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The Planning (Scotland) Bill

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The Planning (Scotland) Bill provides the legislative basis for a number of changes to the Scottish planning system. The proposals in the Bill are part of a larger series of reforms that the Scottish Government intends to introduce, following its recent review of the planning system.



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Introduction

The Scottish Government introduced the ¹ Planning (Scotland) Bill ("the Bill") on 4 December 2017. The Bill aims to update aspects of the Scottish town planning system, by amending the legislation that governs the operation of the system - the Town and Country Planning (Scotland) Act 1997.

This briefing describes the major changes to the planning system proposed in the Bill, outlining the reasons for these changes and provides background information to help understand these proposals.

This briefing is not intended to provide an exhaustive description of every change proposed, as this can be found in the ² explanatory notes that accompany the Bill. The Scottish Government also sets out its thinking behind the proposals, along with a description of alternatives considered during the drafting of the Bill, in the ³ policy memorandum.

This briefing also provides information on three planning issues not covered in the Bill, which are the subject of campaigns by planning stakeholders or have been of particular interest to Members of the Scottish Parliament (MSPs). The intention is to ensure that MSPs and others with an interest in the consideration of the Bill have information on these significant issues, which are likely to be raised during its consideration.

This briefing is one of four produced by SPICe about the Planning (Scotland) Bill, the others:

- outline how the planning system currently operates
- describe the proposed infrastructure levy
- explain planning jargon

Changes to the National Planning Framework

What is the National Planning Framework

The ⁴ National Planning Framework (NPF) sets out Scottish Ministers' long-term land use strategy for Scotland. It is the spatial expression of the Government [Economic Strategy](#) and [infrastructure investment plan](#). The NPF also identifies national developments and other strategically important development opportunities in Scotland. The NPF is accompanied by an Action Programme which identifies how it should be implemented, by whom, and when. Statutory development plans must have regard to the NPF, and Scottish Ministers expect planning decisions to support its delivery. More information on the current NPF can be found on the [Scottish Government's website](#).

What does the Bill propose?

- The definition of the NPF would be amended to include the content of the ⁵ [Scottish Planning Policy](#) (SPP)
- The NPF would become a part of the development plan for every area, alongside the local development plan
- Ministers would have power to direct local authorities to provide information to them on matters relevant to the preparation of the NPF
- The current requirement to review the NPF every 5 years would be increased to 10 years and the period for parliamentary consideration from 60 to 90 days

Why is this an issue?

The Bill would allow the Scottish Government to extend the scope and influence of the NPF. This would be achieved through two changes:

- Merging the NPF with the Scottish Planning Policy (SPP). The SPP sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. In effect, the NPF becomes a policy document, as well as a spatial plan.
- The content of the expanded NPF would become part of each development plan

Streamlining local development planning

What is a local development plan?

Local development plans cover the whole of Scotland; they identify sites for new developments and set out policies that guide decision making on planning applications. Each planning authority (i.e. local authority or national park authority) is required to publish and then update local development plan(s) covering their area at least once every five years. In addition planning authorities must publish, and update, a development plan scheme which outlines its programme for preparing and reviewing local development plans and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each local development plan must be accompanied by an action programme that must be updated at least once every two years.

What does the Bill propose?

The main changes proposed to the content and process for drafting or amending local development plans are summarised below.

- The timescale for the review of local development plans is increased from at least every five years to at least every 10 years
- A process for amending a local development plan between reviews is established
- Local development plan action programmes are replaced by delivery programmes
- Local development plans to be better aligned with community planning objectives, with a requirement to take account of the local outcomes improvement plan
- Requirement to produce a "main issues report" removed - a main issues report is currently the first stage in the preparation of the local development plan. Its purpose is to seek views on the policy and development options that could be included in the LDP. Instead a single "proposed plan" will be produced, with a longer consultation period and a requirement for the planning authority to feedback on the consultation.
- A requirement to produce an "evidence report" setting out the evidence to be used in drafting the local development plan is introduced. These reports must be submitted to Scottish Ministers. The evidence report will be the subject of a "gatecheck" by an independent planning reporter appointed by Ministers. The Reporter may decide the evidence base is sufficient or that further evidence needs to be gathered. If further evidence is needed, then the authority will be required to gather and re-submit the evidence report to Ministers for further consideration

Why is it an issue?

Currently, local development plans go through a lengthy process of drafting, consultation, examination and adoption. This is time consuming and resource intensive for planning authorities, stakeholders and communities. Plans must be updated every five years and, given the timescales involved, the drafting of a new plan can often begin almost as soon as the last one is adopted. This does not always provide policy consistency or continuity

for planning stakeholders. It can also lead to consultation fatigue for stakeholders and is a considerable burden on local authority planning departments.

Abolishing Strategic Development Plans

What is a Strategic Development Plan?

Strategic development plans set out a vision for the long term development of Scotland's four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on cross-boundary issues such as the amount and areas for housing, major business and retail developments, infrastructure provision and green belts/networks.

A strategic development plan is drafted by a Strategic Development Planning Authority (SDPA), the membership of which is defined in statutory designation orders, e.g. the SESplan SDPA comprises the City of Edinburgh, East Lothian, part of Fife, Midlothian, West Lothian and Scottish Borders Councils. Each SDPA is under a statutory duty to publish and then update its strategic development plan, which must be submitted to Scottish Ministers for examination within 4 years of approval of the previous plan.

SDPAs are required to publish, and update, a development plan scheme which outlines its programme for preparing and reviewing the strategic development plan and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each strategic development plan must be accompanied by an action programme, which must be updated at least once every two years.

What does the Bill propose?

The requirement to produce strategic development plans for Scotland's four main city regions would be removed. The Scottish Government intends to enhance the regional content of future National Planning Frameworks.

Why is this an issue?

The removal of the requirement to produce strategic development plans for Scotland's four major city regions represents a significant change to the development planning system. Regional level plans, then known as structure plans, were introduced by the Town and Country Planning (Scotland) Act 1972 and have been produced continuously since, albeit over different geographies.

Introducing local place plans

What is a Local Place Plan?

Local Place Plans (LPPs) would be a new feature of the Scottish planning system.

What does the Bill propose?

A Community Council or other community body (as defined in Section 19 of the Community Empowerment (Scotland) Act 2015) will have the power to produce a LPP. A completed LPP can be submitted to the relevant planning authority, which must have regard to its contents when preparing or reviewing the relevant local development plan.

The proposals for LPPs are at an early stage, with most of the detail to be set out at a later date. However, the Bill requires an LPP to have regard to:

- any relevant local development plan
- the National Planning Framework
- any other matters prescribed by the Scottish Government

The Scottish Government will also have the powers to set out the:

- required content and form of an LPP
- steps to be taken by the Community Council/body before developing an LPP
- steps that must be taken by a Community Council/body before submitting an LPP to the planning authority
- documentation that must be submitted by the Community Council/body to the planning authority alongside an LPP

Why is it an issue?

LPPs are one of the Scottish Government's key proposals aimed at improving public engagement and involvement in the planning system, providing a new avenue for communities to feed into the development plan system.

Replacing Simplified Planning Zones with Simplified Development Zones

What is a Simplified Planning Zone?

A simplified planning zone (SPZ) is an area where the need to apply for planning permission is removed for certain types of development. A SPZ requires the the planning authority to prepare a SPZ Scheme, which details the types of development and nature of uses that are permitted together with any limitations, conditions and guidelines that a development proposal must comply with. Should a development proposal comply with the SPZ Scheme applications for planning permission are not required.

Until recently there had been little take up of SPZs, with only two SPZs currently operational in Scotland - ⁶ Hillington Park SPZ and ⁷ Renfrew Town Centre SPZ. The Scottish Government is currently working with planning authorities on a series of ⁸ SPZ housing pilots.

What does the Bill propose?

The proposed Simplified Development Zones (SDZs) would extend the types of permission automatically deemed to have been granted in a zone, for developments that comply with the SDZ scheme, to include:

- Road construction consent (needed to create new roads within a development)
- Listed building consent (needed to alter a listed building)
- Conservation area consent (needed for demolition of buildings within conservation areas)

Developers would still be required to obtain other consents including Building Warrant and any licenses (where applicable) through the usual processes. Planning legislation currently prevents SPZs from being designated on land:

- in a conservation area
- in a National Scenic Area
- forming part of a green belt
- in a site of special scientific interest in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 has been made

The Bill would remove these restrictions and allow Scottish Ministers to make regulations setting out new restrictions on land that cannot form part of a SDZ.

The Bill would also require planning authorities to periodically report on how they have considered making schemes and introduces a duty for authorities to consider making schemes at the request of Scottish Ministers.

Why is it an issue?

The extension of the types of consent granted by a SDZ, the removal of restrictions on land where SDZs can be designated and the ability of Scottish Ministers to request a planning authority to develop SPZ(s), could represent a significant change to the operation of the Scottish development planning and development management systems, with implications for planning authorities, developers and communities.

Improving the development management process

What is development management?

Development management describes the process used by planning authorities to reach a decision on the granting or refusal of an application for planning permission. The following is a very brief overview of the development management process. Full details of the process are set out in ⁹ Circular 3/2013: Development Management Procedures (Updated).

Hierarchy of Development:

All proposed developments fall within one of the three categories of the hierarchy of developments, which can be described as follows:

1. **National developments:** Developments designated as of national significance in the National Planning Framework for Scotland
2. **Major developments:** Nine classes of large scale development are defined as major developments in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009
3. **Local Developments:** Any development which is not a national or major development is automatically categorised as a local development.

National developments are designated in the National Planning Framework, which is considered by Parliament to establish their need. Decisions on major developments will normally be made by Councillors of the relevant planning authority while local developments are likely to be decided by planning officers, under a scheme of delegation which devolves decision making powers over smaller scale developments from councillors to planning officers

Types of planning permission: A developer can apply for different types of planning permission:

- **Planning Permission in Principle** - This is an application for the principle of development only. While less detail may be required for such applications, more information can be or may have to be requested by the planning authority before making a decision, e.g. where environmental impact assessment is required. Even if permission in principle is granted, development cannot start until a further application(s) for Approval of Matters Specified in Conditions, giving the full details of the development, is applied for and granted.
- **Detailed Planning Permission** – This is an application for full planning permission and must contain full details of the proposed development e.g. detailed plans, drawings and relevant assessments.

Pre-application consultation: Prior to submitting an application for a national or major development, the applicant must carry out a community consultation exercise for certain types of development before submitting a formal planning application.

Submitting an application: A planning application can be submitted via the Scottish Government's e-planning portal, or on a paper form available from the relevant local authority.

Receipt and processing of the application: on receipt of the application, the planning authority will:

- validate the planning application, i.e. check that all the required information and any appropriate fee has been submitted
- publicise the application as required
- consult as required with statutory consultees, e.g. Historic Scotland, other council departments and interested organisations for their views
- the planning authority will consider the application against the development plan, responses from statutory consultees, relevant Scottish Government policy and advice and material planning representations from the public.

Making a decision: In determining an application a planning authority can:

- Grant permission unconditionally.
- Grant permission subject to conditions.
- Refuse permission

Decisions on national and major developments will normally be made by Councillors of the relevant planning authority while local developments are likely to be decided by planning officers, under a scheme of delegation which devolves decision making powers over smaller scale developments from councillors to planning officers.

For national or major developments considered significantly contrary to the Development Plan, a Pre-Determination Hearing will be held. This must take place before a committee of the council and means that those who made representations are offered the opportunity to speak. The application is then determined at a full council meeting.

Where an authority decides to grant permission subject to conditions or refuses permission, the applicant has a right of appeal. If the initial decision was taken by Councillors the appeal is to Scottish Ministers. If the initial decision related to a local development and was taken by a planning officer under a scheme of delegation the appeal is to the council's local review body.

Role of Scottish Ministers: Scottish Ministers have a general power to intervene in any planning application, prior to a decision being issued. However, they normally only use this power, often referred to as calling-in an application, where it raises an issue of national importance.

What does the Bill propose

- Minor changes to the pre-application consultation process for major and local developments

- Additional types of development added to those that can be decided by a planning officer under a scheme of delegation, which in turn extends the scope of appeals that will be made to a local review body rather than Ministers
- Removal of requirement for decision to be made by full council where a pre-determination hearing has been held
- Technical changes to the duration of planning permission (three years for detailed permission and five years for permission in principle) to clarify how extensions to the duration of permission are applied for and calculated
- Removal of need for Ministerial approval for Completion Notices (which require a developer to complete, by a certain date, a development in progress, or lose permission for uncompleted works) that are unopposed
- Clarification of legislation around Planning Obligations, specifically allowing for a developer to make regular payments of set sums of money to a planning authority
- Technical changes around modification and discharge of Planning Obligations

Why is this an issue?

Although generally minor or technical in nature, these proposals are aimed at streamlining the development management process and speeding-up decision making.

Improving the performance of planning authorities

How is the performance of planning authorities currently monitored?

Planning authorities currently voluntarily compile annual performance reports under the ¹⁰ Planning Performance Framework developed by Heads of Planning Scotland - an organisation representing senior local authority planning officers. Planning authorities also report on their performance against a number of key markers, devised by the High Level Group on Planning Performance, co-chaired by the Scottish Government and COSLA. The Scottish Government also publishes ¹¹ quarterly and annual development management statistics for each planning authority, with a particular focus on the time taken to make development management decisions.

What does the Bill propose?

- Councillors involved in planning decisions will be required to undertake training on planning matters, councillors that have not completed such training would be barred from undertaking such duties
- Planning authorities would be required to produce an annual planning performance report Scottish Ministers would be able to appoint a person to monitor and advise planning authorities on their performance, and report back to Ministers
- Scottish Ministers would also be able to appoint a person to undertake an assessment of a planning authority's performance, if concerns arise
- Planning authorities would be required to act on the recommendations of the appointed person as set out in their report(s), with Ministers able to issue directions for action in certain circumstances

Why is this an issue?

Planning stakeholders often criticise the system for being too cumbersome and overly bureaucratic in its operation, particularly regarding the time taken to process planning applications, and the quality of decisions made. Customer and stakeholder confidence in the performance of planning is critical to the reputation of the planning system.

Some key issues not included in the Bill

The following sections set out details of three major issues that, although not included in the Bill as introduced, are the subject of current interest and ongoing campaigns and are likely to be raised during the Bill's passage through the Scottish Parliament. The issues are:

- Third-party right of appeal, also known as equal right of appeal
- The agent of change principle as it applies to live music and entertainment venues
- Short-term holiday lets

Third party right of appeal

What is a third party right of appeal?

Currently, after consideration of a planning application, a planning authority can decide to:

- grant permission unconditionally
- grant permission subject to certain conditions being met
- refuse permission

Where planning permission is granted subject to conditions or is refused, the applicant has the right to appeal that decision to either a local review body (for decisions on local developments made by a planning officer) or Scottish Ministers (for all other decisions) .

The 'first party' to a planning application is the applicant, the 'second party' is the planning authority and the 'third party' is anyone else. The role of any third party in the development management process is limited to making representations to the planning authority, which are considered by the authority during the decision making process. A third party right of appeal, in the form called for by campaigners, would grant certain categories of objector to a planning application a limited right to appeal against the award of planning permission for certain types of development, e.g. when the development is a departure from the policies and proposals in an adopted development plan.

Third party rights of appeal are sometimes also referred to as "equal rights of appeal". Some people also propose that appeal rights could be "equalised" by removing the right of the applicant to appeal in some circumstances, for example when the development is a departure from the development plan.

Why is it an issue?

There has been a long running campaign for the introduction of a limited third party right of appeal, which is currently being led by the Planning Democracy campaign group. The key driver behind this campaign is a desire by some to grant communities the same right to appeal against planning decisions as is currently available to developers.

The introduction of a third party right of appeal was a feature of Scottish Government consultation leading up to the introduction of the Bill; ¹² analysis of the written evidence submitted to the Scottish Government's Planning Review states:

“ The idea of an ‘Equal Right of Appeal’ attracted mixed views from between sectoral groups, but not within. In general terms, civil society respondents supported this, planning and policy sector would put limits on its use (i.e. only for proposals not in compliance with an LDP) and the development sector were concerned over potential delay that this could cause.”

The [report of the](#) ¹³ Independent Review of the planning system concluded that:

“ Effective planning depends on building positive and productive relationships. The evidence shows that a third party right of appeal would add time, complexity and conflict to the process, and have the unintended consequence of centralising decisions, undermining confidence and deterring investment. We believe that using time and resources to focus on improved early engagement would provide much greater benefits.”

More detail

Scottish Ministers are clear in their opposition to the creation of a third-party right of appeal, with the policy memorandum that accompanies the Bill stating:

“ ...it is far more appropriate and more constructive to have stronger early engagement, involving people in the shaping of their areas, as provided for through the changes to development planning, the introduction of LPPs and more effective pre-application consultation. A third party right of appeal would increase delay and uncertainty through to the end of the planning process, running counter to the whole thrust of the Bill and wider review of planning in streamlining and front-loading the system”

It is worth noting that the Scottish Government's reasons for rejecting a third party right of appeal are the same as those made during the development and parliamentary consideration of the Planning etc. (Scotland) Bill during 2005-2006. Malcolm Chisholm MSP, the then Communities Minister, gave the following reasons for rejecting a third party right of appeal in a [statement to Parliament](#) on 29 June 2005:

“ Our aim is to strengthen the participation of local people from the outset of the process in order to make the system fairer and more balanced; to avoid building new delays and unpredictability into the system, which could add costs to development and act as a deterrent to investment in sustainable growth; and to strengthen rather than undermine local authority decision making.”

Agent of change

What is the "agent of change" principle?

Under the provisions of the Environmental Protection Act 1990 responsibility for managing and mitigating the impact of noise on neighbouring residents and businesses lies with the business or activity making the noise, regardless of how long the noise-generating

business or activity has been operating in the area. In some cases, this has led to newly-arrived residents complaining about noise from existing businesses, sometimes forcing the businesses to close

The Agent of Change principle places the responsibility for mitigating the impact of noise firmly on the new development. This means that where new developments are proposed close to existing noise-generating uses, applicants will need to design them in a more sensitive way to protect the new occupiers. This could include paying for soundproofing for the existing noise-generating uses, such as an existing music venue.

The Agent of Change principle works both ways. If a new noise-generating development is proposed close to existing noise-sensitive uses, such as residential development or businesses, the onus is on the developer to ensure its building or activity is designed to protect existing users or residents from noise impacts.

Why is it an issue?

The Music Venue Trust has, since 2014, been campaigning to shift the duty for the installation of measures to mitigate noise impacts on new residential developments built close to existing live music venues from venue owners to the developers of the new properties. The driving force behind this campaign being that the costs or practicalities of installing such measures can ultimately lead to the closure of such venues. This campaign has focussed on introducing the agent of change principle into planning legislation and policy across the UK.

More detail

The Welsh Government announced its intention to introduce the agent of change principle into the next revision of Planning Policy Wales in a ¹⁴ letter to Welsh heads of planning dated 26 May 2017. The proposed policy changes are yet to enter into force, as ¹⁵ Planning Policy Wales has not been updated since Edition 9 was published in November 2016. The ¹⁶ draft [London Plan 2018](#) policy D12 would introduce the agent of change principle into planning decisions in London.

The ¹⁷ [UK Government announced](#) on 18 January 2018 that it intends to include the agent of change principle in the updated National Planning Policy Framework for England, which is due to be consulted on in spring this year.

The Australian state of Victoria has introduced the agent of change principle into its planning system, as set out in ¹⁸ Planning Practice Note 81.

Short-term holiday lets

What are short-term holiday lets?

Short-term holiday lets are privately owned flats or houses with their own cooking facilities that are let out in their entirety on a short-term basis (typically for weekends, a week or a fortnight). This sector has seen significant growth, particularly in popular tourist destinations such as central Edinburgh, which is largely driven by the development of online services such as airbnb and homeaway.

Why is it an issue?

It is argued that the growth of short-term holiday lets, particularly concentrations of such lets in popular tourist destinations, is changing the affordability and residential character of some areas through ¹⁹ [increases in private rents](#), ²⁰ increases in house prices and ²¹ removing properties from the long-term private rental market.

At present, the Scottish planning system does not generally control the use of flats or houses as short-term holiday lets.

More detail

The Town and Country Planning (Use Classes) (Scotland) Order 1997 sets out 11 broad use classes (e.g. shops, food and drink and business). Generally, any building or land that is being used for a purpose that falls within a use class can be used for any other purpose within that class without the need for planning permission, e.g. under the use class “shops” a travel agent can be turned into a hairdresser without the need for planning permission. It is worth noting that planning permission could still be required if physical alterations to the building carried out to facilitate the change of use meet the definition of “development”.

Class 9 of the Use Classes Order is “Houses”, which limits the use of a house (other than a flat) to that of a family home, a main residence of up to five residents living together or a bed and breakfast or guesthouse, where at any one time not more than two bedrooms are used for that purpose, or in the case of premises having less than 4 bedrooms, 1 bedroom.

Flats do not fall into any of the 11 use classes, which means that changing the use of a flat to anything other than a residential use would require planning permission.

It is for the relevant planning authority to determine whether, on a case by case basis, whether the use of a flat or house for short term letting constitutes a material change of use requiring planning permission. However, it is generally accepted that use for short term holiday lets (where no additional services are provided to the tenants) is a residential use and does not constitute a material change that would require the grant of planning permission.

Amendments could be made to the use class order. This would mean that using a flat or house for short term holiday lets would constitute a change of use – which, if the planning authority considered it to be material, would require the grant of planning permission.

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