuable contribution that regional planning had made to "the successful delivery of regeneration and economic growth in the Glasgow city region in recent years."

94. It was not clear from the evidence we heard that removing the current provisions for SDPs will lead to a simplification, to streamlining, to cost savings or to more effective planning at a regional scale. There is a risk that the time and effort currently devoted to the four SDPs will be eroded and political support will wane if regional planning becomes a voluntary endeavour.

95. Given this, we do not consider that the current statutory framework for regional planning should be repealed unless a more robust mechanism is provided to that currently proposed in the Bill.

96. We suggest that such a mechanism could include enabling local authorities to work together for strategic planning purposes; and that any agreed plan that arises from that work should then form part of the relevant Local Development Plans (LDPs).
We have been clear throughout the review of planning that we wish to see a continuing role for strategic planning. The Scottish Government agrees with the Committee that views on the current strategic development planning arrangements are mixed. We respect the long history of regional spatial planning, but the context has changed dramatically since regional plans emerged in the post-war period and even in the period since the 2006 Act.

Whilst strategic planning in Scotland has important strengths, the Scottish Government also wants to address its weaknesses. We have an opportunity to make good use of the National Planning Framework to strengthen and better co-ordinate strategic planning in Scotland.

The Committee’s report reflects the views of some stakeholders who have a direct involvement and interest in existing strategic development plans, but it is important to balance this perspective with wider evidence and views on the matter. Building on the earlier review of strategic development plans, the independent panel concluded that this part of the system is not realising its full potential and made recommendations for change. The Committee’s witness is right to say that “people and the natural environment do not obey strict political boundaries”, but the current system imposes particular boundaries on strategic planning, and leaves some parts of Scotland out of it altogether. We agree with the panel that change is required to simplify and streamline the system of development plans, to reduce unnecessary procedure, to minimise the number of plans that communities have to take time to engage with, and to ensure greater flexibility. To achieve this, we maintain that strategic planning matters across Scotland could be set out collectively in the National Planning Framework. We believe this could generate unprecedented opportunities for innovation, improved alignment, fuller collaboration and streamlining of procedures.

The Scottish Government has been clear that the preparation of the National Planning Framework will be collaborative. We set out our early ideas for co-production on strategic planning in our technical paper¹, and discussed the approach with stakeholders including the working groups. However, we have reflected on the Committee’s views and noted the concerns it raises about political support and resources for strategic planning. The success of the National Planning Framework and its role in enabling a more modern approach to strategic planning will depend to a large extent on the level of investment and commitment that planning authorities and other stakeholders put into it.

We will therefore look to amend the Bill at Stage 2 to introduce a clearer duty for local authorities to work together in strategic planning, while retaining flexibility about how they do so and about which other authorities they collaborate with.

The Scottish Government does not agree with the Committee that strategic planning should be incorporated into local development plans. Our approach would ensure that there is a clear recognition of strategic planning matters. We are concerned that moving strategic planning to a local level would result in a loss of strategic focus, as well as in duplication and confusion between plans. However, we recognise that strategic planning and local development plans should be properly aligned and will consider this further.

130. In considering the changes to local development plans we are content with the proposals to move to a 10 year cycle (which accords with the NPF cycle). We welcome the proposals to provide for greater connection between the LDP and local outcome improvement plans which should provide for a more coherent vision for communities.

131. We note the concerns expressed that the savings identified from the LDP and NPF moving to a 10 year cycle could be "unrealistic" and we therefore recommend that the Scottish Government and COSLA monitors and report on the costs of LDP and NPF plan preparation (should the Bill become an Act) to confirm that such savings do then materialise.

132. The requirement for planning authorities to review LDPs, in order to address newly emerging issues (or as a consequence of NPF reviews), may also give rise to additional costs. Our recommendations for enhanced Parliamentary scrutiny should ensure that NPF reviews (with their consequent impact on LDPs) are only undertaken when necessary and following robust consultation and engagement.

133. We remain to be convinced that removing statutory supplementary guidance will simplify LDPs and improve scrutiny and accessibility to any great extent. The removal of such guidance through the Bill could lead to increasingly complex and lengthy LDPs, as authorities include detail that would have previously formed supplementary guidance in the plan itself. This goes against the aims of streamlining plan making processes and producing concise, easily understood plans.

134. The removal of statutory supplementary guidance may also result in greater use of local guidance which, without statutory weight, could result in more confusion for developers and communities about the types and nature of developments that are permissible locally.

135. We therefore seek further clarification from the Scottish Government on how matters which were previously the subject to statutory supplementary guidance should now be articulated and given sufficient weight to ensure development is in accordance with an authority’s plans.

136. We agree with witnesses that removing the main issues report could reduce the opportunities for engagement with stakeholders and communities. We consider however that the new evidence report and gatecheck provides a mechanism to address these concerns. We welcome the Minister’s commitment to consider amendments at stage 2 to provide for greater community engagement for development planning.

137. We recommend that those amendments should seek to ensure that evidence reports from authorities set out the quality and impact of their engagement with communities and stakeholders and in particular their engagement with disadvantaged communities.

138. We also consider that the gatecheck mechanism should provide for greater involvement with stakeholders so that their views are gathered by the Reporter as evidence on the robustness of evidence underpinning the draft LDP. We recommend that regulations provide for this requirement.
139. We also note the calls for greater innovation on how views are gathered to inform LDP preparation and the gatecheck mechanism, including from public hearings and more deliberative approaches. We request further information from the Scottish Government on how it will encourage these and other more meaningful engagement approaches.

140. Later in this report we also make further recommendations about other aspects of the evidence report and gatecheck which should be amended in the Bill (see the section on Local Place Plans).

**Timescales, reviews and resourcing**

The Scottish Government welcomes the Committee’s views that a move to a 10 year review timescale and improved alignment with community planning would provide a more coherent vision for communities.

We maintain that the proposed changes to development planning could result in a significant saving in resources that would in turn be available to support activities where we want to see greater emphasis, including engagement and delivery. The Scottish Government already works closely with planning authorities to support their development planning functions. We operate a development planning gateway and meet with representatives of all authorities through our development planning forum as well as in collective and individual liaison meetings. Through this engagement, we expect any resourcing issues arising from changes to development planning would be raised. However, planning authorities do not all currently routinely record information on the costs of preparing existing development plans and so a more rigorous comparative analysis of present and future systems may be difficult. Practice, rightly, varies between authorities and we would not interfere with local decisions on the level of resourcing and investment required in each area.

The Scottish Government recognises the potential resource impacts arising from reviews of the National Planning Framework in the future. This also has significant implications for central funding and resourcing and so we agree that reviews should only be undertaken where there is a clear business case to do so. Robust consultation is an essential part of any review of the National Planning Framework.

We can also provide some reassurance to the committee that the Bill does not necessarily require all local development plans to be reviewed in the event that the National Planning Framework is updated – we would expect this to happen naturally during the 10 year review cycle of each local development plan. In addition the new provision for local development plans to be updated will give authorities the ability to amend their plans to address new and significant issues without having to undertake a more resource-intensive review of the plan as a whole.

**Statutory guidance**

The Scottish Government would like to provide further assurance to the Committee that our proposal to remove provisions for statutory supplementary guidance to be part of the development plan are likely to greatly improve the transparency and accessibility of the planning system.
This change was based on significant concerns about current practice and operational difficulties, including:

- **complexity.** Rather than simplifying, in practice supplementary guidance is making development plans more complicated and difficult to follow. The basis for decision making, and what specifically constitutes the development plan, is not always well understood. In the proposed new system it would be clear that decisions should be based on what is in the development plan itself, with all other guidance being a material consideration.

- **consistency.** A significant volume of supplementary guidance, prepared before, during or after the plan, and covering a very wide range of topics is generating confusion for investors and other interested parties. Approaches to supplementary guidance and its connection with the plan vary significantly between authorities.

- **repetition.** As Scottish Planning Policy currently has no statutory status, planning authorities often feel they need to repeat issues in supplementary guidance, in order to be able to give those issues appropriate weight in planning decisions.

- **resourcing.** As set out in the financial memorandum, removal of supplementary guidance could result in significant cost savings at a time when we are seeking to ensure the system is better resourced.

- **transparency and scrutiny.** We fundamentally disagree with views that loss of supplementary guidance would lead to a lower level of support for some policy areas. In addition, it is not subject to a robust and independent Examination, coming instead directly to Scottish Ministers for consideration prior to adoption. There are no opportunities for interested parties to submit representations on supplementary guidance for any further consideration other than by the planning authority prior to the adoption of supplementary guidance.

In response to the Committee’s question therefore, the Scottish Government can clarify that significant policy matters that have previously been included in supplementary guidance should in the future be included in the plan to ensure they are properly considered and consulted on, and given sufficient weight in decision making. Key policy principles that should shape the spatial strategy for an area as whole, such as housing, energy and environment, or those with significant consequences such as the approach to developer contributions, should be an integral part of the plan and properly consulted on and examined, rather than an add-on in the form of statutory guidance prepared at a later date. Matters which are less significant could be set out in guidance locally in a more flexible and proportionate way that still carries the weight of a material consideration in decision making.

Whilst we agree that plans should be concise by avoiding the inclusion of superfluous information, we believe that a marginally longer, but more robust and place-based development plan would be more accessible and user-friendly than a shorter plan accompanied by a voluminous statutory guidance which is difficult to navigate. Our proposals for giving the Scottish Planning Policy statutory weight as part of the National Planning Framework will remove a great deal of unnecessary policy repetition and have a much greater impact on the length and accessibility of local development plans.
Engagement in local development plans

The Scottish Government is clear that the proposed new system would bring, greater, rather than reduced, opportunities for community and stakeholder engagement in development planning. However, much of this would normally be included in secondary legislation on the detailed procedures for preparing development plans. We recognise that this has not been sufficiently clear, and will bring forward amendments to require this intended engagement on the face of the Bill.

The independent panel recommended removal of the main issues report, as too often it has been an ineffective vehicle for meaningful involvement in planning. The proposals in the Bill should secure more effective early engagement in developing the evidence report and the proposed plan, rather than only consultation once a document has been produced. The introduction of a gatecheck will ensure that the outcomes that plans are seeking to achieve are agreed at an early stage. This is a crucial stage, and we are therefore exploring scope for amendments to ensure that it is undertaken in a transparent and collaborative way. We recognise that the public should be engaged prior to finalising the evidence report, and are considering an amendment requiring planning authorities to set out how those views were sought and have been taken into account. Future regulations and guidance can support this and will be informed by pilot work, including a lead practice project we have recently been undertaking in collaboration with Moray Council.

In all cases, wider requirements under the Environmental Assessment (Scotland) Act 2005 mean that all authorities would be required to consult on a draft version of their proposed plan, prior to finalising and submitting it to examination. It is not necessary to restate or duplicate this requirement in planning legislation, although we will ensure it is highlighted in guidance for authorities and information for the public.

Local Place Plans

185. Local Place Plans (LPPs) will provide a statutory role for communities to bring forward plans that reflect their aspirations for the future of the places they live in. LPPs are not, however, a replacement for high quality, meaningful community engagement on the local development plan nor does this Bill propose that they should be. We therefore welcome the Minister’s confirmation that “As part of the wider planning review, we will bring forward proposals to ensure that planning authorities consult more widely on their development plans, including with children and young people.” (Local Government and Communities Committee 21 March 2018, Kevin Stewart, contrib. 92 [95]) —

186. We also welcome the Scottish Government’s commitment to amend the Bill to ensure that authorities must ‘take account of’ LPPs, placing them on a par with the status currently afforded to the NPF. It remains the case, however, that if minded to an authority can choose not to take account of any LPP it receives. As currently framed there is a risk that communities spend considerable time and effort on an exercise which may or may not be taken any account of by the planning authority.

187. Whilst we acknowledge the funding identified by the Minister to support capacity building and to fund the preparation of LPPs, we are not convinced that this will be sufficient to deliver the number of plans envisaged in the Financial Memorandum (92 per year). We remain to be persuaded that the resources that are necessary to support the delivery of LPPs are best expended on a process that might lead to no meaningful outcome for communities.
188. We are concerned that the powers available to create LPPs will disproportionately be taken up by communities with the capacity, time and resources to devote to preparing plans. More disadvantaged communities who stand to gain most from an effective, accountable and participatory planning system, by contrast, will be considerably less likely to take advantage of the opportunities due to a comparative lack of capacity, time and resources. This will widen inequality.

189. We welcome the statutory underpinning of LPPs as proposed in the Bill. However, what is unclear is the extent to which that statutory underpinning will mean that the time, effort and resources required to produce LPPs will result in them playing a "positive role in delivering development requirements" as originally envisaged by the Independent Review Group.

190. As things stand the proposals for LPPs run the risk of being disregarded or ineffective. The Committee firmly believes that communities should be supported to help develop plans for their areas. We suggest that councils, at the start of the Local Development Plan process, should put out a call for people to help them develop local place plans and show how this has been done in the Evidence Report. Once the LDP is in place then we are content that communities can bring forward their own plans that councils should take account of, providing communities are adequately supported to do so.

Our comments in relation to engagement in development planning address some of the concerns raised by the Committee above.

We intend to bring forward amendments to ensure that planning authorities will have a legal requirement to take into account local place plans in all cases. We would expect the planning authority to set out clearly how relevant parts of each local place plan have been taken into account when it is preparing its local development plan, and for this to be considered in examination as appropriate. In view of the Committee's concerns we will consider whether further amendments would be helpful to clarify our expectations of planning authorities in dealing with local place plans.

We note the Committee's concerns regarding resourcing. Fundamentally, we would emphasise that local place plans have been introduced within a wider context of growing community empowerment. This extends beyond the planning system and provides a much stronger platform for active involvement than would have been the case when previous legislation that focused on frontloaded engagement was being developed.

As noted in the Financial Memorandum, the demand for local place plans will be led by communities. The figure of 92 local place plans was provided as an estimate of demand. In supporting the preparation of guidance on local place plans, we will consider how best to provide sign-posting to opportunities for funding for their preparation and delivery. We do not consider that it should be only planning authorities that are responsible for supporting local place plans. A key element in our Making Places Initiative has been increasing community capacity. In addition, we have provided additional funding for PAS to provide assistance to communities in community led and development planning. We will consider further the Committee's concerns in how this additional support is directed to support more disadvantaged communities.

We agree with the Committee that it is important that local place plans set out a positive vision for a community's development. We will stress this in future guidance to community bodies.
We also agree that there should be support for communities in preparing their local place plans. We remain convinced that local authorities should work with their communities in defining priority areas for support. If we were to go further and require authorities to integrate this into the more formal development planning process there is a risk that local place planning would become overly formalised and may lose local community ownership, commitment and drive. We would also be concerned, as expressed in similar terms by the Committee, that less advantaged communities would be excluded from an apparently more formal process. As a result, we remain of the view that provisions should be light touch to allow for a more fluid approach which ensures changing community perspectives can continue to emerge and will be built into the system over time. We believe this is a better approach which properly reflects the need to avoid placing too great a burden on communities.

Some witnesses have suggested that local place plans should have development plan status automatically. We do not believe this would fit with the flexible approach that we consider is most helpful to communities. It would require communities to gather robust evidence, undertake formal impact assessments and undergo full scrutiny prior to the plans being finalised, and would move local place plans away from the original objective of linking with wider community empowerment.

**Equalities and planning**

194. Whilst we welcome the Minister’s offer to meet with ENGENDER to discuss their concerns, we request that the Minister respond to us before the Stage 1 debate on:

- the specific “limited evidence” available that informed its views on the impact of the Bill on gender, sexual orientation and gender reassignment

- the views it received (and that were echoed in our event in Skye) that access panels (or similar representative body) should become statutory consultees as identified within its EQIA

- what specific evidence, broken down by protected characteristic, led it to conclude that "the overall Bill provisions will have a positive impact on equalities issues."

In coming to a view on the impact of the Bill the Scottish Government considered the following evidence in relation to gender:

Scottish Government Equality Outcomes: Gender Evidence Review 2013
http://www.scotland.gov.uk/Publications/2013/04/8765

Scottish Climate Change Bill EqIA (2009)
http://www.gov.scot/Topics/People/Equality/18507/EQIASearch/ScottishClimateChangeBill

Planning and Community Involvement in Scotland (2004)

In terms of available evidence on sexual orientation and gender reassignment the Scottish Government information contained in: the Scottish Government Equality Outcomes: Lesbian, Gay, Bisexual and Transgender Evidence Review 2013 was considered to have limited evidence applicable to planning. http://www.gov.scot/Publications/2013/04/7520


Statutory consultees are specified in secondary legislation. We will explore further whether it would be helpful to specify new statutory consultees to advise on equality (and other issues) following completion of the Bill.

We have listed the evidence considered in relation to protected characteristics in the Appendix to this response.

The Scottish Government is grateful to Engender and other stakeholders for highlighting the importance of equalities issues in relation to the planning system. Officials recently met with Engender to discuss the issues raised in their written submission to the Committee and we expect this will form a positive basis for on-going engagement on gender, planning and place.

We remain of the view that our EqIA was appropriate in relation to the character of the Bill and its role in setting out the overarching framework for the planning system. However, we are updating our EqIA to reflect further relevant evidence that has been published since the Planning Bill was introduced to Parliament in December 2017 and will publish this before Stage 3.

The Scottish Government recognises the importance of ensuring that everyone has an opportunity to get involved in planning the future of their place. The independent panel’s recommendation on involving a wider range of people in the planning system led us to commission research on this. We agree that this is important and will be updating our planning guidance to reflect the need for wider engagement in the new system that emerges following the passage of the Planning Bill. We will also consider whether to bring forward further amendments (complementing others relating to stronger engagement) that will strengthen the existing requirements relating to equalities set out in section 270B of the 1997 Act.
221. Whether rights of appeal in the planning system should be equalised has been a long standing issue on which a wide range of individuals and organisations hold passionate views either for or against. The reasons cited as supporting ERA or for not supporting it are well established as are the views as to whether those reasons are evidence based or robust.

222. The evidence we heard on ERA very much replicated this long standing debate about whether ERA would:

- lead to a more robust, plan-led system which encouraged more meaningful up front engagement and agreement between communities, developers and authorities on what development should take place in local areas; or

- lead to delays, uncertainty, reduce early engagement and investment in the housing and developments necessary to support people to live and work in their local area.

223. It is clear to the Committee that many communities feel frustrated by the planning system. Previous attempts to front-load the system have not been successful. The Committee is not persuaded that proposals in this Bill go far enough to address that. There is an imbalance in a system whereby the applicant can appeal decisions that have been taken in clear accordance with the development plan.

224. The Committee is conscious that the availability of appeals to applicants undermines confidence in a plan-led system. Appeals can be lodged free of charge and irrespective of whether an application is in accordance with the Development Plan. The Committee believes that in a plan-led system appeals should only be allowed in certain circumstances.

225. The Committee has heard evidence from both sides of the argument in relation to equal rights of appeal. We want people to feel involved in the planning system at all stages and we urge the Scottish Government to look at these issues before Stage 2.

The Scottish Government recognises this long-running debate over appeal rights and the widely differing and well-established views of stakeholders. Our position has been clear and consistent on this. Stronger community engagement at an early stage is much more constructive than more adversarial appeals at the end. Having explored the issues, this was also the view of the independent panel.

The thrust of the review of the planning system is towards strengthening of planning’s contribution to inclusive economic growth, through delivery of development and empowering communities to have a meaningful influence. Positive collaboration at the earliest stages is key to achieving that. Stronger engagement in development planning, and in communities’ own local place plans, is a better means to influence future development and to increase confidence in what will happen. Adding further procedures for conflict and dispute resolution onto the end of the planning process would be a disincentive to that early, positive collaboration.

The Scottish Government also understands and respects the views of those who would seek to invest in the development our communities need. We cannot afford to have Scotland at a competitive disadvantage or to put additional obstacles in the way of investment and inclusive growth. We are clear that changes to the long-established system of appeals could
negatively influence investment choices, as investors would perceive conditions in other parts of the UK to be more favourable. The ability for an applicant to appeal a refusal of planning permission remains a vital and necessary part of our planning system. A significant number of much-needed homes, facilities and places of work only exist because they have been approved through appeal. This is not all about profit for the development industry; it is about real people's actual homes and jobs. Independent reporters or local review bodies are responsible for taking account of the development plan and other material considerations to make properly informed decisions in each case.

The Scottish Government does not agree that previous work on the front-loading of the planning system has not been successful. There have been good examples around Scotland of public engagement to capture the views and aspirations of local people. The charrette process has helped many communities to get involved in planning their places, and the Place Standard is being actively used in many areas to guide community involvement in discussions about places. We acknowledge that there is more that can be done to build on this progress, and the Bill's provisions will take this further to embed front-loading, for example through the proposals for the National Planning Framework, development planning, local place plans, simplified development zones and pre-application consultation.

The Scottish Government will monitor the way planning is operating following the reforms. The provisions in the Bill for performance management will enable study of stakeholder satisfaction with the way in which people have been engaged and listened to in the planning of development.

No matter how engaged people become and feel, there will still be instances where some do not get the results they want from planning. Changes to the appeals system will not change that.

The Minister for Local Government and Housing has previously provided evidence to the Committee, comprehensively setting out the difficulties and uncertainties involved in limiting appeal rights to specific circumstances. It would add further process, complexity and frustration to the system if there was to be a right of appeal where the boundaries for that right are unclear. For example, as given in evidence by the Minister and the Chief Planner, it is not always a clear-cut assessment as to whether a proposed development is in accord with the development plan. Often some aspects of the plan will support the development and other aspects will not. Also, the flexibility for material considerations to be able to outweigh development plan provisions is a vital part of the responsiveness that is also sometimes needed and well justified in the system.

The Scottish Government maintains that we have the right balance in appeal rights already and that making changes would take our planning system in the wrong direction, and would be damaging to the overarching intentions of planning reform.

**Agent of change**

239. Music venues make an important contribution to the cultural life and economy of Scotland. We agree that it is, therefore, unreasonable for those moving into a new development to lodge complaints about pre-existing noise levels that can ultimately result in the closure of such businesses.
240. We therefore welcome the Scottish Government's commitment to include the agent of change principle in the next National Planning Framework and that in the meantime the Scottish Government's Chief Planner has provided guidance to planning authorities asking them to ensure decisions reflect this principle.

241. That said, we note that the Chief Planner's letter to Planning Authorities suggests that current Planning Advice Note (PAN) 1/2011 Planning and Noise addresses this issue to some extent. Given that this existing advice required reinforcement by the Chief Planner, we question whether guidance alone or inclusion within the NPF will sufficiently safeguard this principle from subsequent changes in guidance or policy.

242. We also note that the advice in the Chief Planner's letter relates the agent of change principle to music venues, rather than other sources of existing noise such as those we heard about in evidence (e.g. sports venues, theatres). We recommend therefore that the Agent of Change principle should be applied more widely to, for example, theatres.

243. Given these concerns, we recommend that the Agent of Change principle be included within the Bill.

244. We also recommend that the Scottish Government considers widening the statutory consultees on planning applications to include an appropriate representative body of music venues (as already exists in relation to the Theatres Trust).

245. We also seek further information from the Scottish Government on whether:

- the definition of cultural spaces should be amended to include grass-roots Music Venues;

- a designation of "areas of cultural significance" should be created to provide greater protection to areas where creative industries, including music venues, have collectively created a cultural hub.

We recognise that the Committee received a considerable number of representations on this issue and we are grateful to the Committee for their consideration of it. As the Committee has noted, we have already signalled our intention to address this through future policy, and highlighted the existing guidance in PAN 1/2011. This guidance applies to all forms of noise-making uses, including for example transport and industrial operations, but we recognise that in the past planning authorities may not always have given sufficient priority to cultural venues, and therefore the Chief Planner letter and future policy will highlight these issues.

Implementing the Agent of Change principle through policy is consistent with the approach taken in other parts of the United Kingdom and with the requests made through responses to the Committee; indeed in giving evidence to the Committee the representative from the Music Venues Trust recognised that Scotland was already at the forefront with such a strongly worded message to local authorities that had not happened elsewhere in the United Kingdom. We would also remind the Committee of the stronger status proposed for the National Planning Framework through the Bill, so that it will be a key factor in determining planning applications. We consider that the development plan is the appropriate vehicle to discuss the need for different types of land use and issues to be taken into account in making balanced decisions. The primary legislation does not currently mention or give preference in the planning system to any particular type of use, and we do not believe it would be appropriate to do so in this case.
We will consider the Committee’s recommendations about extending the Agent of Change principle further, in relation to other sources of existing noise, and whether there is scope to identify particular areas for their cultural significance as part of the policy development process. Statutory consultees on planning applications are defined in secondary legislation and we will consider what changes may be appropriate when that is reviewed following the passage of the Bill.

Part 2: Simplified Development Zones

277. Simplified Development Zones (SDZs) in the context of a plan-led system could potentially make a positive contribution to place-making or delivering infrastructure. In considering the mixed views on the value of introducing SDZs we note that their predecessor – Simplified Planning Zones (SPZs) - have not met with much success since their introduction. Whilst we recognise SDZs are an improvement, providing greater flexibility and incentives for development to take place where it is needed, we remain to be convinced that they will lead to a sea change in proactive purposeful development.

278. We agree with witnesses that SDZs represent a "discretionary tool in the tool box authorities may use" if they consider it appropriate. As such we are supportive of their inclusion within the Bill. We would, however, wish to see some changes made in order to ensure that they more closely align with the proposals in the Bill to ensure meaningful engagement is undertaken early on.

279. We consider that, as part of the regulation making powers, proposals for SDZs should require to be included within the NPF or LDP to ensure that they are fully consulted on and form part of a wider plan for the area.

280. SDZs could play an important role in master planning and redevelopment, but we believe that only Scottish Ministers and planning authorities should have a statutory right to bring forward proposals for an SDZ.

281. We welcome the Minister’s commitment to amend the Bill at Stage 2 to identify the types of land that may not be included in an SDZ scheme, with a power included to add or remove entries by regulations subject to the affirmative procedure. We also welcome the Scottish Government’s commitment, in its letter dated 25 April 2018, to bring forward amendments to clarify its intention regarding advertising consent in SDZs and to remove the reference to disapplying regulations.

The Scottish Government welcome the recognition that SDZs have the potential to make a positive contribution to place-making and we are pleased that the Committee agrees they have a role to play in an improved planning system. SDZs offer huge potential for the authority to plan high quality places. Whilst the use of SPZs has been limited in Scotland to date, we believe they have achieved significant success with Hillington Park SPZ, for example, attracting £25 million investment into the business park and being recognised in the 2015 Scottish Awards for Quality in Planning.

Taking into account the evidence that the Committee has received on this proposal, we are concerned that the provisions have not been widely understood as a positive tool to strengthen rather than undermine planning. We are therefore considering how they can be rebranded to better reflect their purpose, as recommended by the independent panel. Given some of the misunderstandings about SDZs, we will introduce an amendment to rename SDZs, to better reflect their role in masterplanning and placemaking.
We believe that culture change will encourage planning authorities to be more proactive in planning and designing their areas and using this sort of proactive mechanism. We maintain that planning authorities should lead and facilitate the necessary development in their areas, in line with the vision for that place. To support this shift in mindset we will produce clear new guidance and templates to help planning authorities prepare schemes. We are also working with Scottish Futures Trust to explore the development of a support package for early adopters of the new provisions. These projects will offer real examples to illustrate the benefits of the mechanism in terms of taking a proactive, coordinated, infrastructure first approach, de-risking investment by offering certainty, and providing a holistic, inclusive approach to design and placemaking.

We believe by invigorating and updating legislation, and removing some of the restrictions, the new mechanism will be used more. To monitor that uptake we have included provisions in the Bill requiring authorities to report to Ministers on their use of it.

Our provisions intend to modernise and build on the arrangements for the current SPZ provisions which have been in place since the 1980s. The existing legislation on SPZs does not reflect our emphasis on frontloading and meaningful early engagement. The provisions will allow us to prescribe detailed requirements that ensure full early engagement and appropriate publicity of the scheme and its contents, with opportunities for people to make their views known before any scheme is made.

The Scottish Government does not agree that SDZs should always have to be included within the National Planning Framework or local development plans – this would be inflexible and reduce the opportunities for planning to respond quickly to changing circumstances. This may arise, for example if a major local employer suddenly withdrew from an area or closed down, and a planning authority wanted to act swiftly to set out alternative uses for that location to encourage new investment and support local economy. Any such scheme would still need to go through due process, including community engagement, involving key agencies, and scrutiny by Ministers where necessary. These stages are, in fact, similar to those undertaken in the preparation of a local development plan. We would, however, expect the National Planning Framework or local development plan to include any SDZs that could be anticipated at that time, and we envisage a positive role for local development plan delivery programmes as a more flexible means of prioritising future SDZs to support the delivery of the wider objectives of the plan.

We do not consider it is appropriate to restrict the ability of any interested party to bring forward a SDZ. They are essentially an alternative way of granting planning permission (and other consents) and anyone can seek planning permission, without restriction and the identity of the applicant is not a relevant planning consideration. Community groups may wish to propose an area as an SDZ, for example to support delivery of their local place plan, or to help bring a building or site back into use and influence the most appropriate form of development for that location. As the Minister for Local Government and Housing set out in his letter of the 28th March 2018, we have included provisions that will allow us to set out requirements for making a valid request for the planning authority to establish a SDZ. It is then for the local authority to prepare the scheme, including complying with the consultation requirements set out in schedule 5A. Our early thoughts on the requirements for making a valid request include that the requester should set out their connection with the land and, if they are not the landowner, should contact the landowner and seek their views on the proposal.
306. The evidence we received on the changes to pre-application consultation, delegation of decisions, the duration of planning permission and completion notices (Part 3 of the Bill) was broadly supportive. Overall the changes proposed seek to strengthen engagement through pre-application consultation, seek to have more decisions taken at an appropriate level and provide greater certainty to communities and developers that when planning permission is granted it leads to delivery on the ground in a timeous fashion.

307. As such we are broadly content with Part 3 of the Bill although we seek further clarification from the Scottish Government of whether those who lose permission for incomplete works will have a duty to restore the land to its original state, which will provide further encouragement to deliver the development on time.

308. We recognise that planning authorities currently can "decline to determine" repeat applications in some circumstances. We recommend, however, that the Scottish Government should further limit or deter repeat applications which have been previously refused and where there has been no significant change in that application. We call on the Scottish Government to bring forward amendments to the Bill to give effect to this recommendation.

309. We also recommend that the Scottish Government should limit or deter the ability of applicants to proceed with multiple appeals for the same site and should amend the Bill accordingly.

The Scottish Government welcomes the Committee’s findings on the proposed changes to development management.

In response to the Committee’s request for clarification, there is currently no duty for those who lose permission for incomplete works to restore the land to its original stage. However, existing powers under section 179 of the Town and Country Planning (Scotland) Act 1997 allow an authority to require the taking of reasonable steps to ensure the condition of land was not having a negative effect on amenity.

The Committee’s report also requests further consideration of the criteria for declining to determine repeat applications, and we will therefore revisit this issue. We are of the view that, within such criteria, the planning authority should continue to have discretion to decide whether to decline to determine an application. We also need to consider the issue of allowing revised applications to address grounds for refusal and that planning decisions should be made on planning grounds, i.e. that such discretion to refuse to even consider an application is not exercised on a more arbitrary basis. We have already announced our intention to consult on removing the fee exemption for repeat applications.

In response to the Committee’s proposal for limiting or deterring the ability of applicants to proceed with multiple appeals for the same site, we would point out that where the planning authority declines to determine an application, there is then no decision on the application that can be subject to appeal/local review. Where a repeat application is accepted and permission is refused by the planning authority, we do not consider that removing the right to challenge the grounds of refusal would be appropriate. We therefore have no plans to explore this further at this stage. However, we will consider the possibility of charging for appeals, as part of our fees review.
Part 4: Other matters

Fees

326. We welcome the provisions in the Bill that, subject to further regulations, may in time permit planning authorities to move to full cost recovery for development management. We note that the Scottish Government will consult on how the powers relating to fees will be used. As the Bill seeks an enabling power, we are limited in the extent that we can comment on the detail of the level and type of fees which authorities and the Scottish Government will be able to charge and their resulting impact on applicants and on the resources of planning authorities.

327. In relation to the provisions which would enable the Scottish Government to charge others for its services, we request clarification of what services would fall within "facilitates, is conductive or incidental to the performance of those planning functions".

328. We welcome the Scottish Government commitment that, in responding to the Delegated Powers and Law Reform (DPLR) Committee recommendations, it will bring forward amendments to provide for Scottish Ministers to have a power to waive or reduce a fee that they charge.

329. We note that in its response to the DPLR Committee report the Scottish Government does not consider there should be additional restriction and greater scrutiny of the surcharge provisions in section 21 of the Bill but that it would consider this recommendation further. We therefore seek confirmation of the outcome of the Scottish Government's deliberations on this matter.

330. We request a timetable from the Scottish Government of when it anticipates bringing forward the final fees structure.

The Committee has sought clarification on the types of services that the Scottish Government may seek to charge for under the proposed new section 252(1ZA)(b) of the 1997 Act. These would include, but are not limited to, services which are provided on a national scale such as the eDevelopment Helpdesk service or the development of central IT systems for management of planning casework. We will consult stakeholders on any charges and carry out the full range of impact assessments prior to any charges being implemented.

Following consideration of the matter of surcharges, we propose to bring forward an amendment to set an upper limit to any surcharge for a retrospective application, as a percentage of the original fee. This could be an area where authorities could use their proposed discretion to reduce the fee where they feel a genuine mistake has been made. This will be set out in future regulations and guidance following consultation.

The Scottish Government has previously committed to consulting on the fee regime following the passage of the Planning Bill to ensure we can take account of how the system will operate in the future. We will engage with authorities, agents, developers, businesses and other applicants on our proposals. At this stage we are unable to set out a defined timeline for this work, but it will be progressed early and aligned to the development of other detailed planning processes through secondary legislation to deliver the changes agreed by the Parliament through the passage of the Bill.
352. We note that planning authorities have for a number of years voluntarily reported on their planning performance. We received no evidence that this approach has been flawed.

353. Indeed as COSLA explained in its written evidence "The decision by Scottish Government to legislate on reporting came as a surprise" and that it was "not expecting" the inclusion of the national planning performance co-ordinator in the Bill as discussions with the Scottish Government were ongoing. COSLA comment that "It is the proposals on assessment which give us most concern. As far as we are aware, the appointment of an assessor for local government performance has never recently been discussed."

354. The Committee sees no need or justification for the Bill's proposals on performance and recommends that section 26 of the Bill be removed. We consider that the Scottish Government should continue to work collaboratively with COSLA.

355. There is scope, however, to further enhance the measures reported on by the current Planning Performance Framework and we recommend that the Scottish Government, COSLA and HOPS consider whether to include measures on:

• the quality of support and engagement with communities by planning authorities (given it is a key purpose for this Bill)

• aspects of the entire planning system and not just those aspects under the control of the planning authority (this will give a more balanced view of what influences planning outcomes)

• stakeholder satisfaction

• the quality of planning outcomes and

• recognition of the different planning environments and focus of planning authorities.

356. We also request a copy of the Ironside Farrar report on the reasons for delay in planning applications in housing at the time it is provided to the Scottish Government (end of May 2018) in order to inform our Stage 2 consideration of the Bill (should the Bill be agreed at Stage 1).

The Scottish Government does not agree with the Committee’s recommendations on planning performance. The principles underlying our approach were defined by the independent panel and build on extensive experience of working on planning performance, and recognition of the importance of strengthening performance in order to justify increased resourcing.

We agree that the Planning Performance Framework (PPF) has been a positive tool for authorities to demonstrate the range of activities they undertake in delivering the planning service, and as a means of demonstrating authorities’ commitment to improvement. Although the PPF has led to some improvements in performance, concerns are still raised regularly with Ministers by users of the service about the performance of planning authorities. This includes the quality of service delivery, decision making and engagement with communities, as well as the effectiveness of processing applications.
If planning fees are to be increased to enable full cost recovery, as proposed by the independent panel and widely supported by stakeholders, then the Scottish Government has been clear that it is also appropriate that the performance of the system is placed on a statutory footing.

The Scottish Government therefore disagrees with the committee’s recommendation to remove section 26 of the Bill. We will continue to work in an open, inclusive and collaborative way with COSLA, HOPS and the High Level Group to develop a new performance framework for the Scottish planning system, which will include the role of the co-ordinator and the procedure and triggers for assessment. We will look at the range of activities which planning authorities undertake and the outcomes and impacts which are delivered. The Committee’s helpful suggestions on matters to be considered will inform our considerations in developing the new performance framework. We recognise concerns raised by COSLA in relation to the criminal offence for failing to provide information on performance, and will bring forward an amendment to remove those specific provisions.

We expect to publish the final research on reasons for delay in planning applications in housing shortly and will inform the Committee when it is available.

**Enforcement**

363. We are content with the enhanced enforcement provisions in the Bill as a potential deterrent mechanism. However, it will only be effective if planning authorities have the resources to pursue such actions. Notwithstanding the proposals in the Bill for increases in the maximum fines that can be imposed by a court for breaches of planning control and for the pursuit of legal expenses associated with enforcement action, the Committee is concerned that there is insufficient investment in the planning service within planning authorities. This has implications for enforcement as lack of resources (including access to appropriate legal advice) could stop planning authorities pursuing enforcement action when it is in the public interest. Another consequence of this is that people’s trust in the planning system is also undermined as they see applicants not penalised for failing to adhere to planning conditions.

364. We therefore request that the Scottish Government ensure planning authorities are properly resourced to take enforcement action. We also seek clarification of who retains any fines that planning authorities secure as a result of enforcement action.

The Scottish Government recognises the importance of resourcing the planning system and investment in the planning service and refer the Committee to our response to its recommendations relating to planning performance as set out above. We agree that effective enforcement action is important to support trust in the planning system.

To clarify, the decision to seek prosecution in relation to planning offences is taken by the Procurator Fiscal and fines in relation to offences are retained by the Court. The increase in fines is intended to strengthen the deterrent effect, not to increase resourcing for the planning system. The introduction of charging orders will strengthen planning authorities’ confidence that they will successfully recoup their costs when they take direct action to remedy breaches of planning control.
373. We agree that in undertaking their functions on a Planning Committee it is important that Councillors are clear about the matters upon which they should base their decisions. We consider therefore that Councillors should attend training on key aspects of the planning system. We do not agree, however, that it should be mandatory and accordingly we recommend that the Scottish Government amends the Bill to remove this provision.

374. We consider any training in planning should be considered as part of a continuous professional development programme for Councillors. We invite COSLA and the Improvement Service to consider broadening the range of training available to Councillors on planning to include—

- best practice in community engagement in planning
- equalities and human rights duties
- challenges in urban and rural settings
- environmental and sustainability duties

375. If the amendments we recommend are not made then we consider that all decision-takers in planning should be subject to the same training requirements. This includes all relevant Councillors and Scottish Ministers.

Introducing mandatory training has been widely supported by stakeholders throughout the review of the planning system. The Scottish Government recognises the need to increase trust in the system and ensuring those making decisions are trained in a consistent and reliable way is vital to this ambition. We do not intend, therefore, to bring forward an amendment removing the provisions for mandatory training.

The Scottish Government intends to work with COSLA and the Improvement Service to take forward the suggestions from the Committee as part of the training package available to elected members. We would expect any training to be continuous and reflect the types of decisions elected members are being asked to make, whether that is on planning applications or development planning.

The Scottish Government is clear that Planning Ministers receive appropriate training on their role and functions when they are appointed, in addition to detailed advice on individual cases brought to them for decision. However, under section 52 of the Scotland Act 1998, functions are conferred collectively on the Scottish Ministers, and they have collective responsibility for the actions of each of them. This means that it is not possible in legislation to identify the minister with responsibility for planning functions individually. Imposing such a requirement would also raise the risk that the Scottish Ministers’ planning functions (including appeals, examinations etc) could not be carried out, and there is no other body to which these could be transferred. We therefore do not intend to bring forward amendments on this point.
380. We seek the Scottish Government's views on the concerns raised with us on the protection of trees in conservation areas and on whether it proposes to amend the Bill to address the concerns raised in written evidence.

A tree preservation order (TPO) can make provision to prohibit “the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees”. Where a person proposes to carry out any such operations on a tree in a conservation area, where there is no TPO in place, they must serve notice on the planning authority at least 6 weeks before carrying out the operation. If the authority wants to prevent the operations, they must make a TPO within that 6-week period, including advertising, seeking representations etc.

It has been proposed that this approach should be replaced with a full consenting regime for tree operations within conservation areas. We understand that this would require an application for consent for the tree operations to be made, and they could not be carried out until consent had been given. In line with all other consent regimes relating to planning, we assume this would also require a review or appeal mechanism.

While the Scottish Government recognises that the proposed approach could be less onerous for the planning authority than making a TPO, where it wishes to refuse permission, we are concerned about the possible impact on others, including developers, landowners and residents of conservation areas. We consider that many operations are likely to be uncontroversial, and in these cases the proposed approach would require a full application instead of a simple notification. Where there are particular trees or groups of trees that the authority considers should be protected, a TPO can be brought forward at any time, in advance of any operations being proposed, and we believe this provides appropriate and proportionate protection for trees in conservation areas.

Whilst we would support in principle any amendments to the Bill intended to streamline procedures and improve the efficiency of the planning, we are mindful that this proposal in relation to TPOs has not previously been considered through the review of planning, and the impact of any such amendment on applicants is uncertain and untested. We therefore do not propose to bring forward amendments on this issue at Stage 2.

Part 5: Infrastructure levy

405. As we heard the infrastructure levy as proposed will not be a "game changer that will fundamentally alter and remove blockages from the system." We agree and consider that, if it is introduced, it will likely be more effective in some circumstances and in some places than others. This is because of differences in the volume and nature of development and the potential impact of the infrastructure levy on the financial viability of developments.

406. As such, we agree with HOPS that—

"it is another tool in the box and it is useful to have it, although we expect to have another two rounds of research before we start to think about using it again. I hope that it works, but it has a long way to go yet. (Local Government and Communities Committee 14 March 2018 [Draft], Robert Gray, contrib. 348 [177])"
407. That said, we note the Scottish Government's statement that "no decisions have yet been made on the use of this power". Given this, plus the evidence we received that greater clarity is required as to how the Infrastructure Levy will work and the Minister's own comments that more work is needed before it can be used, we agree with the DPLR Committee that the powers in schedule 1 should be subject to the super-affirmative power. This high level scrutiny approach should ensure that the draft regulations are more likely to come forward as package which can be scrutinised and consulted on in more detail by Parliament and at a much earlier stage than an affirmative SSI procedure affords.

408. The Committee also seeks further information on the timetable for conducting the further work on the Infrastructure Levy and a commitment that the necessary draft regulations will all be laid in Parliament at the same time (to facilitate more meaningful scrutiny).

409. Finally, we remain concerned about the powers in the Bill that enable Scottish Ministers to collect and redistribute all the levy funds to local authorities as they wish. This wider redistribution power seems counter to the Scottish Government's intention, as set out in the Policy Memorandum, for the levy to be "both collected and spent locally, with the potential for authorities to pool resources for joint-funding of regional-level projects." We support the principle that money raised locally should be spent locally and therefore request that the Minister sets out the reasons why this power is necessary and the circumstances when it would be used.

The Scottish Government welcomes the Committee's support for the principle of an infrastructure levy, and their understanding of the issues involved. We have been clear that this is a complex area and that further work is needed to investigate and develop a model that is practical and effective.

The Scottish Government can provide the Committee with an indicative timetable for progressing the detailed design of the levy, including guidance and regulations towards introduction should it remain included in the Bill. At this stage, and subject to Parliamentary timetabling, we currently anticipate the following milestones:

- Detailed design and development in 2019.
- Consultation and refinement of proposals in 2020.
- Draft regulations and guidance prepared and consulted on in 2021/22.
- Implementation from 2023 onwards (although consideration will be given to appropriate lead-in time being incorporated in the design of the regulations).

We recognise the concerns regarding the provision for Scottish Ministers to aggregate and redistribute funds raised through the levy. The aim of this provision has been to allow levy funds to be pooled and put towards common regional infrastructure objectives. At this scale, additional funding or finance streams could make a significant contribution to supporting delivery as demonstrated in case law and evidenced in previous research on infrastructure and planning. It is not our intention to collect and redistribute levy funds from one area to another.

Having considered the Committee's recommendation further, and in order to address this ongoing concern, we will bring forward an amendment to remove paragraph 14 of schedule 1 relating to aggregating levy income.
414. We have some sympathy with those we heard from who are disappointed that the Bill proposes an infrastructure levy, when other potentially more effective approaches to funding infrastructure are being actively considered by the Scottish Government and others.

415. We note the Minister's explanation that the Scottish Government has not yet consulted on these other approaches and recommend that this work is taken forward quickly. We request clarification from the Minister of the timetable and key milestones for completing this work.

The Scottish Government has made it clear that we are interested in a range of approaches to funding infrastructure and capturing an element of land value, or land value uplift, for public benefit. However, such mechanisms, including changing the way land is valued for compulsory purchase, could have significant impacts on markets for land and for housing, and knock-on effects for other parts of the economy such as pension funds and taxation. The implications for human rights of changing compensation for compulsory purchase also need to be considered. As such, detailed consideration and research is required before proposing any particular mechanisms.

As part of their programme of work on Land for Housing and Development, the Scottish Government has asked the Scottish Land Commission (SLC) to assess options for more effective land value capture, and the SLC will this week publish a report assessing historic attempts to do so. The SLC will follow this with further work and consultation on the suitability of different mechanisms for land value capture and will submit a report with recommendations to the Scottish Government by the end of financial year 2018-19. This report will inform subsequent decisions about whether and what changes should be made to legislation and policy in this area.

The balance between national and local decision taking

426. Whether or not the Bill appropriately balances decision taking at national or local level will depend upon how often, why, when and by whom its powers are then used. We have commented throughout our report on those circumstances where we consider the balance of decision making is appropriate (or not).

427. We welcome the Scottish Government's commitment to amend the Bill at Stage 2 to ensure that all directions issued as a consequence of this Bill and the Town and Country Planning (Scotland) Act 1997 are published.

428. We recommend, however, that the Scottish Government ensures those directions are provided to the Scottish Parliament at the time of issue to support greater transparency and scrutiny by MSPs of the circumstances when National Government directs Local Government to act in a specific way. Given the Minister's assurances that these powers would not be frequently used (such as his comments in relation to imposing SDZs) this requirement should not be unduly burdensome on the Scottish Government.

As the Minister for Local Government and Housing mentioned in his evidence to the Committee, we will be happy to arrange that a copy of all directions are provided to the Scottish Parliament Information Service (SPIce) when they are issued.
Regulation making powers

434. We note the concerns that a number of the enabling powers sought in this Bill mean that it is not yet clear how (or in the case of the Infrastructure Levy, if) those powers will be used. It is not good legislative practice for powers to be granted only for them to either lie on the statute books unused or for subsequent governments to seek to use them many years later, potentially in ways not originally envisaged.

435. Throughout our report we have referenced the technical paper provided by the Scottish Government which describes its "current thinking" on how some of the powers it seeks in this Bill will then be used. The Technical Paper is not, however, a guarantee that powers will be used in the way it specifies.

436. Whilst we note that in many areas of the Bill subsequent regulations will enable the Parliament to accept or reject the detail of the proposals, we remain concerned that the Infrastructure Levy provisions may never be enacted - given the work required before Ministers decide whether to use this power, as well as the work underway on other approaches. We therefore invite the Scottish Government to consider amending the Bill to provide a sunset clause for part 5 of the Bill, so that if the power is not enacted within an appropriate period of time (such as 10 years) then it lapses.

The Scottish Government has been clear that the need for the enabling power was to allow further work to be progressed and to allow for consultation to ensure a robust mechanism is put in place. The levy forms an important part of the Bill package as a whole, linking structural reforms with a greater emphasis on delivery. We will bring forward an amendment to provide a sunset clause for part 5 of the Bill to mandate that if the powers for a levy are not enacted within 10 years of the Bill coming into force it will lapse.
Appendix

Evidence considered in relation to protected characteristics

A range of evidence was considered across all protected characteristics. A link to the document has been included where one exists.


Evidence considered specifically for the following protected characteristics is listed below.

Age

- Beyond4Walls (2016) - http://www.childreninscotland.org.uk/project/beyond4walls
- Scotland’s People Annual Report: Results from 2015 Scottish Household Survey (2016) (sections 4.5.1, 8.2.2, 10.4 and 11.2.2) - http://www.gov.scot/Publications/2016/09/7673
- Scotland’s Population The Registrar General’s Annual Review of Demographic Trends 2015

Disability

- Scotland’s 2011 Census (Release 2A, Table 8)
- Overview of Equality Results from the 2011 Census Release 2, focusing on ethnicity, religion and disability (2014) (Key findings)

**Gender Reassignment**

- (see response in main document)

**Marriage and Civil Partnership**

- Not considered

**Pregnancy and Maternity**


**Race**

• Analysis of Equality Results from the 2011 Census (2014) - http://www.gov.scot/Publications/2014/10/8378/0

Religion or Belief

• Analysis of Equality Results from the 2011 Census (2014) - http://www.gov.scot/Publications/2014/10/8378/0
• Scottish Government Equality Outcomes: Religion and Belief Evidence Review 2013

Sex

• (see response in main document)

Sexual Orientation

• (see response in main document)