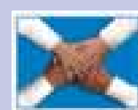
PLANNING

Development Management

Consultation Paper

January 2008



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SCOTTISH GOVERNMENT

Development Management

Consultation Paper

January 2008

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Planning Directorate
Planning Modernisation and Co-ordination Division

MODERNISING THE PLANNING SYSTEM: DEVELOPMENT MANAGEMENT CONSULTATION

Responding to this consultation paper

We are inviting written responses to this consultation paper by 2 April 2008. Please send your response to:

dmconsultation@scotland.gsi.gov.uk

or

Development Management Consultation
Planning Directorate
Scottish Government
2H, Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries on the content of the consultation paper or the consultation process, please contact liam.bullingham@scotland.gsi.gov.uk on 0131 244 0426. Please indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

In Planning Directorate we are changing our methods of distribution, with electronic publication for all our publications, subject to only a very small list of exceptions which will also be published in hard copy, such as the National Planning Framework. In addition, we are creating an improved e-newsletter system which will provide an effective way of alerting you to new e-publications, including consultations. To register for electronic newsletters about planning, please register your details at www.scotland.gov.uk/Topics/planning as soon as possible.

The Scottish Government also has an email alert system for all consultations (SEconsult: http://www.scotland.gov.uk/consultations/seconsult.aspx). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations. SEconsult complements the new planning e-publications system described above and allows you to register for consultations on specific topic areas across the Government. Please follow the SEconsult link above if you wish to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which forms part of this consultation paper as this will

ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Publishing responses

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library within 6 weeks of the close of the consultation and on the SEconsult web pages within 6 weeks of the close of the consultation. Where agreement to publish has been given, we will check all responses for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the draft regulations or order. Final regulations and orders will require to be laid in Parliament. Further details on the timing of this process will be available through the Modernising Planning page on the Scottish Government's Planning Homepage at www.scotland.gov.uk/Topics/planning .

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to liam.bulllingham@scotland.gsi.gov.uk on 0131 244 0426.

RESPONDENT INFORMATION FORM: DEVELOPMENT MANAGEMENT CONSULTATION

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
   - (a) as an individual — go to Q2a/b and then Q4
   - (b) **on behalf of** a group/organisation — go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)
No, not at all — We will treat your response as confidential

2b. **Where *confidentiality is not requested***, we will make your response available to the public on the following basis (**please tick <u>one</u>** of the following boxes)

Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes
No — We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes
No

Equal Opportunities Questionnaire

This Equal Opportunities Questionnaire is requested in order that the Scottish Government can build an accurate picture of the make-up and diversity of the people and groups that our planning policies impact on, and to ensure that the way in which we carry out our consultations is inclusive and not unwittingly discriminatory. If you have responded to this consultation as an individual it would be helpful if you could complete the form. This information is **only** used for this purpose.

If you have a disability that requires us to make a reasonable adjustment to enable you to complete this form, please notify us.

Name	
Consultation to which you are responding	
Gender	Male ☐ Female ☐

Ethnic origin

How would you describe your ethnic or cultural origin?		
White Scottish ☐	White British ☐	White European/Other ☐
Black Scottish ☐	Black British ☐	Black African ☐
Black Caribbean ☐	Black Other ☐	
Asian Scottish ☐	Asian British ☐	
Indian ☐	Pakistani ☐	Chinese/Other Asian ☐
Bangladeshi ☐		
Mixed Racial Origin ☐		Other

Age

Under 25 ☐	25-39 ☐	40 – 54 ☐	55- 65 ☐	65 + ☐

Disability

Do you have a disability as defined by the Disability Discrimination Act 1995 (DDA)?

Yes ☐ No ☐

The definition of a disability under the DDA is “a physical or mental impairment which has a substantial and long term adverse effect on a person’s ability to carry out normal day to day activities.”

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a consultation paper inviting answers to specific questions or more general views about the material presented. Consultation papers are distributed to organisations and individuals with an interest in the issue, electronically or in hard copy and are placed on the Scottish Government's consultations webpage[1] to allow for participation from a wider audience. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: SEconsult (http://www.scotland.gov.uk/consultations).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

1 http://www.scotland.gov.uk/consultations

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DEVELOPMENT MANAGEMENT CONSULTATION

1. INTRODUCTION

1.1 This consultation paper concerns new secondary legislation on procedures relating to processing planning applications, or “development management” as the process is now known. The new procedures in the attached draft Town and Country Planning (Development Management Procedure) (Scotland) Regulations stem from the provisions in the Planning etc. (Scotland) Act 2006 which amend the Town and Country Planning (Scotland) Act 1997. The 2006 Act sets the framework for modernising the planning system.

1.2 The changes to development management are concerned specifically with: making the processes around planning applications fit for purpose and responsive to different types of development proposal; improving efficiency in determining planning applications; and improving public involvement in the consideration of proposals requiring planning permission.

1.3 In setting a framework, the 2006 Act specifies a number of the requirements in relation to each aspect of development management discussed in this paper. It also contains further powers to elaborate on these basic requirements in secondary legislation. In anticipating some of the detailed features of the new procedures the 2006 Act therefore limits some of the options for detailed prescription in the new regulations.

1.4 The order of the elements of development management discussed in this paper largely follows the order of processing a planning application with some exceptions, for example, enhanced scrutiny procedures, which will occur at various stages prior to an application being made or during its processing but are grouped together here to simplify the analysis.

1.5 A significant element of the new development management procedures relates to new inclusion measures. These result from some of the concerns that led local communities and others to seek a right of appeal where planning permission is granted for proposals to which they object. The Scottish Government recognises the need for local communities to have a better opportunity to influence development proposals and take part in the determination process. However, it has been concluded that a so-called “third party right of appeal” at the end of the planning application process would not be an effective way to enable local communities to influence development proposals. Such a mechanism would also risk creating a significant barrier to the timely consideration of many much needed developments.

1.6 The way ahead, as reflected in the White Paper *Modernising the Planning System* (June 2005) and the 2006 Act, is: to improve involvement at the development planning stage, when the local policy context for considering development proposals is being prepared; to allow local communities a greater role at the pre-application stages of certain applications, to influence the nature of the proposals themselves; and to allow enhanced scrutiny during the processing of such applications. In addition, new measures to ensure greater awareness of proposals and transparency of decision-making are being introduced.

Related documents

1.7 This paper should be read in the context of the other consultation papers recently published relating to development planning, enforcement and, in particular, the paper on the hierarchy. The latter explains the approach to differentiating between national, major and local developments. This paper will refer to different aspects of the processing of

applications for development in these three categories. The relevant consultation papers can be viewed through the following links:

http://www.scotland.gov.uk/Publications/2007/11/29105802/0 - The Hierarchy

http://www.scotland.gov.uk/Publications/2007/10/31093026/0 - Development Planning

http://www.scotland.gov.uk/Publications/2007/10/31093316/0 - Planning Enforcement

1.8 In addition to the main consultation paper, this document contains partial Regulatory (RIA) and Equality Impact Assessments (EQIA). The aim of the RIA is to assess the impact of the proposals in the consultation paper on business and other interests. It considers the additional costs to business that may be imposed by the legislative changes and seeks to assess the wider benefits which may be brought by the changes. Equality Impact Assessment (EQIA) is about considering how policy may impact, either positively or negatively, on different sectors of the population in different ways. You are encouraged to comment on these documents in addition to the proposals in the consultation paper.

Glossary

The 2006 Act:	The Planning etc. (Scotland) Act 2006
The 1997 Act:	The Town and Country Planning (Scotland) Act 1997, as amended by the 2006 Act
The GDPO:	The Town and Country Planning (General Development Procedure) (Scotland) Order 1992
The DMR:	The draft Town and Country Planning (Development Management Procedure) (Scotland) Regulations - which will replace the GDPO
EIA Regulations:	The Environmental Impact Assessment (Scotland) Regulations 1999
The White Paper:	Modernising the Planning System (June 2005)

1.9 References in the text to regulations are to regulations in the DMR unless otherwise stated. References to sections are to sections of the 1997 Act unless otherwise stated. Although the paper in effect refers to the Town and Country Planning (Scotland) Act 1997 as amended by the 2006 Act, most of these amendments have yet to be brought into force and this will only happen when the secondary legislation set out here and in other draft regulations relevant to development management are brought into force.

1.10 When the DMR are eventually brought into force they will be accompanied by guidance explaining the various requirements and supporting new measures such as enhanced scrutiny and design and access statements.

2. ENHANCED SCRUTINY

The need for enhanced scrutiny

2.1 To ensure additional scrutiny over certain types of development, the White Paper set out a range of enhanced scrutiny measures consisting of:

(a) **pre-application consultations with local communities**;

(b) **pre-determination hearings**;

(c) **decisions by the full Council** rather than committee; and

(d) **notification to the Scottish Ministers** for their consideration as to whether an application should be called-in for their determination.

2.2 The consultation paper covers the details of each of these measures in turn.

Pre-application consultation with local communities

Context

2.3 The new statutory requirements on prospective applicants to carry out pre-application consultation with local communities should not be confused with "pre-application discussions" between applicants and planning authorities. The latter will remain on a non-statutory footing, although their relevance may increase with the introduction of processing agreements (see Part 3 below). Pre-application discussion remains a useful forum in which the applicant and planning authority can discuss a range of issues concerning the proposed development and how it will be dealt with. In future this should include pre-application consultation requirements, bearing in mind the need to comply with the statutory requirements, including timescales, described below.

2.4 Regulation 4 and Schedule 1 of the DMR specify the classes of development to which we propose that pre-application consultation requirements should apply. These are:

- all national developments;
- all major developments;
- all development requiring environmental impact assessment (EIA); and
- developments listed in column 1 of Schedule 1 of the DMR which meet the criteria or exceed the threshold in column 2.

2.5 In addition to this list, the White Paper referred to two other situations where pre-application consultation might be required. The first was larger scale bad neighbour developments for which there was no specific provision in the development plan. Having now produced draft regulations on the hierarchy, we believe that such development will be either a major development or an EIA development and that a separate category is not required to apply pre-application consultation to such development.

2.6 The second situation was local developments which were significantly contrary to the development plan. Planning authorities are already required in certain circumstances to judge whether a proposal represents a significant departure from a development plan. However, that judgement is usually required after an application has been submitted and there has been consultation on and consideration of the proposal and it is not something that is necessarily clear at the point that the application is submitted. Given the need to identify projects requiring pre-application consultation before a planning application is even made, we conclude that it may be difficult to judge quickly and accurately at the outset whether a proposal is a significant departure from the development plan. Schedule 1 of the DMR therefore seeks to identify clear cut instances where proposals are likely to be significant departures from the development plan and as such should be subject to pre-application consultation.

2.7 Some of the thresholds in Schedule 1 refer to the lack of a "proposal" for a specific development appearing in a development plan. This is to provide certainty for all parties at the outset about the need for pre-application consultation. An approach focused on criteria-based policies would be less likely to provide that.

Q1: Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?

Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?

<u>Pre-application consultation – the process</u>

2.8 New section 35A-C of the 1997 Act along with regulations 4-9 of the draft DMR set out the main elements of the pre-application consultation process which will apply to the developments referred to in the previous section. These elements are discussed in more detail below.

<u>Screening for pre-application consultation</u>

2.9 It will be open to a prospective applicant to serve a notice on the planning authority, requesting a view on whether pre-application consultation is needed. Under new section 35A(5) and regulation 5, the notice requiring a view on the need for pre-application consultation must contain:

a) a description in general terms of the development to be carried out;

b) if the site at which the development is to be carried out has a postal address, that address;

c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;

d) detail as to how the prospective applicant may be contacted and corresponded with;

e) a statement as to whether a screening opinion or screening direction has previously been issued on the need for EIA in respect of the development; and

f) where major or local development is involved, a statement as to whether in the prospective applicant's view the development is one which the development plan proposes should be carried out at this site.

2.10 Although this should be sufficient to make a decision, the planning authority has powers under new section 35A(6) to request further information where necessary to provide a view and we intend to produce guidance in this connection. Unless the planning authority requires more information, they will have 21 days in which to give their view (new section 35A(7)). There is no appeal against that view, unless the sole trigger for pre-application consultation is the need for EIA, in which case the developer could ask the Scottish Ministers, under the EIA Regulations, to direct on the need for EIA.

2.11 A particular benefit of obtaining a formal view from the planning authority is that if it concludes that no pre-application consultation is required and the proposal does not alter

significantly prior to submission of a planning application within 12 months of the notice, then any subsequent change of view – for example, that EIA was required, or that the proposal does actually meet one of the specific triggers for pre-application consultation – could not override that initial view that pre-application consultation was not required (new section 35A(9)). In the absence of such a formal view, it would be possible that such a change of view would require the planning authority to decline to determine the application as invalid, by virtue of new section 39.

2.12 It should also be noted that the screening process for EIA and for pre-application consultation are separate statutory procedures. For example, a pre-application screening opinion under the EIA Regulations that EIA was not required would not in itself function as a view on the need for pre-application consultation. Potential applicants are strongly advised to request both.

Q3: Is the information required in a pre-application screening notice sufficient?

Q4: Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances?

What pre-application consultation will involve

2.13 Where pre-application consultation with local communities is required, the applicant must, under new section 35B(1) and (2), provide to the planning authority a "proposal of application notice" at least 12 weeks prior to the submission of an application. That notice should include the information in paragraph 2.9 a) to d) above and, under regulation 6, an account of what consultation the applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take. This may go beyond the statutory requirements and will assist the planning authority in deciding whether they need to require the prospective applicant to undertake any further consultation (see paragraph 2.16 below).

2.14 Under regulation 7 the notice must be served on the relevant community council and owners and occupiers of "neighbouring land" (as defined in regulation 2). The notice must also be placed by the planning authority on the list of applications required under regulation 24.

2.15 Regulation 8 specifies the statutory consultation and publicity required to be undertaken by the prospective applicant, which include the holding of at least one public meeting and associated publicity.

2.16 In addition to the specific statutory requirements, under new section 35B(7) the planning authority may, within 21 days after receiving the proposal of application notice, notify the prospective applicant of anyone they consider must also receive a copy of the notice and of any other consultation that must be undertaken. In considering any additional requirements, the planning authority is required to have regard to the nature, extent and location of the proposed development and the likely effects, at and in the vicinity of that location, of its being carried out.

2.17 This discretion for planning authorities to request further notification and consultation is to provide flexibility to respond to local circumstances. While a statutory minimum is proposed, we expect there will instances where proposals will require some additional consultation.

2.18 We intend to produce guidance on what further consultation should be carried out relevant to the nature, scale and location of the development involved. That guidance could

then be used by prospective applicants as a basis for developing an approach to pre-application consultation and/ or by the planning authority as a basis for requesting further consultation where there are gaps. We would also expect planning authorities to develop lists of local bodies and interests with whom applicants should consult in particular cases and that these be available to prospective applicants.

Q5: Do you agree with the proposed content of the proposal of application notice?

Q6: Are the requirements to notify community councils and neighbours of the proposal of application notice sufficient or should others be notified at this stage as a statutory minimum?

Q7: Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?

Pre-application consultation reports

2.19 The prospective applicant must (under new section 35C) prepare a pre-application consultation report as to what has been done during the pre-application phase to comply with requirements of the legislation and any requirements set out in the planning authority's response to the proposal of application notice. Regulation 9 sets out the requirements of the report. The report must accompany the planning application when submitted and the authority will be required to include it on the planning register along with the application, plans and drawings.

2.20 Where pre-application consultation is required but not carried out, or there is no report or the planning authority judges that the applicant has not complied with the requirements on pre-application consultation, the planning authority must decline to determine the application (section 39, as amended). Before deciding whether to do so, the planning authority may request further information from the applicant. In declining to determine an application for failure to comply with these particular requirements, the planning authority must give its reasons.

2.21 The pre-application consultation report should be concise, facilitating a straightforward assessment of the quality, breadth and depth of the consultation activities that have taken place during the pre-application consultation exercise. Applicants should also include evidence of consultation, e.g. proof of postage, copies of adverts for public meetings. We intend to provide guidance on best practice on the form and content of these reports.

2.22 It is important that pre-application consultation is seen as an additional measure and not something that takes away the right of, or need for, individuals and communities to make formal views during the application process. This should be emphasised by planning authorities and by the prospective applicants during pre-application consultation.

Q8: Do you agree with the requirements on the content of pre-application reports?

Pre-determination hearings

2.23 As part of the new measures on enhanced scrutiny for certain types of planning application, the 2006 Act makes provision in section 38A for a mandatory hearing prior to an application being determined. The requirement for pre-determination hearings is aimed at making the planning system more inclusive by allowing the views of objectors and interested parties to be heard by a committee of the planning authority before a decision is taken.

2.24 Regulation 37 prescribes the classes of development that will be subject to a mandatory pre-determination hearing and the people who may appear before and be heard by the relevant committee.

2.25 The cases in question are:

- developments significantly contrary to the development plan; and
- cases requiring EIA.

2.26 The persons to be given an opportunity of appearing before and being heard by the committee of the authority are those who have submitted representations on the application. Under new section 38A(3), the planning authority has the discretion to allow other parties to attend the pre-determination hearing. It should be noted that no-one can be forced to attend such a hearing.

2.27 New section 38A(2) allows the planning authority to specify the procedures around arranging and conducting hearings. This includes ensuring the relevance of matters discussed at a hearing and the avoidance of repetition.

2.28 While there is currently no statutory requirement to hold hearings, the practice is already becoming more widespread among Scottish local authorities. We therefore intend to provide further guidance to capture, disseminate and build on existing good practice. This may include a Model Code of Conduct for Hearings which would address issues such as when the hearing should take place and how and by whom it should be conducted.

Q9: Do you support the classes of development which will be subject to pre-determination hearings?

Q10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?

Decisions by the full Council

2.29 As part of the suite of enhanced scrutiny measures, in those cases where a pre-determination hearing is required under new section 38A(1) of the 1997 Act (see above) a decision by the planning committee on an application must be referred to the Council as a whole for ratification or refusal.

2.30 Section 14(2) of the 2006 Act amends section 56 of the Local Government (Scotland) Act 1973 (c. 65) (arrangements for discharge of functions by local authorities), to insert a new sub paragraph (6A), which states, “A local authority’s function of determining an application for planning permission for a development of a class mentioned in section 38A(1) of the Town and Country Planning (Scotland) Act 1997 c.8 shall be discharged only by the authority”.

Q11: What arrangements would need to be made to convene full Councils to make these decisions?

Notification to the Scottish Ministers

2.31 The final strand of enhanced scrutiny is delivered through notification of additional categories of planning application to the Scottish Ministers. The Town and Country Planning

(Notification of Applications) (Scotland) Direction 2007 has now brought in new requirements to notify planning applications for EIA developments and for proposals which are significant departures from the development plan to the Scottish Ministers. This means that where a planning authority is minded to grant planning permission for a proposal covered by the direction they cannot grant planning permission until Ministers have had an opportunity to consider whether or not they should intervene to call-in the application for their determination.

2.32 Further information on the notification of applications is contained in the Scottish Planning Circular 5/2007: Notification of Planning Applications.

3. PROCESSING AGREEMENTS

Prioritising major developments

3.1 The Scottish Government wants to ensure that the planning system responds in a more proportionate way to the proposals that come before it. The new hierarchy[2] for planning aims to direct resources to where they can add most value and particularly to give applications for national and major developments appropriate priority in the system.

3.2 Currently the statutory periods for determining planning applications is 2 months or, where EIA development is involved, 4 months. This applies regardless of the scale and complexity of the proposal. It is recognised that frequently these timescales are not met, leading to uncertainty about the process among applicants and communities.

Processing agreements

3.3 The White Paper introduced the concept of processing agreements. These would be used for national and major developments and would allow the applicant and planning authority to agree on the approach and a realistic timetable for the planning application to be determined, taking into account the views of statutory consultees, and to set this out in a 'processing agreement'.

3.4 Processing agreements can be used as a project management tool for handling applications for national and major developments. They can be used to improve communication between the planning authority and the applicant, and can set out what information in required to process the application. It is for the planning authority and the applicant to agree the scope and content of the processing agreement. Regulations cannot require an agreement to be reached, so processing agreements will be on a voluntary basis, although the expectation is that planning authorities should provide the opportunity and facilitate arrangements for processing agreements to be reached wherever it is practical to do so.

3.5 It is recognised that the take-up and success of processing agreements will largely be dependent upon best practice and parties being willing to work together in a co-operative, open manner and that there is an element of culture change involved for this type of approach to work.

3.6 The existence of such an 'agreement' does not mean the outcome of the planning application will be approval. The agreement can provide for certainty on the procedures and timings to be used in the handling of the application but proposals with processing agreements will continue to be subject to rigorous assessment and scrutiny procedures.

2 See separate consultation paper on Hierarchy of Developments http://www.scotland.gov.uk/Publications/2007/11/29105802/0

Reaching an agreement on processing

3.7 Processing agreements are likely to be of most benefit where there has been early discussion between the applicant, the planning authority and, as appropriate, statutory consultees, allowing issues to be identified and addressed from the start and determining the best approach for dealing with the proposal. For example, this might identify that a masterplan or design brief would be beneficial, that additional studies needed to be commissioned or that the proposal should progress directly to the application stage. Identifying these issues through pre-application discussions will help to front-load the planning system so that efficiency savings may be made later in the process.

3.8 Ideally, processing agreements should, therefore, be in place before the application is submitted. If this has not happened and if, after 28 days following validation of the application, no agreement has been reached, we propose that the timescale for determining the application would default to the statutory requirements. For national and major developments, we are proposing that this timescale should be 4 months (see Part 10 below on time periods for decisions).

Q12: Do you support the view that processing agreements should be in place before submission of the application?

Q13: Do you agree that where there is to be a processing agreement that it should be entered into not later than 28 days after validation?

Scope of agreement

3.9 Processing agreements, under the terms of regulation 27, can cover applications for planning permission and any resultant consent, agreement or approval required by a condition imposed on a grant of planning permission for national or major developments. Where appropriate, parties may also wish to include in the agreement other types of consent, for example, Conservation Area Consent or Listed Building Consent, to provide a comprehensive approach for dealing with the application(s). It will be up to the parties involved to agree the approach to any processing agreement.

3.10 Applications for planning permission in principle and the subsequent application for approval of matters specified in conditions (see Part 4) could be dealt with either as milestones in a single processing agreement or as separately negotiated processing agreements. We propose that a holistic approach should be followed and that processing agreements should cover all stages required to take an application from pre-application consultation through to submission, processing and determination and, where applicable, the discharge of any conditions, the signing of a section 75 agreement and potential for notification of the application to Scottish Ministers. The elements for inclusion in the processing agreement should be discussed at the outset.

Content of processing agreements

3.11 The Scottish Government expects processing agreements to be as clear and simple as possible, and the parties may decide who drafts the agreement. In providing for processing agreements the intention is not to create an additional layer of bureaucracy associated with lengthy discussions and exchanges. It is not the intention, therefore, to prescribe in detail the form and content of such agreements. The key objective is to establish a realistic timescale for processing which takes account of the amount of

information which needs to be considered to determine the application and sets clear milestones. Suggested components of a processing agreement are set out below:

- **Roles and responsibilities** – The agreement should set out the roles and responsibilities of all the parties, including the planning authority, applicant and statutory consultees, in delivering the determination to schedule.

- **Information requirements** – Parties should agree in advance, taking into account comments from statutory consultees, what additional information beyond the validation requirements is needed to determine the application. This information may be listed in the agreement to offer applicants certainty about what they need to provide and aid efficient processing by the planning authority.

- **Decision-making framework** – The agreement should set out the management process and forum for decision-making. This could involve a project team which can agree direction and sign off completed tasks, as well as related working groups or task groups.

- **Key milestones** – A project plan should be included setting out the overall timetable for handling the application and the key milestones within it. This would incorporate the views of statutory consultees and provide the basis for monitoring progress.

- **Timescales** – Where the parties agree that the proposal will take longer than the statutory period to determine they should agree to extend the period after which an appeal may be made to Scottish Ministers against non-determination of the application, in accordance with section 47(2) of the 1997 Act and record that in the agreement. It will not be possible to appeal against non-determination in advance of that agreed timescale.

3.12 We do not intend to prescribe in regulations time periods which parties should set in processing agreements. This will depend upon the circumstances in each case, taking into account statutory periods for consultation, neighbour notification etc.

3.13 Review stages may be built into the project plan. If unforeseen issues arise during the project management of the proposal and it becomes evident that the processing agreement's original timescale is unlikely to be met, it should be at the discretion of the parties to re-appraise the situation. Where parties can reach agreement on an amended timescale the processing agreement may be amended. Where no agreement can be reached the applicant could appeal against non-determination after the originally agreed timescale.

3.14 A suggested template to guide parties in preparing processing agreements is provided at Annex A.

Q14: Do you agree with the suggested components of a processing agreement?

Public availability of the processing agreement

3.15 We propose that, in the interests of transparency, the processing agreement should be placed on Part I of the planning register, and be made available online in line with the move towards e-planning (see Schedule 4).

Committing to the processing agreement

3.16 The planning authority and applicant should sign the processing agreement. It is anticipated that Councils would include in their schemes of delegation provisions to give officials delegated authority to sign the processing agreement[3].

3.17 To reinforce parties' commitment to the processing agreement, the White Paper proposed linking non-compliance with the terms of a processing agreement with the return of planning application fees, where the planning authority was found to have acted unreasonably. Change in regulations to reflect this type of fees return proposal will be considered through the review of the Fees Regulations, which will be consulted upon in 2008. Positive approaches towards processing agreements by the parties involved are likely to result in more collaborative, open and transparent working relationships which can lead to better quality decisions and developments on the ground.

Q15: Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think there is scope for statutory consultees to also sign the agreement?

4. PLANNING PERMISSION IN PRINCIPLE

4.1 The GDPO currently contains provisions for the making of planning applications for outline planning permission (OPP) and for applications for approval of reserved matters. These reserved matters are essentially matters not specified in detail in the application for OPP and which the planning have specified, in conditions attached to the OPP, will require applications for their further approval. The GDPO also defines these reserved matters as relating to siting, design or external appearance of any building to which the OPP relates, or the means of access to such building, or the landscaping of the site for which the application was made.

4.2 This current distinction between conditions relating to reserved matters and other conditions which may require approval of certain matters in relation to an OPP appears to have caused some confusion. The new version of section 59 of the 1997 Act, once commenced, will replace the provisions on OPP with provisions on planning permission in principle (PPP). The importance of this change, however, relates to the removal of reserved matters. In future planning authorities will simply specify conditions on PPP which require matters specified in the conditions to be subject to further approval by the planning authority. These do not relate solely to matters not specified in the application for PPP, nor are they limited to issues of siting, design or external appearance of any buildings, access to such buildings or landscaping of the proposal site.

4.3 The removal of this distinction means that where conditions attached to a PPP specify matters which require the further approval of the planning authority, all such approvals will require to be the subject of formal application. Regulation 14 contains the requirements on the content of these applications. There are also requirements associated with neighbour notification and notification of parties who made representations on the related application for PPP (see Part 7 below).

4.4 The time periods within which applications for these further approvals must be made and within which development must be started are set out in the new version of section 59 of the 1997 Act. The planning authority will, as at present, have power to vary these statutory

3 Further detail on schemes of delegation is to be provided in a separate consultation paper on Schemes of Delegation, Local Review Bodies and Appeals.

time periods when PPP is granted. However, in future this will be done by direction, not by a condition attached to the permission. Despite this, the changes to section 59 will still allow the applicant to appeal against the time periods specified by the planning authority at the time permission is granted.

Q16: Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?

5. CONTENT OF APPLICATIONS AND VALIDATION

Application forms

5.1 With regard to application forms, the 1997 Act allows Scottish Ministers to specify a standard planning application form or forms. Work on standard application forms is being taken forward through the ePlanning Programme, in developing e-forms for electronic submission of planning applications. Until that work reaches a conclusion, there will be no statutory requirement for standard application forms and applicants will be expected to use forms provided by the planning authorities, as at present.

Content of applications for detailed planning permission

5.2 Regulation 11 sets out what is proposed to be the basic information constituting a valid application for detailed planning permission. This draft regulation does not elaborate beyond the current requirements for a description of the development, along with plans and drawings necessary to describe the proposal. There is further specification, however, in relation to the location plan.

5.3 We have considered a number of options, and possible combinations of approaches, to help front-load the application process and clarify the requirements for a valid application (the 1997 Act does not contain powers allowing Ministers to delegate to the planning authority the discretion to decide what information constitutes a valid application). These options are:

a) Prescribing detailed plans and drawings

We considered drafting more detailed statutory requirements for the plans and drawings to accompany planning applications, for example:

- Location plan – at a scale of 1:1250 or 1:2500 (to allow flexibility depending on the scale and location of the proposal). It must identify the land necessary to carry out the development, including access arrangements, landscaping, car parking and open areas around buildings.

- Site Plan – scale of 1:200 or 1:500. This should show:
  a) The direction of North;
  b) The proposed development in relation to the site boundaries and other existing buildings on the site, with written dimensions including those to the boundaries;
  c) All the buildings, roads and footpaths on land adjoining the site including access arrangements;
  d) The extent and type of any hard surfacing;
  e) Boundary treatment including walls or fencing where this is proposed.

- Existing and proposed elevations (at a scale of 1:50 or 1:100) which should:
  a) show the proposed works in relation to what is already there;

b) show all sides of the proposal;
c) indicate, where possible, the proposed building materials and the style, materials and finish of windows and doors;
d) include blank elevations (if only to show that this is in fact the case);
e) where a proposed elevation adjoins another building or is in close proximity, the drawings should clearly show the relationship between the buildings, and detail the positions of the openings on each property.

- Existing and proposed floor plans (at a scale of 1:50 or 1:100) which should:
  a) explain the proposal in detail;
  b) show where existing buildings or walls are to be demolished;
  c) show details of the existing building(s) as well as those for the proposed development;
  d) show new buildings in context with adjacent buildings (including property numbers where applicable).

- Existing and proposed site sections and finished floor and site levels (at a scale of 1:50 or 1:100) which should:
  a) show a cross section(s) through the proposed building(s);
  b) where a proposal involves a change in ground levels, show both existing and finished levels to include details of foundations and eaves and how encroachment onto adjoining land is to be avoided;
  c) include full information to demonstrate how proposed buildings relate to existing site levels and neighbouring development;
  d) show existing site levels and finished floor levels (with levels related to a fixed datum point off site), and also show the proposals in relation to adjoining buildings (unless, in the case of development of an existing house, the levels are evident from floor plans and elevations).

- Roof plans (at a scale of 1:50 or 1:100) to show the shape of the roof and specifying details such as the roofing material, vents and their location.

There was, however, concern that to specify such requirements in legislation might, in some cases, generate far more detailed information than was necessary to determine the application. An alternative may have been to specify different statutory requirements for plans and drawings for different types of application. However, in addition to making the system more complex, it might create misunderstandings where the specific statutory requirements fell short of the information needed to determine the application.

b) Requiring additional assessments

We considered identifying types of case which would require particular types of additional information, such as flood risk assessments, transport assessments, retail impact assessments, and to specify the content of the assessments which should accompany the application.

While such an approach is intuitively appealing, trying to capture the range of developments and circumstances in which particular assessments would be applicable is problematic. Inevitably, it is possible to think of various examples of developments not caught by a particular set of criteria, and while it might be useful to identify a number of common cases to which additional requirements might apply, this could generate confusion about what may or may not be required in cases outwith those covered by legislation. Specifying the required content of the assessments is equally difficult, given the range of variables which may need to be analysed in a variety of circumstances.

As with the plans and drawings, we concluded that preparing large amounts of detailed legislation trying to identify particular developments and criteria in which additional informational requirements might apply, would complicate the system. It would also be likely to produce disputes about whether a particular case required additional information as a statutory minimum and what that information should be in order for the application to be valid.

c) Stopping the processing clock

We considered allowing a period within which the planning authority, having received a valid application (i.e. one that complied with the statutory requirements), could request the further additional information and stipulate that the time period for making a decision would not include the time taken to submit that information.

This would not appear to be an improvement on the existing system in terms of delays in starting processing while additional information is submitted by the applicant, then evaluated by the planning authority and then possibly leading to further information being required[4]. It would also mean that the applicant would not be able to challenge a planning authority's request for further information by recourse to their right of appeal on the grounds of non-determination, which is tied to when the time period for determination has elapsed. Also, such an arrangement would potentially result in three different processes – applications with processing agreements, applications with requests for further information prior to processing and those where a request for further information was issued after the time period mentioned at the start of this paragraph.

5.4 We have concluded that producing a statutory procedure which can effectively provide for the content of every possible planning application is overly complex and that none of options a)-c) above provide an effective solution.

5.5 The intention therefore is that the draft regulations remain fairly widely drawn in this regard and that guidance will provide examples on the sorts of plans and drawings which could be required for various types of development, drawing on the points raised in option a) above. In due course, standard application forms could also incorporate prompts for applicants to consider the need for further assessments to accompany applications, and direct them to relevant planning guidance. The aim is to give applicants and planning authorities a clear steer on what should be provided in support of applications, without being tied to, or misled by, rigid, prescriptive requirements.

Q17: Do respondents consider the approach to the content of planning applications to be appropriate or are any of the other options in paragraph 5.3 preferable?

Q18: What other measures could help to ensure that applications are supported by adequate information at the start of the planning process whilst still encouraging efficiency in the development management system?

Content of applications for Planning Permission in Principle

5.6 Part 4 above discusses the changes from outline planning permission (OPP) to planning permission in principle (PPP). The basic premise, that an application can be made for something less than detailed planning permission remains. However, draft regulation 12

[4] However, we have proposed a similar approach in limited circumstances with regard to the need for further detail on applications for planning permission in principle (see paragraph 5.14)

requires more information to support an application for PPP than is currently required for OPP.

5.7 This means that simply drawing a red line around a site and seeking permission in principle for “housing” or “industrial development” would no longer be sufficient. Where detail is not included in the proposals, applicants for PPP would, in future, have to provide information describing what the proposed development will be like, approximate locations of buildings, routes and open spaces, as well as a design and access statement (see Part 6). This is in the interests of transparency for the public and to ensure that planning authorities are not being asked to consider proposals in the absence of essential information, which simply means delay later in the process as they require that information to be provided. An up to date development plan should also provide an indication of what development is acceptable in principle. We do not want to encourage speculative applications for PPP for proposals which depart from development plans.

5.8 Regulation 15(1) allows that within one month of receiving an application for PPP the planning authority can request that further details of the proposal should be provided. By virtue of regulation 29(6), the time period for determining the application does not include any time between these further details being requested and their receipt by the planning authority. Regulation 15(2) specifies that a request for further detail can relate to the siting, design or external appearance of any building to which the application relates, or the means of access to such buildings, or the landscaping of the site in respect of which the application was made. Regulation 28 contains the general power for planning authorities to request further information on planning applications. Sub-paragraph (2) of that regulation indicates that the planning authority can make a request for further information on the matters in regulation 15(2) after 1 month only if they have requested details on such a matter in accordance with regulation 15(1).

Q19: Do respondents consider that the draft regulations on the content of applications for Planning Permission in Principle are pitched at an appropriate level of information?

Applications for approval of matters specified in conditions

5.9 Regulation 14 specifies the requirements for applications for approval of matters specified in conditions. These replace the requirements for applications for reserved matters in relation to OPP (see Part 4 above). The provision on the content of such applications has been amended slightly to make clear that plans and drawings will be required in certain circumstances.

5.10 Regulation 14 also includes requirements for applications made in relation to an approval, consent or agreement required by a condition attached to certain planning permissions other than PPP. These other planning permissions relate to development which is listed in Schedules 1 and column 1 of Schedule 2 to the EIA Regulations. This is to ensure that the requirements of the EIA Directive[5] are implemented in relation to multi-stage consents where necessary.

5.11 Legislation came into force in November 2007 to apply the requirements of the EIA Directive to reserved matters applications in the existing planning system. Scottish Planning Circular 8/2007: The Environmental Impact Assessment (Scotland) Regulations 1999, contains further information. Regulation 14 of the DMR goes beyond the equivalent of reserved matters and extends to conditions requiring approval, consent or agreement

[5] Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

attached to full planning permissions. This is in recognition of the fact that such approval could also be construed as part of a multi-stage consent under the terms of the Directive and may therefore require to be subject to its terms. Similarly, we will give further consideration as to whether any future changes to legislation may be required in relation to conditions determined following reviews of mineral permissions.

Validation

5.12 At present there is some variation in what planning authorities consider to be a valid application. Some consider that the submission of the statutory requirements in articles 3-6 of the GDPO shall amount to a valid application, allowing the process to start (i.e. the 2 month statutory period for determining applications – other than in cases requiring EIA). Other authorities consider the application to be valid only once all the information they deem necessary to determine it has been received, including various assessments such as transport assessments or retail impact assessments.

5.13 The DMR are intended to make clear that where the information specified in regulations 11-14 is submitted, an application is valid. At that stage the application should be neighbour notified (regulation 22), entered on the list of applications (regulation 24) and the planning register (regulation 20), and any necessary advertising (regulation 23) undertaken. The provisions on neighbour notification, advertising applications and registers contain certain time limits within which information needs to be issued or entered to ensure that information is available when publicity measures are initiated. Planning authorities should coordinate these activities as far as possible to have a readily identifiable period for representations to be made.

5.14 The time period for determining an application starts upon receipt of the last piece of information necessary to meet the aforementioned statutory requirements (except in cases where EIA is required, in which case the 4 month period starts once an environmental statement is submitted).

5.15 This means that where additional information is required – such as retail impact assessments or transport assessments – and is only requested once the application is submitted, the time period for a decision will have commenced while that information is being prepared. This emphasises the need for parties to engage in pre-application discussions to identify informational requirements on more complex cases. In particular, this highlights the value of entering into processing agreements on major developments (see Part 3) in order to set out requirements for supporting information, time periods for submission and agreeing an overall timescale for the determination of the application. It is our intention in future to assess planning authority performance on major developments with processing agreements against the agreed period for determination set out in such agreements, rather than the 2 month or proposed 4 month period.

5.16 Additional elements of a valid application include the proposed requirement for certain planning applications (see Part 6) to be accompanied by a statement setting out the design rationale behind the development and how issues relating to access for disabled people has been addressed (regulation 16). A number of other applications, including all applications for major development, will also require a pre-application consultation report (regulation 4).

5.17 Where design and access statements and/or pre-application consultation reports are submitted, these need to be checked to make sure the necessary statutory requirements on form and content have been complied with. This should be an administrative check to make sure the statutory requirements have been met. It should not focus on an evaluation of whether the applicant has followed appropriate design and access principles or whether they

could have addressed more of the concerns expressed in pre-application consultation in their submitted proposals. These issues are for consideration as part of the determination of the application, not the validation process.

5.18 The validation process should therefore be treated primarily as an administrative check that the information required by statute has been included.

Q20: Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?

6. DESIGN AND ACCESS STATEMENTS

Context

6.1 One of the Scottish Government's National Objectives, as set out in the *Scottish Budget Spending Review 2007*, is for "living in well designed, sustainable places where we are able to access the amenities and services we need". In addition to their duties as public bodies under disability discrimination legislation, new section 270B of the 1997 Act states that Scottish Ministers and planning authorities must perform their functions under this Act in a manner which encourage equal opportunities and in particular the observance of the equal opportunities requirements. Ministers recognise the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. Planning's important role in this is emphasised in the policy statement *Designing Places* and related advice in Planning Advice Note (PAN) 68: *Design Statements* and PAN 78: *Inclusive Design*. The proposals in the consultation paper reflect and build upon the non-statutory requirements to consider design issues.

6.2 Prior to the 2006 Act, there was no statutory requirement for either a design or an access statement to accompany a planning application. Section 7 of the 2006 Act introduces a requirement for prescribed planning applications to be accompanied by a statement explaining:

- the design principles and concepts that have been applied to the development;
- how issues relating to access for disabled people to the development have been dealt with.

6.3 Such a statement may relate to either or both design and access. If both, then these issues can be dealt with in one or two documents. Ministers have powers to set out the form and content of the statement and the range of planning applications where such a statement is required.

6.4 Ministers have not previously consulted on the range of planning applications which should be accompanied by design or access statements or the information they should contain. There are potential resource implications for all parties which include the direct costs of the preparation and submission of a statement but also the costs of ensuring that the contents are appropriately assessed. The range of applications which should be accompanied by a statement covering design or access issues is therefore an important consideration that this consultation paper seeks comments on. These issues are also raised in the accompanying regulatory impact assessment.

6.5 This consultation paper seeks comments on two possible options for requiring statements on design and access issues. In addition it asks whether consultees consider

that there are certain classes of applications where the requirement should be limited to only design or access issues.

What is the role of the statement?

6.6 Statements covering design and/or access issues will be required to be submitted with an application for planning permission prescribed in regulation 16. The main aim of the statement will be to inform the planning decision-making process both for full planning permission and for planning permission in principle.

6.7 Statements should ensure development proposals are based on a carefully considered design process and a sustainable approach to access. They should allow the applicant to explain and justify their proposals and help all those assessing the application to understand the design and access rationale that underpins them.

6.8 Design is already a material consideration and it is likely that the nature of the information contained in the statements on design or access would also be a material consideration. As with all applications for planning permission, it will be for the decision-maker to decide what weight should be attached to a particular material consideration.

When will a statement be required?

6.9 As noted above, Ministers are setting out two options on the range of applications to be accompanied by a statement. Although Option 1 is to be found in the draft regulations, Ministers are seeking views on both options.

Option 1

6.10 This would require a statement, taking account of design and access issues, to accompany all planning applications except for certain minor exemptions listed in the regulations. Option 1 seeks to cover all cases where "development" would lead to access by the general public. Statements would not be required for householder developments, mining and engineering operations or a material change of use in land or buildings. The primary benefits of Option 1 include:

- ensuring that design and access issues are considered early in the process for a wide range of applications, leading to better designed and accessible development; and

- giving communities access to information explaining design and access issues for most planning applications.

6.11 However, it could be suggested that the implications of such an approach could include:

- the introduction of a potential additional burden on planning authorities and developers, particularly in relation to minor commercial developments; and

- that for some developments there will be little benefit in preparing a statement and that it could be seen as adding little value.

Option 2

6.12 This option is based upon the current advice contained in PAN 68 which suggests that a design statement may be appropriate for major developments and some minor applications, or small scale developments on sensitive sites. In developing this option, we have sought to link the scope of the new requirement to these criteria. Therefore a statement would be required in two scenarios.

6.13 First, regulations would require that statements covering design and access issues would accompany applications for all national and major developments. The National Planning Framework (NPF2) will define national developments and separate regulations which set out classes of major development are currently out for consultation. Additionally these applications will also be subject to pre-application consultation under regulation 4((1)a).

6.14 Secondly, applications in sensitive sites would be required to be accompanied by a design statement. We have taken the view that in order to permit some certainty at the outset on the type of application which is to be accompanied by a statement, that this requirement will be linked to areas that are clearly considered sensitive for their historic or environmental interest. This includes developments within conservation areas, World Heritage sites or National Parks.

6.15 We recognise that there are other designations, particularly relating to the historic environment (scheduled monuments, listed buildings, historic gardens etc.), where a design statement might be useful depending on the impact of the proposal but that the impact may not be clear before the application is submitted. Planning policy on the historic environment seeks early engagement on developments likely to affect the historic environment, in effect through pre-application discussions. Although such early engagement would inform a planning authority's appreciation of whether a development would affect the historic environment interest, we are concerned that the non-statutory nature of the engagement would not allow sufficient certainty at the outset that a design statement should be required. We are therefore not proposing that a statutory design statement is required in such cases but will seek to promote their use in this context.

6.16 When considering the contents of a statement for a development which is both major and to be found in a sensitive area, the fact that the development is major would take precedence, leading to a statement covering both design and access elements.

6.17 The primary benefits of Option 2 include:

- putting into statute what is already advised as being good practice – leading to better designed and accessible developments;
- for those developments requiring pre-application consultation, there will be scope to consider the design and access issues through this process;
- the focus for resources will be on developments which have a potentially major impact either on design or access issues; and
- applicants should already be aware of this advice and any potential additional burden should be minimised.

6.18 However, it could be suggested that the implication of such an approach could be that some planning applications where design and access issues may be important factors in

the consideration of a proposal will not be accompanied by a statement which sets out how these issues have been considered.

Q21: Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?

What information should statements contain?

6.19 In its broadest terms, the information contained in the statement, as set out in section 7 of the 2006 Act, should:

(a) for design matters – explain the design principles and concepts that have been applied to the development; and

(b) for access matters – explain how issues relating to access for the disabled to the development have been dealt with.

6.20 In considering how these two elements should be addressed in the design and access statement, there has been consideration of what information is relevant to the decision-making process and whether this information should be set out as a statutory requirement or left to guidance. We consider that although design and access are matters which are integrated, there should be a slightly different approach in the information required in the statement. These requirements reflect the advice in PAN 68 and PAN 78. In addition, as noted by the former Disability Rights Commission in its guidance on access statements, "the precise form of an Access Statement and the level of detail it will contain will vary according to the size, nature and complexity of the proposed development or alteration." We would therefore seek to set out minimum requirements in the regulations, supported by more detailed guidance to cover different types of development.

6.21 Therefore regulation 16(3) requires that the design element of any statement should contain information on:

a) the policy or approach adopted as to design and how any policies relating to design in the development plan have been taken into account; and

b) demonstrate the steps taken to appraise the content of the development and how the design of the development takes that context into account in relation to its proposed use.

6.22 With regard to access issues, regulation 16(4) requires that a statement should set out:

a) the policy or approach adopted as to access and how policies relating to access in the development plan have been taken into account.

   This should explain how the applicant's policy / approach adopted in relation to access fits into the design process. The statement should also reflect on any development plan policies relating to access issues though, as recognised in PAN 78, development plans often contain few, if any, requirements relating to inclusive design.

b) how any specific issues which might affect access to the development for persons with disabilities have been addressed.

This will relate only to access to and through the development and not extend to internal aspects of individual buildings. This is a matter better considered under building standards legislation. However, the location and design of doors and windows, etc. will depend on an understanding of the internal layout of a building and may be reflected in the statement. As noted in PAN 78, even where inclusive design has been considered, it is often specific to the building and does not include links with the surrounding public spaces and wider built environment. As a result, accessible buildings are sometimes located in inaccessible places.

c) how features which ensure access to the development for persons with disabilities will be maintained.

   Designing Places notes that the arrangements for long-term management and maintenance are as important as the actual design. Therefore, issues regarding maintenance will help inform the planning authority in coming to a view on how best, possibly through agreements or conditions, such features are to be maintained in the long-term.

6.23 Taking into account the considerations set out in paragraphs 6.9-6.24, the following table summarises the options on which types of application would be subject to which type of statement.

	Statement on design and access	**Statement on design**
Option 1	All applications except range of applications in regulation 16(1)	-
Option 2	National and major developments	Applications in designated areas

The scope for design and/or access statements

6.24 Section 7 of the 2006 Act allows Ministers to provide that design and access can be set out in one or two statements. As an example, option 2 proposes that a statement covering only design matters may be appropriate where the development is within a sensitive area. Other examples of where only the design elements of statements may be warranted could include: a house in the countryside or the marine element of a fish farm. There may also, for some smaller developments – minor extensions etc. – be instances where access is the sole matter of importance.

6.25 We would therefore seek views as to whether there is scope to introduce a requirement for only design or access elements to the statement to be included in circumstances not identified in the options above.

Q22: In addition to those considered in the options, in what circumstances might statements consider only one element – design or access?

Consultation and engagement

6.26 As noted above, the statement should identify the extent of consultation with stakeholders, including disabled people, and the outcome of such discussions.

6.27 In certain cases, as in relation to major developments, the proposal will be subject to statutory consultation arrangements with communities. Such arrangements should give applicants an opportunity to set out the rationale which underpins the development. Scottish Planning Policy 20 recognises that some developments may also be available for Design Review.

6.28 PAN 78 recognises that access panels are a useful source to consult on design, as they are able to give advice based on personal experience and local knowledge. However, it also recognises that access panels work in different ways and have different levels of experience and technical expertise. Currently such panels do not cover all areas of Scotland.

6.29 There are questions as to how such voluntary panels can be utilised so as to ensure that the best and most efficient use of this resource is made. As noted above, any policies on access in the development plan will be reflected in the statement. It may therefore be appropriate for authorities to engage with access panels and similar stakeholder groups in the preparation of policies on access in the local development plan. In development management, we would particularly seek the views of members of access panels and planning authorities on the potential role that panels can play in providing advice and expertise on design and access issues for individual planning applications. It is hoped that dialogue between a planning authority and local access panel will increase the understanding of the roles, resources and procedures of each party.

Q23: How can access panels be used most effectively in considering design and access?

Assessing the statement

6.30 An initial assessment of the statement will be required at the validation stage. This assessment will be quantitative rather than qualitative in that the planning authority will, in order to validate the application, need to be assured that the statement is enclosed with the application where required and contains the information set out in the regulations.

6.31 In coming to a view on the contents of the statement, particularly relating to access issues, planning officers may wish to seek advice from colleagues within the local authority. PAN 78 notes that access officers exist within most Scottish local authorities. In the majority of cases, the appointed officer's primary role is one of Building Standards Inspector, although the duties of an access officer may vary between authorities. In some cases, they may be concerned with the accessibility of the council's own buildings. However, the officer will be normally involved with building warrant applications, or the review of larger planning applications, as well as being in a position to give general advice to the public on such matters. We would particularly wish local authorities to comment on the potential role of access officers in providing advice on particular applications or as a source of advice on other resources.

6.32 In order to formulate and assess the contents of the statement, it is recognised that it will be important for there to be a policy and guidance framework for planners and applicants. It is the Government’s intention to prepare assessment guidance.

Q24: Do you consider that there is sufficient clarity in the regulations to allow for effective and timeous validation of applications where design and/or access statements are required?

Q25: What role can local authority access officers play in assessing the access element of statements?

Q26: What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?

7. NEIGHBOUR NOTIFICATION AND PUBLICITY FOR APPLICATIONS

7.1 Neighbour notification is the formal means by which local people with an interest in land or property are directly notified of a planning application relating to a neighbouring site. Other methods of notifying local people, such as placing an advert in a local newspaper or the use of site notices, may also be appropriate where an application is likely to be of wider interest. Regulation 22 sets out the requirements in relation to neighbour notification.

7.2 As part of the package of proposals aimed at making the planning system more inclusive, *'Your Place, Your Plan'* confirmed the Scottish Government's decisions both to transfer responsibility for notifying neighbours about a planning application from the applicant to the planning authority and to increase the period for individuals to make representations from 14 to 21 days. In addition, we are proposing that more information about planning proposals and planning procedures should be made available to neighbours. In drafting these new regulations the opportunity has also been taken to simplify the definition of 'neighbouring land' (regulation 2).

7.3 In future, as well as applications for planning permission, neighbour notification requirements will apply to applications for approval of matters specified in conditions relating to planning permission in principle (see Part 4).

7.4 The draft regulations aim to strike a balance between ensuring the public has confidence in the notification system and streamlining aspects of the process to make it less complicated.

Neighbour notification

<u>Who will be notified?</u>

7.5 Currently, the GDPO requires that neighbours to be notified should include both owners and occupiers of neighbouring land for domestic property and for a non-domestic property, the owners, occupiers and lessees. For non-domestic property, notices must be sent to named individuals at the address entered in the valuation roll, where these details are available. For domestic property, or where information on named individuals is not available, notification may be sent addressed to 'the owner' and 'the occupier' at the address of the neighbouring land and to the 'lessee' as appropriate. In contrast to existing provisions and to minimise delays and costs associated with identifying named individuals and in the service of separate notices, the draft regulations propose that a single notice is sent addressed to the "the Owner, Lessee or Occupier" at the address of the neighbouring land. Where it is not possible for the authority to carry out neighbour notification because there are no premises on the neighbouring land to which the notification can be sent, the planning authority must place a notice in the local newspaper (see paragraphs 7.10 – 7.11 below.)

7.6 The planning authority will have to notify neighbours within 5 working days of the validation date (regulation 17), providing them with information on the application, where plans and supporting documents can be viewed and the date by which representations may be made to the planning authority. As indicated above, the minimum period for

representations is being extended from 14 to 21 days from the date the notice is served. For the purposes of notifying neighbours the use of First or Second Class post is considered appropriate.

Q27: Do you consider the proposals on service of notice to neighbours to be appropriate?

Q28: Do you agree that, in order to minimise costs and potential delay, a single notice sent to the address of the neighbouring land is sufficient for these purposes?

7.7 In relation to applications for approval of matters specified in conditions attached to a planning permission in principle (regulation 14), regulation 22 contains a requirement to notify those who made representations on the application for planning permission in principle. As well as improving public involvement generally, one of the reasons for this change is that applications under regulation 14 are not subject to the enhanced scrutiny provisions. Therefore, it is important that using applications for PPP is not seen as a way of avoiding public involvement.

Q29: Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?

Definition of neighbouring land

7.8 It is accepted that the current definition of neighbouring land is complex and difficult to understand. With responsibility for notification transferring from applicant to planning authority, we also wanted to simplify the definition so that it would better allow authorities to use Information Technology to identify the neighbours who should be notified. Consequently, the draft regulations propose the following definition for neighbouring land:

- 'land which is conterminous with or within 20 metres of the boundary of land for which the development is proposed.'

7.9 This definition is similar to that proposed by the draft Development Planning Regulations to ensure consistency. Planning authorities will also be encouraged - through guidance - to issue notices to any other such land as they consider appropriate, taking account of local circumstances and the nature of the individual application concerned.

Q30: Do you support the proposed definition of neighbouring land?

Advertising and site notices

7.10 In addition to neighbour notification, or in instances where direct notification of individuals is not possible, a notice in the local newspaper can be a useful means of informing the local community about a planning application. In certain circumstances, we consider that local advertisement is more appropriate, including the following:

- Where it is not possible for the authority to carry out neighbour or owner notification because there are no premises to which the notification can be sent;

- Bad neighbour development (as listed in schedule 7); and

- Development contrary to the development plan.

7.11 Regulation 23 includes requirements for advertising in these cases, as well as for minerals applications (proposals for underground working) which were already listed in this context in the GDPO. The requirements around advertising of development plan departures come into the DMR from a direction (currently the Town and Country Planning (Development Contrary to Development Plans) (Scotland) Direction 1996), to bring the requirements into one place. In future, planning authorities will be able to recover the costs of advertising for all these cases, as they can currently in relation to bad neighbour developments, cases where neighbour notification cannot be carried out (see also paragraph 7.16 below) and minerals applications.

7.12 Provision concerning the advertisement of EIA applications is also made in the EIA Regulations, as amended, which we intend to retain subject to any consequential changes (eg. in transferring responsibility for notification from the applicant to the planning authority).

7.13 Site notices can also be a useful means of informing communities about local planning applications. However, we believe that the planning authority is best placed to determine which applications would benefit from a notice being placed in the vicinity of the site of the proposed development and do not therefore propose to make any specific statutory provision in this respect. Authorities will nevertheless be encouraged through guidance to consider whether the use of site notices would be appropriate based on the circumstances of each case. These are intended to supplement rather than replace statutory methods of publicising planning proposals such as neighbour notification and advertising.

7.14 Regulation 23(6) indicates a time limit for advertising applications with reference to the date when a valid application is submitted. This does not apply to advertising applications as development plan departures in recognition of the fact that it may not be readily identifiable at the outset whether a proposal constitutes a departure form the development plan.

7.15 Clearly, as far as possible, planning authorities should seek to coordinate the timing of any advertising and neighbour notification to minimise any confusion over the time limit for making representations.

Q31: Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?

The cost of neighbour notification and advertising

7.16 In transferring responsibility for neighbour notification from the applicant to planning authorities, the White Paper has previously acknowledged the need to increase planning fees to cover the higher costs this transfer will impose on planning authorities. Where the regulations include a requirement for planning authorities to advertise in a local newspaper we consider that authority should be able to recover costs from the applicant and will include provision to this effect. Research on planning fees is currently underway.

Notices to owners and agricultural tenants

7.17 Regulation 18 contains requirements on applicants to certify who owns the proposal site and whether there are any agricultural tenants on said land. It also requires the applicant to notify these parties when a planning application is made. These requirements are along similar lines to those currently contained in the GDPO. However, the DMR recognise that at the time that the applicant notifies these parties, at or before submission of the application, the application papers will not be publicly available for inspection.

Consequently, the new notices to be served at this juncture simply indicate that an application has been submitted for the development described, at the location described to the named planning authority and that an opportunity for comments to be made to the planning authority will be available once the planning application papers are ready for public inspection.

7.18 When the planning authority carry out neighbour notification, once the application is validated, they will also be obliged to notify those parties that the applicant has identified as owners and agricultural tenants, providing information on the proposal, where further information can be inspected and the time period within which comments may be made to the planning authority.

7.19 Where an applicant is unable to identify some or all of the owners and agricultural tenants, they will **not** be required to place a local advertisement, which they are required to do at present. Again, an advertisement at this juncture could do little more than indicate a planning application had been made for a particular development at a particular location. However, the planning authority will be required to place an advert in such cases after a valid application is received, indicating where information can be inspected and the time period for comments etc. The cost of this advertising will be recoverable from the applicant. Where there is a requirement to carry out local advertising for one or more of the reasons set out in regulation 23, then only one advert will be required.

Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?

8. LISTS OF APPLICATIONS

8.1 Weekly lists are already prepared by all planning authorities. They are primarily used to inform community councils of the planning applications received that week. However, consistent with Scottish Ministers' intention to improve the wider public's awareness of planning applications, it is proposed to require planning authorities to provide additional information in their list of applications, make it more widely available and regularly advertise where it can be accessed locally. The provisions on lists are set out in new section 36A of the 1997 Act and regulations 24-26 of the DMR.

Contents of the list of applications

8.2 In addition to information on planning applications, new section 36A(1) of the 1997 Act requires that the list of applications will also contain information relating to the proposal of application notices received by the planning authority on pre-application consultations (see Part 2, paragraphs 2.13 to 2.18 for further information). Additionally, planning authorities will include on the list, information on any planning applications that might be made directly to the Scottish Ministers under the "urgent development" procedures introduced on the removal of Crown immunity from planning control.

8.3 The current information requirements for the list include: the reference number given to the application by the planning authority; the site location; the name and address of the applicant or his agent; and a description of the proposed development. These requirements are to be retained. However, the requirement to include the date of receipt of the application will be removed and replaced with information on the date by which comments must be received.

8.4 In addition, planning authorities will provide information on how details of applications can be obtained from the planning authority and, where the application is for approval of matters specified in conditions attached to a previous grant of planning permission (applications under regulation 14), the original reference number to the application which granted planning permission, outline planning permission or Planning Permission in Principle. Slightly different provisions are in place for proposals for application notices and "urgent developments".

8.5 The list of applications is to be kept in four sections, each section relating to one of the four elements mentioned in paragraph 8.2 above. The list of applications shall also contain a statement as to how further information in respect of an application may be obtained from the planning authority.

Availability of the list

8.6 Under provisions in regulation 26(1), the planning authority are to publish the list of applications by means of the internet on their website and are to make the list of applications available for inspection at their principal office. Additionally, regulation 25 requires that a list of applications received in the previous week will be made available to community councils and at public libraries. Community councils will continue to be able to require consultation on any of the applications on that list.

8.7 The 1997 Act also contains powers to prescribe that the availability of the list is to be advertised by the authority in a local newspaper at such intervals as are set by Ministers. This power is limited to advertising the availability of the list and not advertisement of the list itself. Having considered the appropriate time period for advertising the availability of the list, we consider that planning authorities should undertake this advertisement on a monthly basis in a local newspaper (regulation 26(2)).

The cost of advertising the list

8.8 The 2006 Act allows Ministers to make provisions for planning authorities to charge a fee in order to recover any costs incurred as a result of preparing, publishing and advertising the availability of the list. However, as this forms part of planning authorities' wider development management function, there is scope to incorporate related costs in the planning application fee. Research on planning fees is currently underway.

Q33: Are you content with the Scottish Government's proposals for the public availability of the list?

Q34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?

9. STATUTORY CONSULTEES

Who should be consulted?

9.1 Regulation 30 of the new DMR sets out the statutory requirements for consultation on planning applications. The bodies which require to be consulted and the criteria for triggering consultation in particular cases are the same as the current GDPO. However, consideration is being given to possible changes in relation to a number of bodies' interests.

9.2 In addition, the ePlanning Efficient Government Programme is currently working on consultation triggers for eConsultation and it may be that as work moves forward on this, changes to the current statutory requirements for consultation may be required.

9.3 There will be further consultation on any detailed proposals for changes to statutory requirements in this area.

9.4. An area where we have decided not to change the arrangements relates to trees. The then Scottish Executive publication *Tree Preservation Orders: Consultation Paper* (December 2004) proposed making Forestry Commission Scotland a statutory consultee on planning applications resulting in over 0.25 hectares of tree felling. The *Overview of Consultation Responses* (June 2005) stated our intention to proceed with this change. However, since that time the Scottish Government has reconsidered the implications for the possible delays in processing from such additional consultation requirements. We consider that a more cost-effective way of ensuring adequate protection of woodlands is to strengthen the strategic engagement between forestry and planning, and that this is best addressed in the revised National Planning Framework and national planning policy on natural heritage.

The consultation process

9.5 The regulations propose a minor change to the process of consultation. In future, consultation will be required “before the determination of an application for planning permission” rather than “before granting planning permission”, as under the current GDPO. This is to ensure that where there are appeals against refusal of planning permission the views of statutory consultees are available to the body considering the appeal or local review.

9.6 The introduction of local reviews raises a further issue in relation to statutory consultees. It would be inappropriate for a local review body to potentially grant planning permission on a case refused by a planning officer, where an application for the same proposal should be notified to Ministers prior to a grant of planning permission. Such cases will therefore not be subject to the scheme of delegation which leads to local reviews. In order to identify such cases, planning authority officials will need to consult statutory consultees, even where it is clear from the outset that a recommendation of approval appears unlikely, in order to identify those cases where notification to Ministers would be required as a result of an outstanding objection from a statutory consultee. Further details of the proposals on schemes of delegation and local reviews will be contained in a separate consultation on appeals.

Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?

10. TIME PERIODS FOR DECISIONS

10.1 Regulation 29 sets out the time periods for determining an application. Sub-paragraphs (1) and (2) set out the time period within which a decision should not be made, with reference to the time periods for people to respond to notices and adverts under provisions on neighbour notification, notices to owners and agricultural tenants and additional publicity around minerals applications.

10.2 The time period within which local development should be determined is 2 months from the date of submission of a valid application (or the last item of material required to constitute a valid application). An additional time period for determination of 4 months is

now proposed for national and major developments. This new provision recognises that given the nature of such proposals they are unlikely to be determined within 2 months.

10.3 There are exceptions to these time periods:

- regulation 29(5) – where the case is called in for determination by the Cairngorm National Park Authority;
- regulation 29(6) – where applicants have not submitted the costs of advertising applications under regulation 23 or have not submitted information requested under regulation 15 in relation to planning permission in principle;
- regulation 29(7) - where advertisement of development plan departures and placing of additional notices on minerals applications have taken place late in the processing of an application and period for representations will run out after the 2 or 4 month period; and
- regulation 29(8) – where the applicant and the planning authority have agreed in writing to an extension of the period for issuing a decision notice prior to the right of appeal on the grounds of non-determination arising.

10.4 A valid application is one which meets the requirements of regulations 11-14 on content set out in the DMR. It does not include additional information which the planning authority may request in advance to accompany an application or which they may request once the application has been received.

10.5 The current provisions in the EIA Regulations on time periods for determination of applications will continue to apply. These make it clear that the time period for determining a case requiring EIA is 4 months and that in calculating that period, no account is taken of the time prior to the submission of an environmental statement to accompany the application.

10.6 Once the statutory time limit has elapsed, in the event that the planning authority has not notified the applicant of their decision on the application, or that the application has been referred to the Scottish Ministers (i.e. called-in), it is open to the applicant to appeal to the Scottish Ministers on the grounds of non-determination. In future the applicant will have 3 months (a reduction from the current 6 month period) from the end of the statutory time limit in which to make such an appeal, thereafter any such appeal will be time barred.

10.7 Where the application relates to a local development covered by a scheme of delegation under section 43A of the 1997 Act, then instead of an appeal to Ministers on the grounds of non-determination, the applicant would be entitled to require a review by the planning authority. A forthcoming consultation paper will discuss these proposals on appeals, schemes of delegation and local reviews.

10.8 Paragraphs 5.3 to 5.5 above discuss the issues around using statutory requirements to front load the informational requirements on certain planning applications, including whether it would be appropriate to 'stop the clock' where further information is required by the planning authority to determine the application. However, as discussed above, we have concluded that this is not an appropriate way to proceed other than in limited circumstances relating to requesting further detail on applications for planning permission in principle – see regulations 15 and 29(6).

Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months?

11. DECISION NOTICES, REPORTS OF HANDLING AND REGISTERS

Decision notices

Notices under the current system

11.1 Currently when a planning authority gives notice of a decision in respect of an application for planning permission or for approval of reserved matters, the notice has to be in writing; where the planning authority decides to grant permission or approval subject to conditions or to refuse it, the notice states the reasons for the decision; and in the case of refusal or approval subject to conditions is accompanied by details on how to appeal. There are currently no requirements to notify anyone other than the applicant of the decision, although Ministers may direct that information be distributed to others.

Contents of the new decision notices

11.2 A new subsection (1A) of section 43 of the 1997 Act sets out revised requirements for the contents of the notice issued to an applicant and requires the planning authority to include in each notice:

- the terms of the planning authority's decision,
- any conditions to which that decision is subject, and
- the reasons on which the authority based that decision.

11.3 Additionally, Ministers have powers to require that other information may be included. In imposing such a requirement, Ministers have considered how to make the decision notice a more helpful document both to the recipient and those who have made representations.

11.4 Under regulation 39(2), planning authorities will be required to issue a decision notice relating to an application for planning permission or for a consent, agreement or approval required by a condition imposed on a grant of planning permission.

11.5 We propose that the decision notice should contain the following information in addition to the three elements set out in primary legislation. In the case of applications for planning permissions, planning permission in principle and further applications, under regulations 11 to 13 respectively, this will include:

- **Additional general Information** – this will include: the description of the development (including reference to any variation to the original proposal agreed with the applicant); a postal address (if relevant); and the reference number of the application.

- **Lapse of planning permission after 3 years if development not started or any direction under section 58(2) or 59(5)** - Once commenced, amended section 58 of the 1997 Act will require that a planning permission to which the section applies, whether granted or deemed to be granted, lapses after 3 years. However, section 58(2) allows a planning authority to direct that some other alternative period to 3 years applies. Reference to the statutory period in section 58(1) or to any Direction under section 58(2) will be included in the decision notice. Similar directions can be made under section 59(5) of the 1997 Act with regard to planning permission in principle. Although these time periods will no longer be attached as conditions to the

permission, applicants would still retain a right of appeal against the periods specified when planning permission is granted.

- **Reference identifying the plans considered by the planning authority in determining the planning application** - There have been concerns that there may have been some confusion between the plans considered by the planning authority when coming to its decision and those submitted subsequently on appeal. The referencing in the decision notice of the plans which were considered by the planning authority will remove such confusion.

- **Indicate whether there is a planning obligation under section 75 associated with the planning permission** - Consideration has been given to whether any related planning obligation under section 75 agreement and the reasoning behind such an agreement should be included in any decision notice. Although not generally lengthy documents, section 75 agreements can be legalistic and complex. Circular 12/1996 indicates that the signing of the agreement is linked with the issuing of the decision letter but may have already been agreed and signed off before the decision letter is issued. It is therefore the intention that the decision notice should simply indicate where such an agreement has been concluded. Further information will be contained in the report of handling of the application (see below).

- **Scottish Ministers' direction** - The GDPO currently requires that where the Scottish Ministers have given a direction restricting the grant of permission for the development referred to in the application, the details of the direction should be given. Ministers can now issue a direction to require the attachment of conditions to a planning permission in accordance with powers in section 43(1)(aa) of the 1997 Act as amended. It will be for the planning authority to set out the reasons for these (on the basis of information supplied by Scottish Ministers) and any other conditions attached to a permission.

- **Challenge of decision (appeal or local review)** - While currently required, changes are proposed to update the notification paragraphs in Schedule 9, including the new arrangements around local review of decisions.

11.6 Due to the nature of the application, there will be different arrangements for application for approval of matters specified in conditions (regulation 14). The decision notice will, in addition to the minimum set out in the Act, include:

- a description of the matter in respect of which approval, consent or agreement has been granted, or as the case may be refused;

- the reference number of the application; and

- the reference number of the application for planning permission in respect of the grant of which the condition in question was imposed.

11.7 Any relevant application for approval, consent or agreement not covered by regulations 11-14 will require a notice comprising the three matters set out in primary legislation (see paragraph 11.2 above). Such applications would include, for example, seeking approval as required by a condition attached to a full planning permission which did not require a formal application under regulation 14.

Receipt of the decision notice

11.8 Provisions within section 43 of the 1997 Act allow Ministers to require the planning authority to send a copy of the decision notice to those who submitted representations on the application. Regulation 39(1)(b) fulfils the policy intention set out in the White Paper.

11.9 However, we recognise that planning authorities may have a legitimate concern as to the possible scale of the burden on them particularly where there are a large number of representations or a large scale petition on a case. We would therefore wish to encourage planning authorities to set out the number of times they are likely to deal with a large number of representations or petitions and what level of representation is involved. Any views on methodologies used to manage this potential burden would also be appreciated.

Q37: Is the level of information to be provided in the decision notice appropriate?

Q38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?

Registers and reports of handling planning applications

11.10 Concerns have been expressed about access to information on a planning authority's reasons for its decision on an application. The changes to section 36 of the 1997 Act are intended to ensure that planning authorities provide a full record of the relevant factors considered in determining each application for inclusion in the planning register.

11.11 As required in Schedule 5 of the GDPO, planning authorities already maintain a register of applications. Part I contains information on applications which have yet to be disposed of whilst part II focuses on information on those applications which have been determined. This two part structure is to be retained with some amendments arising from the new provisions.

Part I of the Planning Register

11.12 Information on part I of the Register is to be extended to include all the matters which constitute a valid application under regulations 11 to 14. Where relevant this will include a copy of any pre-application consultation report or design and access statement. The regulations also require a copy of any processing agreement to be included on Part I of the register. In addition, separate provisions arising from regulation 20(1) of the EIA Regulations require that the register contains relevant additional information where the development is subject to EIA.

Part II of the Planning Register

11.13 There are new provisions relating to the information to be contained in part II of the Register. With regard to applications for planning permission, paragraph 3 of schedule 4 to the DMR sets out the proposed requirements in this regard. These vary depending on whether the application is an application for planning permission or an application for matters specified in conditions and on whether the case was subject to a review by the planning authority or a decision by the Scottish Ministers on appeal or call-in.

11.14 Paragraph 3(a) of schedule 4 indicates that for all applications made under regulations 11-14 which are determined by the planning authority or a delegated officer, a copy of the decision notice required by regulation 39 and the related plans must be put on

part II of the register. Where an application is called-in by the Scottish Ministers or is the subject of an appeal or request for review on the grounds of non-determination, the planning authority will not have had an opportunity to determine the application formally. In those cases, paragraphs 3(d) and (e) require a note of the date and effect of any decision by the Scottish Ministers and a copy of the planning authority's review decision notice to be put on the part II of the register.

11.15 Paragraph 3(b) of the schedule requires that a copy of an environmental statement (prepared in accordance with the EIA Regulations) associated with any application be placed on part II of the register.

Reports of handling of planning applications

11.16 Additionally for those applications subject to regulations 11 to 13 and determined by the planning authority other than on review[6], the register should also contain a copy of a report on the handling of the application. Planning authorities are to prepare a report on each application which is to contain a range of information relevant to the processing of the application, including: reference to any relevant development plan policies, the issues raised by statutory consultees and in representations on the proposal, statements as to whether various statements and assessments were provided – including environmental statements and design and access statements – and the main issues they raise. The full list of the requirements of the report are to be found in paragraph 4 of Schedule 4. The decision notice on the application will contain the description of the development, location, the planning authority's decision on the application and its reasons.

11.17 It is not our intention to specify the format and structure of the report in legislation. In most cases the contents of the report should be similar to reports currently prepared for their planning committees. We would be interested to hear the views of planning authorities on the extent to which existing committee reports can be adapted to meet those requirements.

Other entries on Part II of the Register

11.18 Provisions relating to the manner in which the register of applications for Certificates of Lawful Use or Development and registers in general have been updated but not significantly amended.

11.19 We also wish to see that these matters are placed on the register timeously. Therefore regulation 20(2) sets out that:

- Planning applications, plans and drawings and any design and access statement or pre-application consultation report must be placed on part I of the register on or before the earliest date on which notice is given in respect of the application under regulation 23(1) (Advertising of applications) or 22(1) (Neighbour Notification);

- Any direction given under the 1997 Act or the DMR in relation to the application should be entered on part I of the register within 7 days;

- The information described in paragraphs 11.13 to 11.16 and 11.18 above is to be placed on part II of the register within 7 days of a decision being issued.

6 Where the planning authority makes a decision on a review required by the applicant under new section 43A of the 1997 Act, only where the planning authority actually determine the application prior to the applicant seeking a review is there a requirement to place a report on the register.

Q39: Is the information to be contained in the report of handling appropriate in order to provide a robust summary of how the application has been dealt with and the reasons behind the planning authority's decision?

Q40: Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?

12. BAD NEIGHBOUR DEVELOPMENT

12.1 Schedule 7 of the new DMR replicates Schedule 7 of the GDPO on "bad neighbour developments". The developments listed in this schedule represent developments likely to raise amenity issues beyond immediate neighbours, or during the evening and weekend hours. Issues include, noise, large numbers of people gathering in or moving through an area, significant increases in traffic movements, parking issues and so on. Where a planning application includes development listed in the Schedule, the application must be advertised in a local newspaper, in addition to any required notification of neighbours, to raise awareness more widely in the local community.

12.2 Two areas of concern have been expressed about bad neighbour development. First, that the name itself is unduly negative and can create a misconception about the nature of a proposal which follows the application through the planning process.

Q41: What might be an appropriate alternative name for "bad neighbour development"?

12.3 The second issue is whether the descriptions of development should be changed to update terminology and catch some additional developments that raise wider amenity considerations.

12.4 It is therefore proposed to make the following additions to the list:

- Nightclub/ public house
- Community hall
- Concert hall
- Places of Worship
- Skateboard Park
- Waste transfer sites
- Recycling points
- The construction of buildings or the use of land or buildings for the purpose of slaughtering animals or the processing of animal carcasses for final disposal or as part of the production of other goods.

12.5 Suggested deletions from the list are:

- Music Hall
- Dance Hall
- The construction of buildings or the use of land for the purpose of slaughterhouse or knacker's yard or for the killing or plucking of poultry.

Q42: Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have other suggestions?

13. MISCELLANEOUS ISSUES

Powers of direction

13.1 The GDPO currently contains powers allowing the Scottish Ministers to direct:

a) that a development which is listed in Schedule 2 to the EIA Regulations requires EIA – i.e. regardless of whether it meets the criteria or exceeds the thresholds which would normally be the trigger to screen for EIA. Such a direction can refer to a particular development or class of such development (regulation 31);

b) that planning permission may not be granted by a planning authority either indefinitely or during such period as may be specified with regard to a development or class of development specified in the direction. For example, this is the power which forms the basis of directions requiring notification of applications to Ministers (regulation 32(2));

c) that in relation to a development or class of development specified in the direction the planning authority must consider, when minded to grant permission, imposing a condition specified in the direction of a nature indicated in the direction and, unless the direction is withdrawn, not to grant permission unless they satisfy Ministers that such consideration has been given and that such a condition will either be imposed or need not be imposed (regulation 33);

d) that the planning authority pass to persons prescribed in the direction information, also specified in the direction, on applications for planning permission made to that authority, including information as to the manner in which the application had been was dealt (regulation 32(1)).

13.2 These powers to make directions are retained in the DMR, as indicated. These powers to give a direction also include powers to vary or cancel the direction with a subsequent direction. All directions in force under the GDPO and its predecessors prior to the coming into force of the new DMR will remain in force.

Variation of applications

13.3 New section 32A of the 1997 Act specifies that planning applications may, with the agreement of the planning authority, be varied after submission. Where the planning authority consider such a variation to be substantial, they must not agree to it and a new application would be needed for the altered proposal. The planning authority may give such notice of the variation as they consider appropriate.

13.4. This new provision puts current practice based on case law on a statutory footing. Where an application is called-in for determination by the Scottish Ministers, new section 32B makes similar provision for variations albeit that agreement to the variations is matter for the Scottish Ministers. New section 32A specifies that an application is not to be varied after there is an appeal made to the Scottish Ministers.

13.5 Although new sections 32A and 32B specify powers for making further provisions in subordinate legislation with regard to variations, we do not intend to make any further statutory provision in this regard.

Crown immunity provisions

13.6 With the removal of Crown immunity from planning control in 2006, provisions were put in place to allow applicants to withhold information that may be sensitive on national security grounds. Similar provisions will be applied to the new requirements in the development management regulations, including, for example, information requirements in relation to pre-application consultation.

13.7 Certain provisions of the current GDPO are also applied to planning applications made by the Crown directly to the Scottish Ministers on the grounds that the development is of national importance and is required urgently. Again the like provisions in the DMR will be applied to urgent Crown applications. It should be noted that the potential nature of these urgent Crown developments, such as national security or defence installations, means it would be inappropriate to apply enhanced scrutiny measures to them, adding to the processing time. However, applications for Crown development outwith the special urgency procedures will be subject to enhanced scrutiny where the relevant criteria are met.

CLUD provisions

13.8 The GDPO, as amended, currently contains provisions on the making of applications for and revocation of certificates of lawful use or development (CLUDs). Equivalent provisions are contained in regulations 42 to 45 of the draft DMR. These have been updated but make no significant changes to the procedures for CLUDs.

Marine fish farming provisions

13.9 Marine fish farm related development was brought within planning control this year and amendments were made to the provisions of the GDPO as a result. These relate to amendments to take account of these developments being at sea and include removing requirements for neighbour notification and requiring all applications in this regard to be advertised. Similar provisions will apply in relation to the new development management regulations. Regulation 1(3) makes it clear that the DMR will not apply to applications under section 31A of the 1997 Act in relation to marine fish farming equipment in place prior to such works being brought within planning control.

E-enablement of development management

13.10 Following the introduction of the Town and Country Planning (Electronic Communications) (Scotland) Order 2004, the current GDPO allows most of the statutory procedures to be carried out electronically and the intention is that the new development management regulations should be similarly e-enabled.

Powers to require further information

13.11 Planning authorities will still have powers (draft regulation 28) to require additional information in order to determine planning applications. As at present, the use of these powers does not however affect the information which is required to make an application valid.

13.12 In relation to planning permission in principle, planning authorities will retain a power (regulation 15(1)) to require within a month from submission of a valid application that additional detail on certain aspects of the development proposal will need to be submitted before processing can continue.

Other forms and certificates

13.13 With the change in responsibilities for neighbour notification from applicants to planning authorities, the various certificates regarding the carrying out of neighbour notification have been withdrawn. The notices and forms associated with the making of an appeal will be contained in the new appeals procedure regulations which are discussed in a separate consultation paper.

13.14 Schedule 2 contains the forms associated with certifying who are the owners and agricultural tenants associated with a proposal site and the extent to which the applicant has been able to identify and notify these parties. They do not specify the time period for objections and representations and nor do the form of notices. Once a valid application is received, these parties will be notified by the planning authority of where information on the application can be viewed and the period for making representations and to whom they should be made.

13.15 Schedules 5 and 6 contain the format for acknowledging receipt of an application, depending on whether the content of the application complies with the statutory requirements and whether the development is subject to local review procedures as opposed to appeal to the Scottish Ministers.

13.16 There is a single form of notice (Schedule 8) for a local newspaper where the planning authority is require to undertake advertising of planning applications once a valid application has been received.

13.17 The notice regarding appeals, to accompany refusals of planning permission, has been updated to address the introduction of local reviews and is set out at Schedule 9.

13.18 The forms for certificates of lawful use or development (CLUDs) have not been changed significantly but have been updated and appear in Schedule 10.

14. CONTROL OF INCREASE IN GROSS FLOOR SPACE – MEZZANINE FLOORS

Context

14.1 The draft Town and Country Planning (Increase in Gross Floor Space) Development Order controls increases in the internal floorspace of buildings used for the retail sale of goods, following proposals set out in the White Paper.

14.2 The planning system controls and manages the carrying out of building, engineering or other operations or changes of use which are defined as ''development'' in section 26 of the 1997 Act. Currently, under the 1997 Act, (section 26 (2)(a)) alterations which only affect the interior of a building or do not materially affect the external appearance of the building, such as increases in the amount of internal floorspace, are not considered to fall within the meaning of "development" and therefore do not require planning permission.

14.3 The most common method of adding additional floor space within a building is the installation of a mezzanine floor. Mezzanine floors are partial storeys between the main storeys of a building, and can be a quick and flexible way to increase floor space within a building, enabling businesses to make better use of their buildings and increase productivity from the same footprint - making more efficient use of land. However, in the wrong locations such unregulated development can also undermine policy objectives for town centres, sustainable land use and travel patterns and accessibility. In particular, in out of centre locations, internal increases can divert trade away from town centres, particularly as town

centre units may be less likely to have scope to accommodate similar increases in floorspace due to the configuration of space. Many places in Scotland have witnessed the practice of retail operators increasing the size of existing out-of-town retail units by adding additional floor space through mezzanine floors or basements.

14.4 Concerns have been raised that significant internal floorspace increases could take place, without being subject to planning control, in out of centre locations, undermining the Government's key objective to promote the vitality and viability of town centres, as set out in Scottish Planning Policy (SPP) 8: Town Centres and Retailing. Currently such works can take place without the need for consent, whereas additional floorspace gained by extending the building would be subject to planning control. Whilst recent planning permissions often have conditions attached that limit the amount of permitted floorspace, many earlier permissions did not. Controls are therefore considered necessary to help protect town centres.

New powers

14.5 New section 26 (2AA) of the 1997 Act gives the Scottish Ministers the power to specify in a development order the circumstances or description of circumstances in which section 26(2) (a) of the 1997 Act does not apply. This allows the development order to prescribe that 'development' includes certain internal operations. In particular it focuses on operations which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.

Types of use covered by controls on internal floorspace

14.6 The Scottish Government intends to apply the draft order to buildings used for the retail sale of goods. We are not aware of other types of uses raising significant issues through use of internal floorspace increases.

Q43: Are there any other uses which you consider should also be subject to controls on increases in gross floorspace ?

Thresholds and circumstances

14.7 We propose to allow all operators to increase the internal floorspace of their building by a set amount (200 square metres) but to control further increases above that level. The draft order therefore provides for the different circumstances where previous works have or have not been carried out to a building resulting in an increase in the gross floor area of the building. Examples of how the order would apply to different sets of circumstances are set out below.

a) Where a building has not been subject to any previous works - The draft order provides at article 2(1) for circumstances where a building has not been subject to any previous works which increase the gross floorspace of the building. In such cases:-

- increasing the internal floorspace by up to 200 square metres would not be development and would not require planning permission.

- increases of 200 square metres or more would be development and would require planning permission.

b) Where previous works have taken place - The draft order also provides at article 2(2) for circumstances where previous works have taken place which increase the gross floorspace of the building. In such cases, where:

- the previous internal aggregate increase in floorspace is less than 200 square metres, and where the proposed internal increase in the gross floor area of the building together with any previous increases in floorspace would still be less than 200 square metres, this would not constitute development.

- the previous internal aggregate increase in floorspace is less than 200 square metres, and where the proposed internal increase would bring the aggregate increase in the gross floor area of the building to 200 square metres or more, this would constitute development.
- the previous internal aggregate increases in the floorspace of the building is 200 square metres or more, any further increases of 10 square metres or more would constitute development.
- increases are of less than 10 square metres they would not constitute development.

Q44: Do you support our proposal to have different approaches depending on whether other increases in the internal floorspace have taken place?

Q45: Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?

14.8 The order uses set amounts in square metres rather than a percentage. It was considered that use of a percentage figure would be less precise and would favour existing large-scale developments.

Q46: For the purpose of controlling internal Floorspace, do you support the decision to use amounts in square metres rather than a percentage?

Definition of previous works

14.9 The order provides for different circumstances where previous works have or have not taken place. Previous works for the purpose of the order are set out in article 2(3) (b) of the order. This includes works for the maintenance, improvement or other alteration of a building, being works that affect only the interior of the building. This includes any works for the alteration of a building by providing additional underground space.

14.10 However, the definition of previous works does not include previous extensions which have increased the footprint of the building as these types of works do not solely affect the interior of the building. Therefore this type of increase in floor area should not be taken into account in calculations of the aggregate increase in the gross internal floor area of the building. In practice this means that where a building has had a previous extension, but no internal increases in floorspace, it would still be possible to extend the internal floor area by up to 200 square metres without constituting development.

15. TRANSITIONAL ARRANGEMENTS

15.1 The draft regulations accompanying this consultation paper do not cover provisions on transitional arrangements. Consideration is currently being given to the detailed arrangements, for example: how to treat applications in the system when new requirements take effect; how to commence aspects of the new system relating to the pre-application phase to avoid disadvantaging applicants; how to deal with applications for reserved matters made after the new provisions on PPP come into effect and whether and how we stage the introduction of elements of the new system.

15.2 We will consult with planning authorities on these issues and ensure guidance is in the public domain well in advance of provisions coming into force.

16. CONCLUDING REMARKS

16.1 This consultation paper sets out the draft regulations on development management which will sit alongside the new provisions in Part 3 of the 2006 Act. It also discusses the draft order relating to controls over mezzanine floors. We would welcome any comments on the content of the regulations and the order, as well as on the partial Regulatory Impact Assessment and partial Equalities Impact Assessment which are attached as Annexes. Details of how to respond are set out at the front of the consultation paper.

Q47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?

Q48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?

Q49: Do you have any other comments to make on the draft development management regulations or the mezzanine floors order?

ANNEX A

Template for Processing Agreements – guidance on matters that could be included

<table>
<tr><td rowspan="1">Development proposal</td><td colspan="3">Set out nature and location of development, as per the application form.</td></tr>
<tr><td rowspan="2">Parties involved</td><td>Applicant:</td><td colspan="2">Planning Authority:</td></tr>
<tr><td>Project Manager:</td><td colspan="2">Project Manager:</td></tr>
<tr><td>Scope of agreement</td><td colspan="3">The types of consents sought, for example:
- Application for planning permission
- Application for listed building consent
- Compulsory Purchase Order
- Stopping Up Order</td></tr>
<tr><td>Stages covered</td><td><u>Pre-Application Stage</u>
Pre-application consultation ☐
Pre-application discussion ☐
Submission ☐
Validation ☐</td><td><u>Application Stage</u>
Neighbour Notification/ Consultation ☐

<u>Pre-Approval</u>
Pre-determination hearing ☐
Notification ☐</td><td><u>Implementation Stage</u>
Planning Obligation ☐
Discharge of Conditions ☐
Reserved Matters ☐</td></tr>
<tr><td>Roles and responsibilities</td><td>The applicant will:
Set out what the applicant will do, for example, provide all information upfront that is required to form a valid application plus any other information agreed to be necessary and set out in this agreement.</td><td colspan="2">The planning authority will:
Set out what the planning authority will do, for example, process the application to agreed timescales and keep applicant informed about progress.</td></tr>
<tr><td>Information Requirements</td><td colspan="3">Set out additional information or documentation that has been agreed is necessary to process the application, for example:
- Flood Risk Assessment
- Noise Survey
- Retail Impact Assessment</td></tr>
<tr><td>Decision-making framework</td><td colspan="3">Set out management process and forum for decision-making.</td></tr>
<tr><td>Key milestones</td><td colspan="3">Set out the dates of the key milestones in the overall timetable, for example:
- Neighbour Notification
- Statutory Consultation
- Report to Committee
- Notification to Ministers, where applicable
Include Project Plan as an annex if appropriate.</td></tr>
<tr><td>Period of processing agreement</td><td colspan="3">X months from submission of the application(s).
Set out the overall timescale for the processing agreement, which is the period within which an appeal may be made to the Scottish Ministers in accordance with Section 47(2) of the Town and Country Planning (Scotland) Act 1997 (as amended).</td></tr>
<tr><td>Monitoring progress</td><td colspan="3">Set out the approach parties will take to review progress at the key milestones and to mutually agreeing to extend / review timescales set.</td></tr>
<tr><td rowspan="2">Signatures</td><td>Signature of applicant</td><td colspan="2">Signature of Planning Authority
(Planning authority officials should have delegated powers to sign a processing agreement)</td></tr>
<tr><td>Date</td><td colspan="2">Date</td></tr>
</table>

ANNEX B

S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

2007 No. [   ]

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2007

Made - - - -	*2007*
Laid before the Scottish Parliament	*2007*
Coming into force - -	*2007*

ARRANGEMENT OF REGULATIONS

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INTRODUCTORY

1. Application, citation and commencement
2. Interpretation
3. Withdrawal of consent to use electronic communications

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PRE-APPLICATION CONSULTATION

4. Pre-application consultation – classes of development
5. Content of pre-application screening notice
6. Content of proposal of application notice
7. Pre-application notification
8. Pre-application consultation
9. Pre-application consultation report

PART 3
PROCEDURE ON APPLICATIONS FOR PLANNING PERMISSION

10. Applications for planning permission
11. Form and content of an application for planning permission
12. Application for planning permission in principle
13. Further applications
14. Application for approval of matters specified in conditions
15. Further information in respect of specified matters
16. Design and access statements
17. Validation date

18. Notices to owners and agricultural tenants under section 35
19. Notices to owners and agricultural tenants under section 35 – minerals applications

PART 4
PROCEDURE BY PLANNING AUTHORITY

20. Registers of applications
21. Acknowledgment of applications
22. Notification by the planning authority
23. Publication of application by the planning authority
25. Provision of information to community councils and within public libraries
26. Publication of list of applications and provision of information to community councils
27. Processing Agreements
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29. Time periods for decision
30. Consultations before grant of planning permission
31. Directions as to environmental impact assessment Regulations
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34. Development not according to development plan
35. Provisions supplementary to regulations 31-34
36. Notice of reference of applications to the Scottish Ministers
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38. Decision by planning authority
39. Decision Notice
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MARINE FISH FARMING

41. Application to marine fish farming

PART 6
CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

42. Application for certificate of lawful use or development
43. Documentation accompanying applications
44. Procedure on receipt of application
45. Revocations of certificate of lawful use or development

PART 7
DIRECTIONS

46. Directions and savings

PART 8
NOTICES

47. Service of Notices

PART 9
REVOCATIONS AND SAVINGS

48. Revocations and savings

SCHEDULE 1 — PRE-APPLICATION CONSULTATION - LOCAL DEVELOPMENTS
SCHEDULE 2 — CERTIFICATES UNDER REGULATION 18(3) AND 19(6)
SCHEDULE 3 — NOTICES UNDER REGULATION 18 AND 19
SCHEDULE 4 — REGISTERS UNDER SECTIONS 36(1) TO (4)
SCHEDULE 5 — NOTIFICATION OF APPLICANT ON RECEIPT OF APPLICATION
SCHEDULE 6 — NOTIFICATION OF APPLICANT OF MISSING ITEMS
SCHEDULE 7 — BAD NEIGHBOUR DEVELOPMENT
SCHEDULE 8 — NOTICE FOR PUBLICATION IN NEWSPAPER
SCHEDULE 9 — NOTICE TO ACCOMPANY REFUSAL ETC.
SCHEDULE 10 — CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30, 32, 34, 35, 36, 38, 40, 43, 43A, 47, 48, 59, 152 and 275 of the Town and Country Planning (Scotland) Act 1997(**7**), and section 2(2) of the European Communities Act 1972 and of all other powers enabling them to do so:

PART 1

INTRODUCTORY

Application, citation and commencement

1.—(1) These Regulations may be cited as the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2007 and shall come into force on [ ].

(2) If a special development order is made, or has been made before the commencement of these Regulations, in relation to any land, these Regulations shall apply thereto to such extent only and subject to such modifications as may be specified in the special order.

(3) These Regulations do not apply to applications for planning permission made under section 31A of the Act.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Town and Country Planning (Scotland) Act 1997;

"category A listed building" means a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 specified as being category A in a list of buildings compiled or approved and amended as the case may be by the Scottish Ministers in accordance with that provision;

"cemetery" includes a burial ground or any other place of interment for the dead;

"community council" means a community council as referred to in Part IV of the Local Government (Scotland) Act 1973(**8**);

(**7**) 1997 c.8.
(**8**) 1973 c.65.

"design and access statement" has the meaning given in regulation 16;

"district salmon fishery board" has the meaning assigned to it by section 40 of the Salmon Act 1986(**9**);

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000;

"the Fees Regulations" means the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004(**10**);

"fish farm development" means the placing or assembly of any equipment in marine waters for the purposes of fish farming ("equipment" and "fish farming" having the same meaning as in section 26(6) of the Act) and any material change of use of equipment so placed or assembled;

"the General Permitted Development Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(**11**);

"historic garden or designed landscape" means a garden or landscape identified in the "Inventory of Gardens and Designed Landscapes in Scotland – List of Sites 2007", published by the Scottish Ministers in 2007, (ISBN 978 1 904966 449);

"landscaping" means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes screening by fences, walls or other means, the planting of trees, hedges, shrubs or grass, the formation of banks, terraces or other earthworks, the laying out or provision of gardens, courts or squares, water features, sculpture, or public art, and the provision of other amenity features;

"licensed premises" means premises licensed for the sale of alcoholic liquor pursuant to the provisions of the Licensing (Scotland) Act 1976(**12**) or premises licensed pursuant to the provisions of the Betting, Gaming and Lotteries Act 1963(**13**);

"listed building" means a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(**14**);

"local advertisement" means–

(a) the publication of a notice in a local newspaper circulating in the locality in which the land to which the application relates is situated; and

(b) where publication is to be carried out by the planning authority and the planning authority maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;

"marine waters" means the waters described in paragraphs (b) and (c) of subsection (6) of section 26 of the Act;

"minerals application" means an application for planning permission for development consisting of the winning and working of minerals by underground working;

"motorway" means any road to which the Motorways Traffic (Scotland) Regulations 1995(**15**) apply by virtue of regulation 3 thereof;

"National Park" means an area designated as such by an designation order made under section 6 of the National Parks (Scotland) Act 2000(**16**);

"neighbouring land" means land which is conterminous with or within 20 metres of the boundary of land for which the development is proposed;

"planning permission in principle" means a planning permission granted pursuant to an application made under regulation 12 for the carrying out of building, engineering, mining or other operations in, on, over or under land which is granted subject to a condition (in addition to any other conditions

(**9**) 1986 [c.].
(**10**) S.S.I. 2004/219 as amended by [ ].
(**11**) S.I. 1992/224.
(**12**) 1976 c. .
(**13**) 1963 c. .
(**14**) 1997 c. .
(**15**) S.I. 1995/ .
(**16**) asp 10.

which may be imposed) that the development in question will not begin until certain matters have been approved by the planning authority or, as the case may be, the Scottish Ministers;

"playing field" means an area of land extending to not less than 0.4 hectares used for any sport which is played on a pitch and may also include any adjoining land used for tennis courts, bowling greens and athletics tracks;

"pre-application consultation report" means a report prepared in accordance with section 35C of the Act and regulation 9;

"processing agreement" has the meaning given in regulation 27(1);

"public notice" means posting a notice firmly to some object sited and displayed so as to be easily visible to and legible by members of the public;

"public road" means a road which a roads authority have a duty to maintain;

"scheduled monument" has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979(**17**);

"SEPA" means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995(**18**);

"slurry" means animal faeces and urine (whether or not water has been added);

"special road" means a road provided or to be provided in accordance with a scheme under section 7 of the Roads (Scotland) Act 1984(**19**);

"toll order" has the same meaning as in Part II of the New Roads and Street Works Act 1991(**20**);

"toll road" means a road which is the subject of a toll order;

"trunk road" means a road or proposed road which is a trunk road within the meaning of section 151 of the Roads (Scotland) Act 1984 that is to say, a road which is a trunk road by virtue of section 5 of that Act or of an order or direction under that section or section 202(2) and (3) of the Act;

"validation date" is the date on which an application is taken to have been made in terms of regulation 17;

"waste disposal authority" means a local authority exercising its function as a disposal authority under Part I of the Control of Pollution Act 1974(**21**) or as waste disposal authority under Part II of the Environmental Protection Act 1990(**22**);

"World Heritage Site" means land appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;

(2) In these Regulations "EIA development", "environmental statement", "screening opinion" and "screening direction" have the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999(**23**).

(3) Any reference to a numbered regulation or Schedule is a reference to the regulation or as the case may be the Schedule bearing that number in these Regulations and a reference to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph having that number in the regulation or paragraph in the Schedule in which the reference appears.

(4) References to distance are references to distance measured along a horizontal plan.

(5) Any requirement that a form shall be as set out in a specified Schedule shall be construed as meaning a form as so specified or a form substantially to the like effect.

(6) In these Regulations and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being carried out electronically–

(a) the expression "address" includes any number or address used for the purpose of such communications or storage, except that where these Regulations imposes any obligation on any

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(**17**) 1979 c.46.
(**18**) 1995 c. .
(**19**) 1984 c.54.
(**20**) 1991 c. .
(**21**) 1974 c.40.
(**22**) 1990 c.43.
(**23**) 1999/1.

person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address; and

(b) references to documents, forms, maps, plans, drawings, certificates or other documents, includes references to such documents or copies of them in electronic form.

(7) Paragraphs (8) to (12) apply where an electronic communication is used by a person for the following purposes–

(a) fulfilling any requirements in this these Regulations to give or send any application, notice or other document to any other person; or

(b) lodging an application, certificate or other document under regulation 29(5) with an authority mentioned in that regulation,

and in those paragraphs, "the recipient" means the person mentioned in sub-paragraph (a) of this paragraph, or the authority mentioned in sub-paragraph (b), as the case may be.

(8) The requirement shall be deemed to be fulfilled where the notice, form, plan or other document is transmitted by the electronic communication is–

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference.

(9) In paragraph (8) "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(10) Where the electronic communication is received by a recipient–

(a) at any time before the end of a day which is a working day, it shall be deemed to have been received on that day; or

(b) at any time during a day which is not a working day, it shall be deemed to have been received on the next working day,

and for these purposes, "working day" means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(**24**), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(11) A requirement in these Regulations that any application, notice, form or other document should be in writing is fulfilled where the document meets the criteria in paragraph (8) and "written" and cognate expressions are to be construed accordingly.

(12) In a case to which this paragraph applies, and except where a contrary intention appears, a person making an application, or giving or serving a notice or document using electronic communications shall be deemed to have agreed–

(a) to the use of such communications for all purposes relating to an application, notice, or document, as the case may be, which are capable of being carried out electronically;

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, notice or document; and

(c) that the person's deemed agreement under this paragraph shall subsist until the person gives notice in accordance with regulation 3 that the person wishes to revoke the agreement.

Withdrawal of consent to use electronic communications

3. Where a person is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically, that person shall give notice in writing–

(a) withdrawing any address notified to the Scottish Ministers or to a planning authority for that purpose; or

(**24**) 1971 c. .

(b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or with a planning authority for that purpose,

and such withdrawal or revocation shall be final, and shall take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.

PART 2

PRE-APPLICATION CONSULTATION

Pre-application consultation – classes of development

4. The classes of development prescribed for the purposes of section 35A(1) are–

(a) development belonging to the categories of national developments and major developments; and

(b) the classes of development, so far as belonging to the category of local developments, described in Column 1 of the table in Schedule 1, where any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development.

Content of pre-application screening notice

5. A notice under section 35A(3) (“a pre-application screening notice”) in addition to the information mentioned in paragraphs (a) to (d) of section 35B(4), must also–

(a) contain a statement as to whether or not the planning authority have adopted a screening opinion or the Scottish Ministers have made a screening direction in respect of the development to which the notice relates; and

(b) where the notice relates to development within the categories of major developments or local developments, a statement as to whether or not the development in question is, in the view of the prospective applicant, development which the development plan proposes should be carried out at that site.

Content of proposal of application notice

6. A proposal of application notice must, in addition to those matters required by section 35B(4), also contain an account of what consultation the applicant intends to undertake, when such consultation is to take place, with whom and what form it will take.

Pre-application notification

7. The prospective applicant is–

(a) to give a copy of the proposal of application notice to every community council (any part of whose area is within, or adjoins, the land where the proposed development is situated); and

(b) where there are premises situated on neighbouring land to which a notification can be sent, to send a copy of the proposal of application notice to such premises.

Pre-application consultation

8.—(1) The prospective applicant is to consult as respects a proposed application every community council any part of whose area is within or adjoins the land where the proposed development is situated.

(2) The prospective applicant is to–

(a) convene at least one public meeting where members of the public may make representations to the prospective applicant as regards the proposed development;

(b) publish in a local newspaper circulating in the locality in which the proposed development is situated a notice containing–

   (i) a description of, and the location of, the proposed development;

   (ii) details as to where further information may be obtained concerning the proposed development;

   (iii) a statement explaining how, and by when, persons wishing to make comments relating to the proposal may do so; and

   (iv) advertising the date and place of the public meeting.

Pre-application consultation report

9. A pre-application consultation report must–

(a) specify the persons who have been consulted as respects the proposed application;

(b) include an account of what steps were taken in order to comply with the consultation requirements set out in regulation 8 and any additional requirements of the planning authority notified in accordance with section 35B(7); and

(c) include an account of the representations made in connection with the proposed development and how the applicant has responded to such representations, including whether and the extent to which the proposal for development has altered in response to such representations.

PART 3

PROCEDURE ON APPLICATIONS FOR PLANNING PERMISSION

Applications for planning permission

10. Any application made under any of regulations 11 to 14 shall be made to the planning authority within whose district is situated the development to which the application relates.

Form and content of an application for planning permission

11.—(1) An application to a planning authority for planning permission (other than planning permission in principle) is to be made in accordance with this regulation.

(2) Describe the development to which it relates and must contain or be accompanied by–

(a) a plan sufficient to identify the land to which it relates;

(b) such other plans and drawings as are necessary to describe the development which is the subject of the application;

(c) three additional copies of such plans and drawings;

(d) one or other of the certificates required under regulation 18(3) or 19(6) in the appropriate form as set out in Schedule 2;

(e) where the application relates to–

   (i) development of a description specified in regulation 4, a pre-application consultation report;

   (ii) an installation of an antenna to be employed in an electronic communication network, a declaration by the applicant that the antenna is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12th July 1999 on the limitation of exposure of the general public to electro magnetic fields (0Hz to 300GHz);

(f) where regulation 16 applies, a design and access statement; and

(g) any fee payable under the Fees Regulations.

(3) The plan to be submitted in accordance with paragraph (2)(a) must show the situation of the land in relation to the locality and in particular in relation to neighbouring land.

Application for planning permission in principle

12.—(1) An application to a planning authority for planning permission in principle is to be made in accordance with the requirements of this regulation.

(2) An application for planning permission must describe the development to which it relates and must contain or be accompanied by–

(a) a plan sufficient to identify the land to which it relates;

(b) a written description of the development sufficient to describe in outline the development which is the subject of the application;

(c) three additional copies of the plans and drawings;

(d) one or other of the certificates required under regulation 18(3) or 19(6) in the appropriate form as set out in Schedule 2;

(e) where layout is not particularised in the application, a statement of the approximate location of buildings, routes and open spaces included in the development proposed;

(f) where scale is not particularised in the application, a statement of the upper and lower limit for the height, width and length of each building included in the development proposed;

(g) where access is not particularised in the application, a statement of the area or areas where access points to the development proposed will be situated;

(h) where the application relates to–

(i) development of a description specified in regulation 4, a pre-application consultation report;

(ii) an installation of an antenna to be employed in an electronic communication network, a declaration by the applicant that the antenna is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionising Radiation Protection, as expressed in EU Council recommendation of 12th July 1999 on the limitation of exposure of the general public to electro magnetic fields (0Hz to 300GHz);

(i) any fee payable under the Fees Regulations; and

(j) where regulation 16(1) applies, a design and access statement.

(3) The plan to be submitted in accordance with paragraph (2)(a) must show the situation of the land in relation to the locality and in particular in relation to neighbouring land.

(4) In this regulation–

"access" means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where "site" means the site or part of the site in respect of which an application for such a permission has been made;

"layout" means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development; and

"scale" means the height, width and length of each building proposed within the development in relation to its surroundings.

Further applications

13.—(1) Where planning permission has been granted for development, that development has not been commenced and a time limit imposed by or under section 58 or section 59 of the Act has not expired, an application may be made for planning permission for the same development without complying with the provisions of regulation 11 or regulation 12 other than regulation 11(2)(d) and (g) and regulation 12(2)(d) and (i).

(2) An application under paragraph (1) shall be in writing and shall give sufficient information to enable the authority to identify the previous grant of planning permission.

Application for approval of matters specified in conditions

14.—(1) An application to a planning authority for approval, consent or agreement required by a condition imposed on–

(a) a grant of planning permission in principle; or

(b) a grant of planning permission for development, other than exempt development, of a description mentioned in Schedule 1 or in column 1 of the table in Schedule 2 to the Environmental Import Assessment (Scotland) Regulations 1999(**25**),

must be made in accordance with this regulation.

(2) An application for such approval, consent or agreement must–

(a) be in writing;

(b) identify the planning permission to which it relates;

(c) contain a description of the matter in respect of which the application is made; and

(d) be accompanied by–

(i) where the application relates to the alteration or construction of buildings, other structures or roads or to landscaping, plans and drawings describing the matter in respect of which the application is made;

(ii) three copies of the relevant application for planning permission together with such plans and drawings as were required by the authority to be supplied in relation to the application for planning permission; and

(iii) any fee payable under the Fees Regulations.

(3) In paragraph (1) "exempt development" has the same meaning as in the Environmental Impact Assessment (Scotland) Regulations 1999.

Further information in respect of specified matters

15.—(1) Where the planning authority are of the opinion that in the circumstances of the case the application for planning permission in principle ought not to be considered separately from all or any of the matters specified in paragraph (2), they shall within one month from receipt of the application require by notice the applicant to provide such further information in respect of such matters as is specified in the notice.

(2) The matters are, any matters in respect of which details have not been given in the application and which concern the siting, design or external appearance of any building to which the planning permission or the application relates, or the means of access to such building, or the landscaping of the site in respect of which the application was made.

Design and access statements

16.—(1) This regulation applies to an application for planning permission which is not–

(a) an application for planning permission for development of land without complying with conditions subject to which a previous planning permission was granted;

(b) an application for planning permission–

(i) for engineering or mining operations;

(ii) development of an existing dwelling-house, or development within the curtilage of such a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such; or

(iii) a material change in the use of land or buildings.

(**25**) S.S.I. 1999/1.

(2) A design and access statement is a statement about–

(a) the design principles and concepts that have been applied to the development; and

(b) how issues relating to access to the development for persons with disabilities have been dealt with.

(3) A design and access statement is to be in writing and must–

(a) explain the policy or approach adopted as to design and how any policies relating to design in the development plan have been taken into account–

(b) demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account in relation to its proposed use.

(4) A design and access statement shall also–

(a) explain–

(i) the policy or approach adopted as to access and how policies relating to such access in the development plan have been taken into account;

(ii) how any specific issues which might affect access to the development for persons with disabilities have been addressed; and

(iii) how features which ensure access to the development for persons with disabilities will be maintained.

(b) state what, if any, consultation has been undertaken on issues relating to–

(i) the design principles and concepts that have been applied to the development; and

(ii) access to the development for persons with disabilities,

and what account has been taken of the outcome of any such consultation.

Validation date

17.—(1) An application under any of regulations 11 to 14 is to be taken to have been made on the date on which the last of the items or information required respectively in accordance with regulations 11, 12, 13 or 14 is received by the planning authority.

(2) Where the planning authority has received an application for its determination that its approval is required as a condition of permission granted by the General Permitted Development Order and the planning authority has determined that its approval is required, the date when the application is to be taken to have been made is the date when any details required under the General Permitted Development Order and the appropriate fee or the cost of advertising or both, were lodged with the planning authority or where these events did not all occur on the same day, the date when the last of such events occurred.

(3) The date on which an application for any other consent, agreement or approval required by a condition attached to a grant of planning permission is to be taken to have been made is the date on which it was received by the planning authority.

Notices to owners and agricultural tenants under section 35

18.—(1) Notice given by an applicant for the purposes of this regulation shall be in the form set out in Schedule 3.

(2) Subject to regulation 19, an applicant for planning permission under regulation 11 to 13 shall give notice of the application by serving notice on every person (other than the applicant) who at the beginning of the prescribed period is the owner of any of the land to which the application relates, or an agricultural tenant, and whose name and address is, after the applicant has taken reasonable steps to ascertain such information, known to the applicant.

(3) The applicant shall issue a certificate in one of the forms set out in Schedule 2–

(a) stating whether or not the land or part of the land to which the application relates constitutes or forms part of an agricultural holding; and

(b) stating, as appropriate–

(i) that at the beginning of the prescribed period no person (other than the applicant) was the owner of any of the land to which the application relates or an agricultural tenant;

(ii) that the applicant has served notice on every person (other than the applicant) who, at the beginning of the prescribed period, was the owner of any of the land to which the application relates or an agricultural tenant, setting out the name of every such person and the address at which and the date on which each notice was served;

(iii) that the applicant is unable to issue a certificate in accordance with the two preceding sub-paragraphs, that the applicant has been unable to serve notice on any of the persons mentioned in the last preceding paragraph or, as the case may be, that the applicant has served notice on such one or more of those persons as are specified in the certificate (setting out their names and the address at which and the date on which each notice was served), that the applicant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons, or the remainder of them as the case may be, that the applicant has been unable to do so;

(4) In this regulation and in regulation 19–

"agricultural holding" has the meaning given to it by section 35(7) of the Act;

"agricultural tenant" means the tenant of an agricultural holding any part of which is comprised in the land to which an application relates;

"prescribed period" means the period of 21 days ending with the date of the application.

Notices to owners and agricultural tenants under section 35 – minerals applications

19.—(1) In the case of a minerals application, instead of giving notice in the manner provided for by regulation 18, the applicant shall give notice of the application–

(a) by serving notice in the form set out in Schedule 3 on every person (other than the applicant) who is, at the beginning of the prescribed period, the owner of any of the land to which the application relates, or an agricultural tenant, and whose name and address is, after the applicant has taken reasonable steps to ascertain such information, known to the applicant; and

(b) by public notice in at least one place in the district of the planning authority to which the application is being made, leaving the notice in position for not less than 7 days in the period of 21 days immediately preceding the making of the application to the planning authority.

(2) Notice under paragraph (1)(b) is to state that an application for planning permission to has been made to the planning authority, give a brief description of the proposed development and its location and provide information regarding both when and where a copy of the application, plans and other documents submitted may be inspected and how and within which period (being no less than a period of 14 days beginning with the date of the notice) representations made be made on the application to the planning authority.

(3) At any time before determining a minerals application, the planning authority may in writing direct the applicant to give further notice by public notice in such places in its district not exceeding 4 in number as may be specified in the direction.

(4) Where a direction under paragraph (3) is given, the applicant is to provide the authority with a certificate stating–

(a) that the applicant has complied with the direction; and

(b) that every notice required by the direction has been in position for not less than 7 days in the period of 21 days immediately preceding the date on which the applicant lodged the certificate with the planning authority.

(5) The applicant shall not be treated as having failed to satisfy the requirements of paragraphs (2)(b) or (4) if the notice is, without any fault or intention of the applicant's, removed, obscured or defaced before the period of 7 days referred to in those paragraphs has elapsed, if the applicant has taken reasonable steps for its protection and, if need be, replacement.

(6) The applicant shall issue a certificate in terms of Form 4 set out in Schedule 2–

(a) that at the beginning of the prescribed period no person (other than the applicant) was the owner of any of the land to which the application relates or an agricultural tenant;

(b) that the applicant has served notice on every person (other than the applicant) whom the applicant knows was, at the beginning of the prescribed period, the owner of any of the land to which the application relates or an agricultural tenant, and whose name and address is known to the applicant (setting out the name of every such person, and the address at which and the date on which each notice was served) and that the applicant has not omitted to serve notice on any such person whose name and address is known to the applicant;

(c) that the applicant has complied with paragraphs (2)(b); and

(d) where the applicant has cause to rely on paragraph (5), the relevant circumstances.

(7) The applications prescribed for the purposes of paragraph (b) of the definition of "owner" in section 35(7) of the Act are minerals applications, and the minerals prescribed for the purposes of that paragraph are any minerals other than oil, gas, coal, gold or silver.

PART 4

PROCEDURE BY PLANNING AUTHORITY

Registers of applications

20.—(1) The register of applications for planning permission, which every planning authority is required to keep under section 36(1) of the Act, shall be kept in the manner specified in Schedule 4.

(2) Entries in the register of applications for planning permission which are required to be placed in the register by–

(a) paragraph 2(a) of Schedule 4, must be made on or before the earliest date on which notice is given in respect of the application under regulation 22(1) or 23(1);

(b) paragraph 2(b) of Schedule 4, must be made within 7 days of the giving or making of the relevant direction;

(c) paragraph 2(c) of Schedule 4, must be made within 7 days of the date on which the processing agreement was entered into or of the validation date, whichever is the later;

(d) paragraph 3(a) to (c) of Schedule 4, must be made within 7 days of the date on which the decision notice in respect of the application is given to the applicant.

(3) Every entry in a register required by paragraph 3(d) or (e) or paragraph 5 of Schedule 4, shall be made within 7 days of–

(a) the making of the application; or

(b) the giving or making of the relevant direction, decision or approval as the case may be.

Acknowledgment of applications

21. On receipt of an application for planning permission, the planning authority shall–

(a) where the application is made in accordance with and accompanied by the information and documents required by regulation 11, 12, 13 or 14, as the case may be, send to the applicant an acknowledgement thereof in the terms of Form 1 set out in the notification in Schedule 5, or in the case of an application to be determined by a person appointed by virtue of section 43A(1), in the terms of Form 2 set out in Schedule 5; or

(b) where the application is not made in accordance with and accompanied by the information and documents required by regulation 11, 12, 13 or 14, as the case may be, send to the applicant an acknowledgement thereof in the terms of Form 1 set out in Schedule 6, or in the case of an application to be determined by a person appointed by virtue of section 43A(1), in terms of Form 2 set out in Schedule 6.

Notification by the planning authority

22.—(1) A planning authority must give notice in accordance with this regulation that–

(a) an application for planning permission; or

(b) an application for consent, agreement or approval required by a condition imposed on a grant of planning permission in principle

has been made.

(2) Notice under paragraph (1) is to be given–

(a) to persons to whom notice was given under section 35;

(b) where there are premises situated on the neighbouring land to which the notice can be sent, by sending a notice addressed to "the Owner, Lessee or Occupier" to such premises; and

(c) in relation to an application mentioned in paragraph (1)(b), to persons who made (and did not withdraw) representations with respect to the grant of planning permission in principle.

(3) Notice in accordance with paragraph (1) must be given no later than 5 working days after the validation date.

(4) The notice to be given in accordance with paragraph (1) must–

(a) state the name of the applicant;

(b) include the reference number given to the application by the planning authority;

(c) include a description of the development and, if the site at which the proposed development is to be carried out has as postal address, that address;

(d) state that the application, plans or drawings relating to it and other documents submitted in connection with it may be inspected in the register kept by the planning authority;

(e) state the address (and the website address) at which the application may be so inspected;

(f) state that representations may be made to the planning authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 21 days after service of the notice);

(g) the period within which the application may be inspected;

(h) be accompanied by a plan showing the situation or location of the development; and

(i) include a statement describing any proposals contained in the local development plan relating to the occurrence of development on the land in respect of which the application is made;

(j) include an explanation of the manner in which the application for planning permission is to be handled and the procedures which are to be followed in relation to the application;

(k) where the development to which the application belongs is a class of development prescribed for the purposes of section 35A(1), include a statement that notwithstanding that comments or representations may have been made to the applicant prior to the application being made, persons wishing to make representations in respect of the application should do so to the planning authority in the manner indicated in the notice.

Publication of application by the planning authority

23.—(1) Where–

(a) it is not possible for the planning authority to carry out notification in terms of regulation 22 because there are no premises situated on the neighbouring land to which the notification can be sent;

(b) the applicant has submitted with an application for planning permission under regulation 11 to 13 a certificate issued under regulation 18(3)(b)(iii);

(c) the application is a minerals application; or

(d) the application relates to development of one or more of the classes of development specified in Schedule 7 (bad neighbour development),

(e) the application relates to development which does not accord with the provisions of the development plan,

the planning authority must publish a notice in the form set out in Schedule 8 in a newspaper circulating in the locality in which the neighbouring land is situated.

(2) The planning authority shall not publish a notice in accordance with paragraph (1) where a notice is required to be published by the planning authority in accordance with sections 60(2)(a) and 65(2)(a) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (publicity for applications affecting conservation areas).

(3) Where the planning authority are required to publish a notice in a newspaper in accordance with paragraph (1), the applicant shall pay the cost to be incurred by the planning authority in arranging such advertisement at the time of submitting the applicant's application.

(4) The planning authority shall within the period of five days beginning with the validation date, notify the Cairngorms National Park Authority of any application made under any of regulations 11 to 14 in respect of development situated in the area of that Authority.

(5) Notice under paragraphs (1)(a) to (d) is to be published within 14 days of the validation date.

(6) Where any of paragraphs (1)(a) to (e) apply but notice has already been published with respect to the application under paragraph (1) the planning are not required to publish a further notice.

List of applications

24.—(1) The list of applications to be kept in accordance with section 36A shall be kept in four sections.

(2) The first section shall in relation to applications for planning permission made to the planning authority include the information specified in paragraph (6).

(3) The second section shall in relation to applications for approval referred to in regulation 14(1) for approval made to the planning authority include the information specified in paragraph (6) and also a description of the matter in respect of which the application is made.

(4) The third section shall, in relation to applications made under section 242(2) of the Act in respect of development in the district of the planning authority, include the information specified in paragraph (6) and a statement that representations are to be made to the Scottish Ministers and where any such representations should be sent.

(5) The fourth section shall, in relation to proposal of application notices received by the planning authority, include the information specified in paragraphs (a), (b) and (d) of paragraph (6) and–

(a) details as the how the prospective applicant may be contacted and corresponded with; and

(b) the earliest date on which an application for planning permission in respect of the development may be submitted to the planning authority.

(6) The information is–

(a) the reference number given to the application by the planning authority, or as the case may be, the Scottish Ministers;

(b) the site location;

(c) the name and address of the applicant or the applicant's agent;

(d) a description of the proposed development; and

(e) the date of expiry of the period mentioned in section 34(4)(a) of the Act.

(7) The list of applications shall also contain a statement as to how further information in respect of an application may be obtained from the planning authority.

Provision of information to community councils and within public libraries

25.—(1) The planning authority must send to every community council in its district at weekly intervals a list of all applications made to the authority during the previous week under any of regulations 11 to 14 which list shall contain the following information–

(a) the reference number given to the application by the planning authority;

(b) the site location;

(c) the date of receipt of the application by the planning authority;

(d) the name and address of the applicant or the applicant's agent;

(e) a description of the proposed development.

(2) The planning authority is to publish the list sent to community councils by placing a copy of the list in each public library in its district.

Publication of list of applications and provision of information to community councils

26.—(1) The planning authority are to publish the list of applications by means of the internet on their website and are to make the list of applications available for inspection at their principal office and at public libraries in the district of the planning authority.

(2) The availability of the list of applications is to be advertised in a local newspaper at monthly intervals.

Processing Agreements

27.—(1) A "processing agreement" is, with respect to an application mentioned in paragraph (2), an agreement between the applicant and the planning authority which–

(a) sets out an agreed framework for processing such an application; and

(b) is entered into not later than 28 days after the validation date in respect of such application.

(2) The applications are–

(a) for planning permission for development belonging either to the category of national developments or to the category of major developments;

(b) for any consent, agreement or approval of the planning authority required by a condition imposed on a grant of planning permission for development within such categories.

Further information

28.—(1) In respect of an application under regulations 11 to 14 a planning authority may, in addition to the particulars, documents, materials or evidence which are to be included in or accompany an application in accordance with regulation 11, 12, 13 or 14, as the case may be, require from the applicant further particulars, documents, materials or evidence which they consider that they require to enable them to deal with the application.

(2) In relation to an application for planning permission in principle the planning authority may only request further information in respect of the matters specified in regulation 15(2) after the expiry of the one month period mentioned in regulation 15(1) if the planning authority has made a request in relation to such a matter in accordance with regulation 15(1).

Time periods for decision

29.—(1) Without prejudice to sections 60(3) and 65(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and subject to paragraphs (2) and (3), an application under any of regulations 11 to 14 shall not be determined until the date, or the latest date, of the expiry of the period allowed for the making of representations or comments in respect of that application specified in notice–

(a) given in accordance with regulation 22(1); or

(b) published in accordance with regulation 23(1).

(2) Where a direction under regulation 19(3) is given, the application shall not be determined until the expiry of a period of 21 days beginning with the date when the certificate under regulation 19(4) was lodged with the planning authority.

(3) Where a planning authority has received–

(a) an application under any of regulations 11 to 14;

(b) an application for its determination that its approval is required as a condition of permission granted by the General Permitted Development Order and the planning authority has determined that its approval is required; or

(c) an application for any other consent, agreement or approval required by a condition attached to a grant of planning permission,

the period within which the authority must give notice to an applicant of their decision or determination or referral of the application to the Scottish Ministers is the period mentioned in paragraph (4).

(4) Subject to paragraphs (6) and (7), the period is–

(a) in the case of an application for planning permission for development within the category of national developments or major developments, four months after the validation date; and

(b) in any other case, two months after the validation date,

(5) For the purposes of paragraph (3) the validation date in a case where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003(**26**) is to be taken as the date on which that direction was issued.

(6) Where–

(a) the applicant was required to pay the cost of advertisement under regulation 23(3); or

(b) the planning authority have required the applicant to provide further information in accordance with regulation 15,

in calculating the two, or as the case may be, four month period for the purposes of paragraph (4) no account shall be taken of any period during which payment of such cost or provision of such information has been required from the applicant but such payment or information has not been received by the planning authority.

(7) Where–

(a) notice is published in accordance with regulation 23(1)(e); or

(b) the certificate under regulation 19(4) is lodged with the planning authority,

less than one month from the end of the period mentioned in paragraph (4)(a) or (b) then the period referred to in those paragraphs is the period ending one month after the date of publication of such notice or the date of lodging of the certificate, as the case may be.

(8) Paragraph (3) does not apply where the applicant and the planning authority agree in writing by virtue of section 47(2) to extend the period within which the planning authority may give notice of their decision to the applicant before the right to appeal under section 47(2) arises.

(9) The period prescribed for the purposes of section 43A(8)(c) and 47(2) of the Act is the period mentioned in paragraph (4).

Consultations before grant of planning permission

30.—(1) Before determining an application for planning permission for development in any of the following cases, a planning authority shall consult with the following authorities or persons–

(a) any adjoining planning authority, where it appears to the planning authority that the development is likely to affect land in the district of that authority;

(b) the Cairngorms National Park Authority, where it appears to the planning authority that the development is likely to affect land in the area of that Authority;

(c) the Coal Authority where the development consists of–

(i) the erection of a building, other than an alteration, extension or re-erection of an existing building or the erection of a building of a temporary character; or

(ii) the provision of a pipeline,

(**26**) S.S.I. 2003/1.

in an area of coal working or former or proposed coal working notified by the Coal Authority to the planning authority;

(d) the British Railways Board or other railway undertakers likely to be affected where the development is likely to result in a material increase in the volume or a material change in the character of traffic using a level crossing over a railway;

(e) Scottish Natural Heritage where–

(i) the development may affect an area of special interest notified to the planning authority by Scottish Natural Heritage in accordance with section 28 of the Wildlife and Countryside Act 1981(**27**); or

(ii) the development consists of or includes the winning and working of peat other than for the domestic requirements of the applicant;

(f) a district salmon fishery board where the development consists of fish farming;

(g) the Health and Safety Executive where the development is within an area which has been notified to the planning authority by the Health and Safety Executive for the purpose of this provision because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances and which involves the provision of–

(i) residential accommodation;

(ii) more than 250 square metres of retail floor space;

(iii) more than 500 square metres of office floor space; or

(iv) more than 750 square metres of floor space to be used for an industrial process,

or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area;

(h) SEPA–

(i) where it appears to the planning authority that the development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding; or

(ii) where the development consists of or includes–

(aa) fish farming;

(bb) mining operations;

(cc) the carrying out of building or other operations or use of land for the purposes of providing or storing mineral oils and their derivatives;

(dd) the carrying out of building or other operations (other than the laying of sewers, the construction of pump-houses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling-houses, single caravans or single buildings in which not more than 10 people will normally reside, work or congregate, and works ancillary thereto) or use of land for the retention, treatment or disposal of sewage, trade-waste, or effluent;

(ee) the carrying out of works or operations in the bed or on the banks of a river or stream;

(ff) the use of land as a cemetery; or

(gg) the use of land for the deposit of any kind of refuse or waste, including slurry or sludge;

(i) the roads authority concerned, where the development involves–

(i) the formation, laying out or alteration of any means of access to, or is likely to create or attract traffic which will result in a material increase in the volume of traffic entering or leaving, a road (other than a trunk road) for which the planning authority are not also the roads authority; or

(ii) the formation, laying out or alteration of any means of access to land affording access to a toll road;

(**27**) 1981 c.[ ].

(j) the Scottish Ministers, in the case of–

(i) (aa) a trunk road;

(bb) a proposed trunk road or a proposed special road, being a road the route of which is shown as such in the development plan, or in respect of which the Scottish Ministers have given notice in writing to the planning authority of their proposal, together with the maps or plans sufficient to identify the proposed route of the road;

(cc) any road which is comprised in the route of a special road to be provided by the Scottish Ministers in accordance with a scheme under section 7 of the Roads (Scotland) Act 1984 relating to special roads, and which has not for the time being been transferred to them; or

(dd) any road which has been or is to be provided by the Scottish Ministers in pursuance of an order under the provisions of the said Act relating to trunk roads and special roads and has not for the time being been transferred to any roads authority,

where either the development constitutes development of land within 67 metres of the middle of such a road or the development consists of or includes the formation, laying out or alteration of any means of access to such a road;

(ii) development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a trunk road;

(iii) development for the purpose of creating a motorway service area or new development within the boundary of such an area;

(iv) development of land within 400 metres of the boundary of any motorway for the purpose of providing such services as refreshments, fuel or parking;

(v) development of an area of land exceeding 2 hectares situated within one kilometre of a motorway junction for the purpose of providing fuel and refreshments;

(vi) development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park;

(vii) development which may affect a historic garden or designed landscape;

(viii) development which may affect the site of a scheduled monument or its setting;

(ix) development which may affect a category A listed building or its setting;

(x) development which consists of or includes the winning and working of peat other than for the domestic requirements of the applicant;

(xi) fish farm development;

(k) the Theatres Trust where the development involves any land on which there is a theatre as defined in the Theatres Trust Act 1976(**28**);

(l) the waste disposal authority where the development is within 250 metres of land which–

(i) is or has, at any time in the 30 years before the relevant application, been used for the deposit of refuse or waste; and

(ii) has been notified to the planning authority by the waste disposal authority for the purposes of this provision;

(m) Scottish Water where the development is likely to require a material addition to or a material change in the services provided by that authority;

(n) the community council if any within whose area the development is to take place where–

(i) the community council, within 7 days (excluding Saturday and Sunday, December 25th and 26th and January 1st and 2nd) of the date on which the planning authority sent to that community council in accordance with regulation 25(1) the list which includes information about that development, informs the planning authority that it wishes to be consulted;

(**28**) 1976 c. .

(ii) the development is in a class of case or in an area in respect of which the planning authority and the community council have agreed in writing that the community council will be consulted; or

(iii) it appears to the planning authority that the development is likely to affect the amenity in the area of the community council;

(o) the Scottish Sports Council where the development–

(i) is likely to prejudice the existing use of any land as a playing field;

(ii) is likely to result in the loss of land as a playing field; or

(iii) is likely to prevent the use of land, which was last used as a playing field, from being used again for that purpose;

(p) Scottish Natural Heritage, the Health and Safety Executive and SEPA where the development–

(i) involves the siting of new establishments;

(ii) consists of modifications to existing establishments which could have significant repercussions on major accident hazards; or

(iii) includes transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequences of a major accident.

(q) the Scottish Ministers and the Secretary of State where fish farm development may affect a site designated as a controlled site under section 1 of the Protection of Military Remains Act 1986(**29**).

(2) Expressions which are used in paragraph (1)(p) and in Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances shall, in that sub-paragraph, have the same meaning as in that Directive.

(3) The Scottish Ministers may give a direction to any planning authority requiring that authority to consult with the authorities, persons or bodies named in such direction in any case or class of case specified in such direction before granting or determining any application for planning permission and the planning authority shall enter into consultation accordingly.

(4) Where under this regulation, a planning authority are required to consult with any authority, person or body as to any application, they shall give not less than 14 days' notice to such authority, person or body that such application is to be taken into consideration and shall not determine the application until after the expiration of the period of such notice.

(5) Where any authority, person or body which a planning authority are required to consult under this regulation (except under paragraph (1)(p)) consider that consultation with them is not required in respect of any case or class of case or in respect of development within any area or areas they shall so inform the planning authority in writing and notwithstanding the foregoing provisions of this regulation the planning authority shall not be required to consult the authority, person or body in respect of any development coming within the case or class of case or within the area or areas specified.

Directions as to environmental impact assessment Regulations

31. The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in Schedule 2 to the Environmental Impact Assessment (Scotland) Regulations 1999 and of a class described in the direction is EIA development for the purposes of those Regulations.

Directions requiring information or restricting the grant of planning permission

32.—(1) The Scottish Ministers may make directions requiring a planning authority to give to the Scottish Ministers and to such other persons as may be prescribed in directions information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.

(**29**) 1986 c.35.

(2) The Scottish Ministers may give directions restricting the grant of planning permission by a planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development or in respect of development of any such class, as may be so specified.

Directions requiring consideration of condition

33. The Scottish Ministers may give directions to a planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions–

(a) to consider, where the planning authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and

(b) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed.

Development not according to development plan

34. A planning authority may grant planning permission for development which does not accord with the provisions of the development plan in such cases and subject to such conditions as may be prescribed by directions given by the Scottish Ministers.

Provisions supplementary to regulations 31-34

35. A planning authority shall deal with applications for planning permission for development to which a direction given under regulation 31, 32 or 34 applies in such manner as to give effect to the direction.

Notice of reference of applications to the Scottish Ministers

36.—(1) On referring any application to the Scottish Ministers under section 46 of the Act, a planning authority shall serve on the applicant notice–

(a) of the terms of the direction;

(b) of any reasons given by the Scottish Ministers;

(c) that the application has been referred to the Scottish Ministers; and

(d) that the decision of the Scottish Ministers on the application will be final.

(2) Regulation 38 applies to applications referred to the Scottish Ministers as mentioned in the preceding paragraph, as if the references to a planning authority were to the Scottish Ministers.

Pre-determination Hearings

37.—(1) The classes of development prescribed for the purposes of section 38A(1) are–

(a) EIA development; and

(b) development which is significantly contrary to the local development plan.

(2) The persons who submitted representations to the planning authority in respect of the application in accordance with these Regulations are prescribed for the purposes of section 38A(1) as persons to whom the planning authority are to give an opportunity of appearing before and being heard by a committee of the authority.

Decision by planning authority

38. A planning authority shall, in determining an application for planning permission, take into account any representations by any person in response to notification given under–

(a) regulation 22, within 21 days beginning with the date when the notice was served on that person or such later date as may be specified in the notice as the date by which representations may be made; or

(b) regulation 23, within 21 days of the date of publication of the notice.

Decision Notice

39.—(1) The planning authority must as regards an application mentioned in paragraph (2) give–

(a) the applicant; and

(b) every person who has made representations in respect of the application.

notice ("a decision notice") as to the manner in which the application has been dealt within the period mentioned in regulation 29(4).

(2) The applications are–

(a) for planning permission;

(b) for a consent, agreement or approval required by a condition imposed on a grant of planning permission.

(3) A decision notice must, in addition to the matters required by section 43(1A)(a)–

(a) in the case of an application under regulation 11 to 13–

(i) include a description of the proposed development (including identification of the plans and drawings showing the proposed development) for which planning permission has been granted, or as the case may be, refused;

(ii) include a description of the location of the proposed development, including where applicable, a postal address;

(iii) include the reference number of the application;

(iv) include a description of any variation made to the application in accordance with section 32A;

(v) a statement as to the effect of section 58(2) or 59(4), as the case may be, or where the planning authority have made a direction under section 58(2) or 59(5), give details of that direction;

(vi) if any obligation is to be entered into under section 75 of the Act in connection with the application state where the terms of such obligation or a summary of such terms may be inspected; and

(vii) where a direction has been made, by the Scottish Ministers under regulation 32 or 33 give details of such direction in respect of that direction; and

(b) in the case of an application under regulation 14 include–

(i) a description of the matter in respect of which approval, consent or agreement has been granted, or as the case may be, refused;

(ii) the reference number of the application; and

(iii) the reference number of the application for the planning permission in respect of which the condition in question was imposed.

(4) A decision notice must in the case of refusal or approval subject to conditions be accompanied by a notification in the terms of Form 1 set out in Schedule 9 or where the application is determined by a person appointed by virtue of section 43A(1), by notification in terms of Form 2 set out in Schedule 9.

Schemes of delegation

40. Where an application is determined by an appointed person by virtue of a scheme of delegation prepared under section 43A(1) of the Act, references to the planning authority in regulations 29, 30, 33 and 39 and in paragraphs 3(a)(ii) and 4(c) of Schedule 4 to the planning authority are to be treated as references to such appointed person.

PART 5

MARINE FISH FARMING

Application to marine fish farming

41.—(1) This Order shall apply to an application for planning permission relating to fish farm development subject to the following modifications.

(2) In regulation 11–

(a) in paragraph 2(a) for "land" substitute "location of the development"; and

(b) omit paragraph (3).

(3) Omit regulations 12 and 22.

(4) In regulation 23 for paragraph (1) substitute–

"(1) The planning authority shall publish a notice in the form set out in Schedule 8 in a newspaper circulating in the district of that planning authority.".

(5) In regulation 30(1), in paragraph (m) for "within whose area the development is to take place" substitute, "whose area is adjacent to the marine planning zone in which the fish farm development is to take place".

(6) Where an application for planning permission relates in part to fish farm development and in part to other development, the modifications specified in this regulation shall apply only for the purposes of that application to the extent that it relates to fish farm development.

PART 6

CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

Application for certificate of lawful use or development

42. An application for a certificate under section 150(1) or 151(1) of the Act shall be in writing and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the following information–

(a) the paragraph of section 150(1) or, as the case may be, section 151(1), under which the application is made:

(b) in the case of an application under section 150(1), the date on which the use, operations or other matter began or, in the case of operations carried out without planning permission, the date on which the operations were substantially completed;

(c) in the case of an application under section 150(1)(a), the name of any use class specified in an order under section 26(2)(f) of the Act which the applicant considers applicable to the existing use;

(d) in the case of an application under section 150(1)(c), sufficient details of the relevant planning permission to enable it to be identified;

(e) in the case of an application under section 151(1)(a), the use of the land at the date of the application (or, when the land is not in use at that date, the purpose for which it was last used) and the name of any use class specified in an order under section 26(2)(f) of the Act which the applicant considers applicable to the proposed use;

(f) the applicant's reasons, if any, for regarding the use, operations or other matter described in the application as lawful; and

(g) such other information as the applicant considers to be relevant to the application.

Documentation accompanying applications

43.—(1) An application to which regulation 42 applies must be accompanied by–

(a) a plan identifying the land to which the application relates;

(b) such evidence verifying the information included in the application as the applicant can provide; and

(c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.

(2) Where such an application specifies two or more uses, operations or other matters, the plan which accompanies the application shall indicate to which part of the land each such use, operation or matter relates.

Procedure on receipt of application

44.—(1) When a planning authority receive an application to which regulation 42 applies and any fee required to be paid in respect of the application, they must, as soon as reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Part I of Schedule 10.

(2) Where, after sending an acknowledgement as required by paragraph (1), the planning authority consider that the application is invalid by reason of the failure to comply with regulations 42 and 43 or any other statutory requirement, they must, as soon as practicable, notify the applicant that the applicant's application is invalid.

(3) The planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.

(4) The planning authority must give the applicant written notice of their decision within a period of 2 months beginning with the date of receipt by the authority of the application and any fee required to be paid in respect of the application or within such extended period as may be agreed upon in writing between the applicant and the authority.

(5) For the purpose of calculating the appropriate period specified in paragraph (4), where any fee required has been paid by a cheque which is subsequently dishonoured, the time between the date when the authority send the applicant written notice of the dishonouring of the cheque and the date when the authority receive the full amount of the fee shall not be taken into account.

(6) Where an application is refused in whole or in part (including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that description), the notice of decision shall be in writing and shall–

(a) state the authority's reasons for their decision; and

(b) include a statement to the effect that the applicant may appeal to the Scottish Ministers under section 154 of the Act.

(7) A certificate under section 150 or 151 of the Act shall be in the form set out in Part II of Schedule 10.

(8) Regulation 39(5) (furnishing of information by planning authority to Scottish Ministers) shall apply to applications for a certificate to which regulation 42 applies as it applies to applications for planning permission.

Revocations of certificate of lawful use or development

45.—(1) Where a planning authority propose to revoke a certificate issued under section 150 or 151 of the Act in accordance with section 152(7) of the Act, they shall, before they revoke the certificate, give notice of that proposal to–

(a) the owner of the land affected;

(b) the occupier of the land affected;

(c) any other person who will in their opinion be affected by the revocation; and

(d) in the case of a certificate issued by the Scottish Ministers under section 154 of the Act, the Scottish Ministers.

(2) A notice issued under paragraph (1) shall invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice and the authority shall not revoke the certificate until all such periods allowed for making representations have expired.

(3) An authority shall given written notice of any revocation under section 152(7) of the Act to every person on whom notice of the proposed revocation was served under paragraph (1).

PART 7

DIRECTIONS

Directions and savings

46.—(1) Any power conferred by these Regulations to give a direction shall be construed as including power to cancel or vary the direction by a subsequent direction.

(2) Any directions in force immediately before the coming into force of these Regulations by virtue of the Town and Country Planning (General Development) (Scotland) Orders 1950 to 1970, the Town and Country Planning (General Development) (Scotland) Order 1975, the Town and Country Planning (General Development) (Scotland) Order 1981 and the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 shall continue in force and have effect as if given under the corresponding provisions of these Regulations.

PART 8

NOTICES

Service of Notices

47. Section 271 applies to notices or other documents required or authorised to be served or given under these Regulations on the owners or occupiers of land as it applies to notices or other documents required or authorised to be served or given under the Act.

PART 9

REVOCATIONS AND SAVINGS

Revocations and savings

48.—(1) The Town and Country Planning (General Development Procedure) (Scotland) Order 1992(**30**) is, subject to paragraph (2) hereby revoked.

(2) The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 shall continue to apply as it did immediately before the coming into force of these Regulations in respect of any application for planning permission, for an approval under a development order, or for a certificate of lawful use or development.

(**30**) S.I. 1992/224.

SCHEDULE 1

Regulation 4(1)(b)

PRE-APPLICATION CONSULTATION - LOCAL DEVELOPMENTS

Description of development	*Threshold or criteria*
1. EIA development	All development
2. Construction of a building structure or other erection for purpose for use– (a) for the retail sale of goods other than hot food (b) (i) as a cinema; (ii) as a concert hall; (iii) as a bingo hall or casino; (iv) as a dance hall or discotheque; (v) as a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreation, not involving motorised vehicles or firearms;	(a) the area of the proposed development would extend to more than 2,500 square metres; and (b) there is no proposal in the development plan for such development on the land in question;
3. Construction of buildings for use as residential accommodation.	(a) the proposed development is for more than 5 houses (including flats); and (b) there is no proposal in the development plan for such development on the land in question.
4. Development on land identified in the development plan as open space which would, if carried out, result in the loss, in whole or in part, of the availability of that land as open space.	All development.
5. Development which would if carried out result in the loss, in whole or in part, of a playing field for such purpose.	There is no proposal in the development plan for such development on the land in question.
6. Development to be carried out on land identified in the development plan as greenbelt;	All development
7. Construction of facilities for use for the purpose of waste (including sewage sludge) management, transfer, treatment or disposal.	There is no proposal in the development plan for such development on the land in question.

SCHEDULE 2

Regulations 11(2)(d), 12(2)(d), 18(3) and 19(6)

CERTIFICATES UNDER REGULATION 18(3) AND 19(6)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007

FORM 1 [NOTE 1]

I hereby certify that–

(1) No person other than *myself/the applicant was an owner [Note 2] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

(2) None of the land to which the application relates constitutes or forms part of an agricultural holding.

Signed

*On behalf of

Date

*Delete where inappropriate

Note 1 - Form 1 is for use where the applicant is the only owner and the land is not an agricultural holding.

Note 2 - Any person who, in respect of any part of the land, is the owner of the land or is the lessee under a lease thereof of which not less than 7 years remain unexpired.

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007

FORM 2 [NOTE 1]

I hereby certify that–

(1) No person other than *myself/the applicant was an owner [Note 2] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or–

(1) *I have/The applicant has served notice on every person other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner [Note 2] of any part of the land to which the application relates. These persons are:

Name	*Address*	*Date of service of notice*

(2) None of the land to which the application relates constitutes or forms part of an agricultural holding;

or–

(2) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and *I have/the applicant has served notice on every person other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was an agricultural tenant. These persons are:

Name of tenant [Note 3]	*Address*	*Date of service of notice*

Signed

*On behalf of

Date

*Delete where inappropriate

Note 1 - Form 2 is for use where Form 1 does not apply but where it has been possible to notify all the owners and agricultural tenants.

Note 2 - Any person who, in respect of any part of the land, is the proprietor of the land or is the lessee under a lease thereof of which not less than 7 years remain unexpired.

Note 3 - If you are the sole agricultural tenant enter “None”.

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007

FORM 3 [NOTE 1]

I hereby certify that–

(1) *I am/The applicant is unable to issue a certificate in accordance with sub-paragraphs (b)(i) or (ii) of regulation 18(3) in respect of the accompanying application;

(2) No person other than *myself/the applicant was an owner [Note 2] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or–

(2) *I have/the applicant has been unable to serve notice on any person other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner [Note 2] of any part of the land to which the application relates;

or–

(2) *I have/The applicant has served notice on each of the following persons other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner [Note 2] of any part of the land to which the application relates. These persons are:

Name	*Address*	*Date of service of notice*

(3) None of the land to which the application relates constitutes or forms part of an agricultural holding;

or–

(3) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding but *I have/the applicant has/the appellant has been unable to serve notice on any person other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant;

or–

(3) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and *I have/the applicant has served notice on each of the following persons other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are:

Name of tenant [Note 3]	*Address*	*Date of service of notice*

(4) *I have/The applicant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and *have/has been unable to do so–

[Note 4]

Signed

*On behalf of

Date

*Delete where inappropriate

Note 1 - Form 3 is for use where it has not been possible to notify all the owners and agricultural tenants.

Note 2 - Any person who, in respect of any part of the land, is the proprietor of the land or is the lessee under a lease thereof of which not less than 7 years remain unexpired.

Note 3 - If you are the sole agricultural tenant enter “None”.

Note 4 - Insert descriptions of steps taken.

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007

FORM 4

Minerals application

I hereby certify that–

(1) No person other than *myself/the applicant was an owner [Note 1] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or–

(1) *I have/The applicant has served notice on each of the following persons other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner [Note 1] of any part of the land to which the application relates. These persons are:

Name [Note 2]	*Address*	*Date of service of notice*

(2) None of the land to which the application relates constitutes or forms part of an agricultural holding;

or–

(2) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and *I have/the applicant has served notice on each of the following persons other than *myself/the applicant who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are:

Name [Note 3]	*Address*	*Date of service of notice*

Signed

*On behalf of

Date

*Delete where inappropriate

Note 1 - Any person who, in respect of any part of the land, is the proprietor of the land or is the lessee under a lease thereof of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.

Note 2 - If no owner has been notified enter "None".

Note 3 - If you are the sole agricultural tenant or if no agricultural tenant has been notified enter "None".

SCHEDULE 3

Regulation 18 and 19

NOTICES UNDER REGULATION 18 AND 19

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007

Notice under regulation 18(2) and 19(2)(a) of application for planning permission for service on owners and tenants of agricultural holdings

Proposed development at [Note 1]

TAKE NOTICE

1. that application is being made to–

[Note 2] Council by

[Note 3]... for planning permission to

[Note 4]..

2. After the application is made the Council will send another notice to you informing you where you can inspect the application and documents submitted with it. The Council will at that time also inform you how and by when you may make representations about the application, if you wish to do so.

(The grant of planning permission does not affect owners' rights to retain or dispose of their property unless there is some provision to the contrary in an agreement or lease.

The grant of planning permission for non-agricultural development may affect agricultural tenants' security of tenure.)

Signed

*On behalf of

Date

*Delete where inappropriate

Note 1- Insert address or location of proposed development.

Note 2 - Insert name of Council.

Note 3 - Insert name of applicant.

Note 4 - Insert description of proposed development.

SCHEDULE 4

Regulation 20

REGISTERS UNDER SECTIONS 36(1) TO (4)

Register of applications for planning permission

1. The register of applications for planning permission which every planning authority is required to keep under section 36(1) of the Act is to be kept in 2 parts.

2. Part I of the register is to contain a copy of–

(a) every application made under regulations 11 to 14 and not finally disposed of, together with–

(i) copies of plans and drawings; and

(ii) any design and access statement;

(iii) any pre-application consultation report,

submitted in respect of the application;

(b) particulars of any direction given under the Act or these Regulations in respect of the application; and

(c) any processing agreement entered into with respect to the application.

3. Part II of the register of applications for planning permission is to contain–

(a) in respect of all applications made under regulations 11 to 14 determined by the planning authority (other than following a review of the case by virtue of section 43A(8))–

(i) a copy of the decision notice;

(ii) copies of any plans considered by the planning authority in determining the application; and

(b) a copy of any environmental statement submitted with respect to the application; and

(c) in respect of all applications made under regulations 11 to 13 a Report containing the information mentioned in paragraph 4 of this Schedule; and

(d) the date and effect of any decision of the Scottish Ministers in respect of the application, on appeal or on a reference under section 46 of the Act; and

(e) a copy of the decision notice of the planning authority as to the manner in which a review of the case under section 43A has been dealt with

4. The information to be contained in the Report is–

(a) a statement of the number of representations made in respect of the application and a summary of the main issues raised by such representations;

(b) details of the authorities and persons consulted by the planning authority in respect of the application and a summary of the responses made by such authorities or persons;

(c) a statement as to whether–

(i) an environmental statement was submitted in respect of the proposed development;

(ii) an appropriate assessment under the Conservation (Natural Habitats &c.) Regulations 1994(**31**) was carried out in respect of the proposed development;

(iii) a design and access statement was submitted in respect of the proposed development; or

(iv) any report on the impact or potential impact of the proposed development (for example the retail impact, transport impact, noise impact or risk of flooding) which was submitted in connection with the application,

and where such a statement or report was submitted or such assessment carried out, a summary of the main issues raised by such statement, report or assessment;

(**31**) S.I. 1994/2716.

(d) if a pre-determination hearing was held under section 38A of the Act, a statement of the main issues raised at such hearing;

(e) a summary of the terms of any planning obligation entered into under section 75 in relation to the grant of planning permission for the proposed development;

(f) details of the provisions of the development plan and any other material considerations (in addition to any to be included in the Report under above paragraphs) to which the planning authority had regard in determining the application; and

(g) to the extent not included in the decision notice, particulars of any direction given under the Act or these Regulations in respect of the application.

(h) where the planning authority published notice of the application under regulation 23(1), details of the newspaper in which the notice was published and the dates of such publication.

(i) where the planning authority has given notice of the application in addition to notification in accordance with these Regulations, a statement that such notification was given and of the planning authority's reasons for doing so.

Certificates of lawful use or development

5. The register kept by the planning authority shall also contain the following information in respect of every application for a certificate under section 150 (certificate of lawfulness of existing use or development) or 151 (certificate of lawfulness of proposed use or development) of the Act submitted to the authority–

(a) the name and address of the applicant;

(b) the date of the application;

(c) the address or location of the land to which the application relates;

(d) the description of the use, operations or other matter included in the application;

(e) the decision (if any) of the planning authority in respect of the application and the date of such decision; and

(f) the reference number, date and effect of any decision of the Scottish Ministers on an appeal in respect of the application.

Provisions applicable to registers generally

6.—(1) Every register shall include an index, which shall be in the form of a map.

(2) The registers for their district shall be kept at the office of every planning authority but part of a register relating to land in a part of the district of that authority may be kept at a place within or convenient to that part.

7. Where the register kept by a planning authority under this Schedule is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.

SCHEDULE 5

Regulation 21(a)

FORM 1

NOTIFICATION OF RECEIPT OF APPLICATION TO APPLICANT

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to applicant on receipt of application

Your application dated   was received on [Note 1]

The planning authority are required by regulation 29 of the Town and Country Planning (Development Management Procedure) Regulations 2007 to give you a decision notice by [Note 2]. The period within which the planning authority are obliged to give a decision notice may, however, be extended in the circumstances described in regulations 29(6) or (7) or under regulation 45 of the Environmental Impact Assessment (Scotland) Regulations 1999.

*If by [Note 2] or the expiry of such extended period

(a) the authority dealing with your application have not given you notice of their decision; and

(b) you have not agreed with them in writing that the period within which their decision shall be given may be extended,

you may appeal to the Scottish Ministers in accordance with section 47 of the Town and Country Planning (Scotland) Act 1997 by notice sent within three months from that date (unless the application has already been referred by this authority to the Scottish Ministers).

A form for appeals under this section of the Act is obtainable from [Note 3].

*Delete where inappropriate

Note 1 - Insert date of receipt of the application.

Note 2 - Insert date 2 months from date of receipt of the application as given at Note 1 or if the application is an application for planning permission for development within the category of national developments or major developments, insert date 4 months from the date of receipt of the application as given in Note 1.

Note 3 - Insert details of where a form may be obtained.

FORM 2

NOTIFICATION OF RECEIPT OF APPLICATION TO APPLICANT

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to applicant on receipt of application

Your application dated   was received on [Note 1]

Your application is to be determined by a person appointed by the planning authority under a Scheme of Delegation [Note 2].

The appointed person is required by regulation 29 of the Town and Country Planning (Development Management Procedure) Regulations 2007 to give you a decision notice by [Note 3]. The period within which the appointed person is obliged to give a decision notice may, however, be extended in the circumstances described in regulations 29(6) or (7).

*If by [Note 3] or the expiry of such extended period, the person appointed to deal with your application under the Scheme of Delegation has not given you notice of their decision you may require the planning authority to review the case in accordance with section 43A of the Town and Country Planning (Scotland) Act 1997 by notice sent within three months from that date (unless the application has already been referred to the Scottish Ministers).

A form for review of the case under this section 43A of the Act is obtainable from [Note 4].

Note 1 - Insert date of receipt of the application.

Note 2 - Insert information as to where a copy of the Scheme of Delegation may be inspected (including any website address at which the Scheme may be inspected)

Note 3 - Insert date 2 months from date of receipt of the application as given at Note 1.

Note 4 - Insert details of where a form may be obtained.

SCHEDULE 6

Regulation 21(b)

FORM 1

NOTIFICATION OF RECEIPT OF APPLICATION TO APPLICANT

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to applicant of missing items

On examination of your application received on [Note 1] it is found that the application fails to comply with the requirements of regulation [Note 2].

To enable your application to be considered you must submit to the planning authority the following–

[Note 3]

Following receipt of these items the planning authority are required by regulation 29 of the Town and Country Planning (Development Management Procedure) Regulations 2007 to give you a decision notice by [Note 4]. The period within which the planning authority are obliged to give a decision notice may, however, be extended in the circumstances described in regulations 29(6) or (7) or under regulation 45 of the Environmental Impact Assessment (Scotland) Regulations 1999.

*If by [Note 4], or the expiry of such extended period

(a) you have not received notification that your application is invalid;

(b) the authority dealing with your application have not given you notice of their decision; and

(c) you have not agreed with them in writing that the period within which their decision shall be given may be extended,

you may appeal to the Scottish Ministers in accordance with section 47 of the Town and Country Planning (Scotland) Act 1997 by notice sent with three months from that date (unless the application has already been referred by this authority to the Scottish Ministers).

A form for appeals under section 47 of the Act is obtainable from [Note 5].

Note 1 - Insert date when the application was received.

Note 2 - Insert reference to regulation 11, 12, 13 or 14 as the case may be.

Note 3 - Insert description of documents which still require to be submitted to comply with regulation 11, 12, 13 or 14, as the case may be.

Note 4 - Insert date 2 months from date of receipt of the application as given at Note 1 or if the application is an application for planning permission for development within the category of national developments or major developments, insert date 4 months from the date of receipt of the application as given in Note 1.

Note 5 - Inset details of where a form may be obtained.

FORM 2

NOTIFICATION OF RECEIPT OF APPLICATION TO APPLICANT

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to applicant of missing items

On examination of your application received on [Note 1] it is found that the application fails to comply with the requirements of regulation [Note 2].

To enable your application to be considered you must submit to the planning authority the following–

[Note 3]

Your application is to be determined by a person appointed by the planning authority under a Scheme of Delegation [Note 4].

Following receipt of these items the appointed person is required by regulation 29 of the Town and Country Planning (Development Management Procedure) Regulations 2007 to give you a decision notice by [Note 5]. The period within which the planning authority are obliged to give a decision notice may, however, be extended in the circumstances described in regulations 29(6) or (7).

*If by [Note 5], or the expiry of such extended period

(a) you have not received notification that your application is invalid;

(b) the person appointed to deal with your application under the Scheme of Delegation has not given you notice of their decision; and

(c) you have not agreed with them in writing that the period within which their decision shall be given may be extended,

you may require the planning authority to review the case in accordance with section 43A of the Town and Country Planning (Scotland) Act 1997 by notice sent within three months from that date (unless the application has already been referred to the Scottish Ministers).

A form for requesting a review under section 43A of the Act is obtainable from [Note 6]

Note 1 - Insert date when the application was received.

Note 2 - Insert reference to regulation 11, 12, 13 or 14 as the case may be.

Note 3 - Insert description of documents which still require to be submitted to comply with regulation 11, 12, 13 or 14, as the case may be.

Note 4 - Insert information as to where a copy of the Scheme of Delegation may be inspected (including any website address at which the Scheme may be inspected)

Note 5 - Insert date 2 months from date of receipt of the application as given at Note 1.

Note 6 - Insert details of where a form may be obtained.

SCHEDULE 7

Regulation 23(1)

BAD NEIGHBOUR DEVELOPMENT

The following are the classes of development specified for the purposes of regulation 23(1)(d)–

(1) the construction of buildings for use as a public convenience;

(2) the construction of buildings or other operations, or use of land–

(a) for the disposal of refuse or waste materials, or for the storage or recovery of reusable metal;

(b) for the retention, treatment or disposal of sewage, trade-waste, or effluent other than–

(i) the construction of pumphouses in a line of sewers;

(ii) the construction of septic tanks and cesspools serving single dwelling-houses, or single caravans, or single buildings in which not more than 10 people will normally reside, work or congregate;

(iii) the laying of sewers; or

(iv) works ancillary to those described in sub-paragraphs (i) to (iii);

(c) as a scrap yard or coal yard; or

(d) for the winning or working of minerals;

(3) the construction of buildings or use of land for the purpose of a slaughterhouse or knacker's yard or for the killing or plucking of poultry;

(4) the construction or use of buildings for any of the following purposes–

bingo hall

building for indoor games

casino

cinema

dance hall

fun fair

gymnasium (not forming part of a school, college or university)

hot food shop

licensed premises

music hall

skating rink

swimming pool

theatre, or

Turkish or other vapour or foam bath;

(5) the construction of buildings for or the use of buildings or land as–

(a) a crematorium, or the use of land as a cemetery;

(b) a zoo, or wildlife park, or for the business of boarding or breeding cats or dogs;

(6) the construction of buildings and use of buildings or land for motor car or motor cycle racing;

(7) the construction of a building to a height exceeding 20 metres;

(8) the construction of buildings, operations, and use of buildings or land which will–

(a) affect residential property by reason of fumes, noise, vibration, smoke, artificial lighting, or discharge of any solid or liquid substance;
(b) alter the character of an area of established amenity;
(c) bring crowds into a generally quiet area;
(d) cause activity and noise between the hours of 8 pm and 8 am; and
(e) introduce significant change into a homogeneous area.

SCHEDULE 8

Regulations 23(1)

NOTICE FOR PUBLICATION IN NEWSPAPER

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007

Notice of application to be published in a local newspaper under regulation 23(1)

Applications for planning permission listed below together with the plans and other documents submitted with them may be

examined at [Note 1]

between the hours of [Note 2]

on [Note 3]

Written comments may be made to [Note 4]

within 21 days from the date of publication of this notice.

List of applications for planning permission

Address [Note 5]

Proposed development [Note 6]

Note 1 - Insert address of planning authority and any other address (including any website address).

Note 2 - Insert beginning and end of periods.

Note 3 - Insert days of week.

Note 4 - Insert Director of Planning or officer responsible for planning functions and the Director of Planning or that officer's address (including an email address).

Note 5 - For each application to be advertised insert postal address of proposed development.

Note 6 - For each application to be advertised insert description of proposed development.

SCHEDULE 9

Regulation 39

FORM 1

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may appeal to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of appeal should be addressed to the [Note 1].

2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Note 1 - Insert details of address to which the notice of appeal should be sent.

FORM 2

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the [Note 1]

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Note 1 - Insert details of address to which the notice of review should be sent.

SCHEDULE 10

Regulation 44(1)

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

PART I

Town and Country Planning (Scotland) Act 1997

Form of acknowledgement of application for Certificate of Lawful Use or Development

Your application dated ……………………. was received on ………………………. [Note]

Examination of the application and accompanying plans and documents to ascertain whether they comply with the requirements set out in regulations 42 and 43 of the Town and Country Planning (Development Procedure Management) (Scotland) Regulations 2007 as amended or any other statutory requirement has not been completed. If, on further examination, it is found that the application is invalid for failure to comply with such requirements (or for any other reason) a further communication will be sent to you as soon as possible.

If the authority require further information to enable them to deal with your application, they will notify you in writing.

The planning authority are required to notify you of their decision within 2 months of receipt of your application and the appropriate fee (if any), or within such extended period as may be agreed in writing between you and the planning authority.

If the planning authority decide to refuse your application, in whole or in part, you may appeal to the Scottish Ministers.

Note - Insert date on which application was received.

PART II

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 150 AND 151

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2007: REGULATION 43(7)

Certificate of Lawful Use or Development

The [Note 1] ……………………………………… Council hereby certify that on [Note 2] …………………………………. the use*/operations*/matter* described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged*/hatched*/coloured* [Note 3] ……………………………….. on the plan attached to this certificate was*/would have been* lawful within the meaning of section 150 of the Town and Country Planning (Scotland) Act 1997, for the following reason(s)

Signed (Council's proper officer)

On behalf of Council

Date

*Delete where inappropriate

First Schedule

[Note 4]

Second Schedule

[Note 5]

Notes

1. This certificate is issued solely for the purpose of section 150*/151* of the Town and Country Planning (Scotland) Act 1997.

2. It certifies that the use*/operations*/matter* described in the First Schedule taking place on the land specified in the Second Schedule was*/would have been* lawful, on the specified date and, thus, was not*/would not have been* liable to enforcement action under section 127 of the 1997 Act on that date.

3. This certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

*4. The effect of the certificate is also qualified by the proviso in section 151(4) of the 1997 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

*Delete where inappropriate.

Note 1 - Insert name of Council.

Note 2 - Insert date of application to the Council.

Note 3 - Insert colour used on the plan.

Note 4 - Insert full description of use, operations or other matter, if necessary, by reference to details in the application or submitted plans, including where appropriate a reference to the use class of any order made under section 26(2)(f) of the Town and Country Planning (Scotland) Act 1997 within which the certificated use falls.

Note 5 - Insert address or location of the site.

SCOTTISH STATUTORY INSTRUMENTS

2007 No.

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Increase in Gross Floor Space) (Scotland) Order 2007

Made - - - -	*2007*
Laid before the Scottish Parliament	*2007*
Coming into force - -	*2007*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 26(2AA) and 30 of the Town and Country Planning (Scotland) Act 1997(**32**) and of all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Town and Country Planning (Increase in Gross Floor Space) (Scotland) Order 2007 and comes into force on 2007.

(2) In this Order "the Act" means the Town and Country Planning (Scotland) Act 1997.

Development to include certain internal operations

2.—(1) Where no previous works have been carried out to a building resulting in an increase in the gross floor area of the building, the amount specified under section 26(2AA) of the Act is 200 square metres and the circumstances in which subsection (2) of section 26 of the Act does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor area of such a building by more than 200 square metres are that the building is used for the retail sale of goods.

(2) Where previous works have been carried out to a building resulting in an increase in the gross floor area of the building, the amount specified under section 26(2AA) of the Act is 10 square metres and the circumstances in which subsection (2) of section 26 of the Act does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by more than 10 square metres are that–

(a) the aggregate increase in the gross floor area of the building as a result of such an increase when taken with increases in the gross floor area of the building resulting from the carrying out of previous works, would be more than 200 square metres; and

(b) the building is used for the retail sale of goods.

(3) In paragraphs (1) and (2)–

(**32**) 1997 c.8, to which there are amendments not relevant to this Order. The functions of the Secretary of State under section 30 were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998. Subsection (2AA) was inserted into section 26 of the 1997 Act by section 3(1)(b) of the Planning etc. (Scotland) Act 2006 (asp 17).

(a) the reference to a building used for the retail sale of goods includes a building used as a retail warehouse club, being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club but does not include a building used only for the retail sale of hot food; and

(b) the reference to previous works is a reference to works for the maintenance, improvement or other alteration of a building being works which affect only the interior of the building.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2007

ANNEX D

DEVELOPMENT MANAGEMENT CONSULTATION: PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations.

2. Introduction

Objectives

2.1 The new procedures for development management stem from provisions in the Planning etc. (Scotland) Act 2006 (the 2006 Act) primarily amending the Town and Country Planning (Scotland) Act 1997 (the 1997 Act as amended). The 2006 Act sets the framework for achieving the Scottish Government's aim to modernise the planning system.

2.2 The aims of the modernisation programme are to deliver a planning system that is:

- **Efficient**: We want up to date development plans to be at the heart of an efficient system that provides certainty for users and local people.
- **Inclusive**: We want local people to be more involved in the decisions that shape the development of their communities.
- **Fit for purpose**: We want the planning system to have a clearer sense of priorities, and to address different issues in different ways. In doing so it will be able to deliver the sustainable growth we need.
- **Sustainable**: We want development to contribute to economic growth that is sustainable. Planning will deliver sustainable development ensuring development in the right place and of the right quality.

2.3 The changes to development management are concerned specifically with: making the processes around applying for planning permission fit for purpose and responsive to different types of development proposal; improving efficiency in determining planning applications; and improving public involvement in the consideration of proposals requiring planning permission.

2.4 In setting a framework, the 2006 Act specifies a number of the requirements in relation to each aspect of development management discussed in this Regulatory Impact Assessment (RIA). The 2006 Act anticipates some of the detailed features of the new procedures and in so doing limits some of the options for detailed prescription in the regulations. The sections below will identify where significant elements of the detailed procedures have been pre-determined by the 2006 Act.

2.5 Due to the number of individual, though linked, policy areas covered by the regulations, this RIA is structured slightly differently to other RIAs. Information on the purpose and intended effect, consultation plus options and their costs and benefits (normally found in sections 2 - 5 of the RIA) are set out under headings for each policy area. Other areas covered by the RIA (normally found in sections 6-11) are considered for the complete

set of regulations. The order of the topics in this RIA does follow the order that they occur in the main part of the consultation paper.

3. Enhanced Scrutiny

3.1 Following a general introduction on the purpose and intended effect of and the consultation on the enhanced scrutiny proposals, this section details the options, costs and benefits of each of the following areas:

a) Pre-application screening;
b) Pre-application consultation;
c) Pre-determination hearings;
d) Decisions by the full Council; and
e) Notification to Scottish Ministers.

Purpose and intended effect of the enhanced scrutiny proposals

3.2 Potential applicants will be able to require planning authorities to state whether, in their view, a proposed development falls within a class of development that will require pre-application consultation with community councils and other consultees to be identified by authorities as appropriate. Certain types of development will be subject to enhanced scrutiny measures, improving the planning system in particular to strengthen the involvement of communities and better reflect local views.

3.3 An applicant considering a large, complex or high impact development should, with the assistance of planning authority, consult appropriately with all those communities of interest and geography that will be affected by the proposed development. Early, appropriate engagement should lead to more refined, better quality applications. The White Paper *Modernising the Planning System* (2005) proposed that larger-scale bad neighbour (LSBN) development where no provision is made in the development plan would be subject to enhanced scrutiny, but we now consider that these would fall under the expanded and refined definition of major development and/or would require EIA so we propose to streamline the classes of development attracting enhanced scrutiny – omitting LSBNs. Community consultation is already required in respect of EIA developments. The standing policy commitment was to extend enhanced scrutiny to those developments contrary to development plans and that is given effect in these proposals.

Consultation

3.4 The commitment to introduce statutory pre-application consultation was contained in the White Paper which was subject to consultation in 2005. During the phase in advance of formal public consultation, proposals were subject to informal discussion with key stakeholders including representatives from the Association of Scottish Community Councils, Communities Scotland, Planning Aid Scotland, Homes for Scotland and the Scottish Society for the Directors of Planning.

a) Pre-application screening

Options

3.5 Section 35A of the 1997 Act sets out the provisions governing the proposals set out in the regulations. The minimum contents of the notice are set out in section 35B(4).

Option 1 Do nothing beyond the requirements set out in section 35B(4).

Option 2 Proposals as drafted.

3.6 In Option 1 the content of the pre-application screening notice would contain: a site description, a postal address (if one exists), an outline plan and contact details for the prospective applicant. Option 2 proposes that prospective applicants state additionally whether a specific proposal analogous to that being considered by them (and in respect of which they are submitting the notice to the authority) is denoted in the development plan. This provision is to assist planning authorities in responding swiftly to straightforward requests. There would be no return of application to the applicant if the planning authority's statement as to class has been sought, and the authority determines pre-application consultation is not required, only to consider subsequently that it should have been carried out.

Costs and benefits

Sectors and groups affected

3.7 The screening process will primarily be a matter for developers of large scale or potentially controversial proposals in that they will be required to provide information over and above what is currently required. There will also be additional requirements on planning authorities to process the notice.

Costs

Option 1 Costs for planning authorities in responding to proposal of application notices to be identified through fees research.

Option 2 Minimal additional costs falling to applicants to include a note identifying whether the proposal is included in the relevant development plan.

3.8 There will be resource implications for applicants in preparing the notices, and for planning authorities in responding to them. However, we have endeavoured to keep the form of the notice as simple as possible. We are seeking evidence from authorities as to the extent of the likely impact of handling, processing and responding to screening notices. It will be considered as part of the research into the restructuring of the fees regime.

Benefits

Option 1

3.9 For developers, this will provide some certainty as to whether the proposal under consideration will require statutory pre-application consultation. They will be able to plan projects and resources accordingly. Similarly, planning authorities will receive early notice of complex or high-impact proposals that may require significant resources to handle and process.

Option 2

3.10 For developers and authorities, this option will also promote an efficient and swift response to those pre-application screening notices which self-evidently accord with the local development plan.

3.11 These reforms will assist potential applicants in preparing for pre-application consultation if necessary and, if not, in preparing for scaling back the required documentation associated with any subsequent application. In addition, they will enable

planning authorities to plan and prepare for the receipt and handling of major or complex applications.

b) Pre-application consultation

Options

Option 1 Restrict to major, national and other specified developments.

Option 2 Extend to all developments.

3.12 In coming to a view on possible options, it was not considered that a "do nothing" approach was appropriate in light of the policy commitment in *Modernising the Planning System* and during the passage of the 2006 Act. Further detail is required in order to make the 2006 legislative provisions meaningful. Option 1 looks to implement the commitment contained in the White paper whilst Option 2 extends the requirement for pre-application to all developments.

Costs and benefits

Sectors and groups affected

3.13 The proposals would potentially affect communities, developers, community councils and planning authorities.

Costs

3.14 For both options, there will be some costs to planning authorities in checking that the appropriate documentation has been received prior to validation and that the pre-application consultation was satisfactory and commensurate. Based on developing good practice in this area in England, authority officers would need to take some part in the consultation to ensure that applicant was representing their proposals in balanced and fair way. This would be an additional burden for planning authorities.

3.15 For communities and community groups, there will be marginal costs in preparing for, travelling to and contributing to pre-application consultation events. Developers should consider defraying some of those expenses. Developers will incur costs in notifying community councils, convening and supporting public meetings, arranging local advertising and liaising with planning authorities. Planning authorities will incur costs in responding to proposal of application notices. They may be able to recover some of that via reforms to the planning fees regime.

3.16 Option 2 would extend the requirement to all developments. This is not considered proportionate because many applications are small in scale and non-controversial and therefore would not warrant the additional burden on applicants.

Benefits

3.17 Communities will have the opportunity to interact with prospective developers, to assist them in understanding views and objections, to refine proposals and to mitigate negative impacts. Developers will benefit from constructive, better informed communities engaging positively with proposals. Where the consultation discloses significant community resistance, then developers will at least will be aware of the issues that concern those affected communities. Applications submitted to authorities would been further evolved,

taking into account community views, thereby leader to faster decisions and better outcomes.

c) Pre-determination hearings

Options

Option 1: Do nothing.

Option 2: Proposals as drafted. The requirement for developments that are significantly contrary to the development plan and those screened as EIA to be referred to statutory pre-determination hearings was trailed in the 2005 White Paper. Beyond that, mechanisms and procedures for pre-determination hearings are to be determined by planning authorities themselves.

3.18 In coming to a view on possible options, it was not considered that a "do nothing" approach was appropriate in light of the policy commitment in the White Paper. Option 2 looks to implement the commitment contained in the White paper. Regulations are required to specify the classes of development that section 38A(1) of the amended 1997 Act states are to attract mandatory pre-determination hearings.

Costs and benefits

Sectors and groups affected

3.19 Communities (objectors and supporters), community councils, applicants and representatives and planning authorities/planning committees.

Costs

3.20 Marginal costs may fall on individuals, communities and applicants in preparing to appear before the hearing and in travelling to them. *Planning Reforms: An Impact Assessment (Arup, 2005)* considered that the costs on authorities would be potentially low, as hearings were assumed to be infrequent. Costs were estimated to be approximately three additional officer days per hearing, with an average of two hearings per authority per year. In 'ready reckoner' terms this equates to one hour per week of Senior Case Officer time, equivalent to £95,821. Views from planning authorities are welcomed on whether these figures are still realistic in relation to the current proposals.

Benefits

3.21 The hearings would address applicant concerns that they are not always able to have sufficient access to planning officers and members before the decision is taken. Also communities and others making representations would be able to make their views clearly known in advance of the decision.

d) Decisions by the full Council

3.22 No further regulation or options are being proposed at this stage. Greater rigour would be introduced to the system if full councils were able to ratify or reconsider positive decisions made by pre-determination hearings on proposals previously deemed by the authority to be significantly contrary to the local development plan. However, we are seeking planning authorities' views in the DMR consultation on the impact of referring pre-determination hearing decisions to full council.

e) Notification to Scottish Ministers

Costs and benefits

Sectors and groups affected

3.23 Notification to Scottish Ministers will affect businesses and applicants, the Scottish Government (Planning Directorate and the Directorate of Planning and Environmental Appeals) and planning authorities. Communities, individuals and other interested parties may also be affected where proposals are called-in by Scottish Ministers and subsequently involve an inquiry or hearing session. The Financial Memorandum to the Planning etc. (Scotland) Bill discussed the potential costs and benefits of this proposal in more detail.

Costs

3.24 The changes to the notification direction are likely to lead to a major increase in the number of applications notified to Scottish Ministers. However, the nature of the increase is difficult to estimate, not least because applications are not currently classified in the same way as they will be once the Act is enacted. Nevertheless, it is estimated that, of the approximately 52,000 planning applications received each year:

- Less than 0.1% will be for national developments. It is estimated that 100% of these – i.e. 10 – will be notified;

- 1% will be for major developments. It is estimated that 100% of these – i.e. 520 – will be notified;

- 60% will be for local developments. It is estimated that 1% – i.e. 310 – of these will be notified; and

- 39% will be for minor developments. These would not be notified to Ministers as they will be removed from planning control.

3.25 These estimates would lead to a 180% increase in the numbers of applications notified to Scottish Ministers: from 300 a year at present, to 840.

3.26 It is also necessary to consider the likely amount of cases that, once notified, Ministers will actually call in for their own determination. Based on Ministerial involvement in previous cases, and assuming that, except for national developments, only about 10% of called in applications are determined by Ministers (in line with the figures from recent years) we estimate the following:

- 20% of the 10 applications for national developments (i.e. 2) will be called in;

- 10% of the 520 applications for major developments (i.e. 52) will be called in; and

- 10% of the 310 applications for local developments (i.e. 31) will be called in.

3.27 This would represent a 183% increase in the numbers of applications currently called in for Ministers' own determination, from 30 per annum to 85. Under normal circumstances,

Ministers have 28 days to decide whether to call-in a notified application for their own determination. In light of the figures above, there would be a short delay for a small number applications. In most cases, the categories of development to which notification applies would also be major developments that had a processing agreement attached. The processing agreement could therefore flag up the potential for notification to Scottish Ministers at the outset, thereby providing certainty and allowing the applicant to build in any notification to the overall timescale.

3.28 There will however be a significant impact on the Government's Planning Directorate and on the Directorate of Planning and Environmental Appeals in dealing with the increase in notified cases, which has already required additional staff. There may be very minor additional costs for planning authorities in sending additional documentation to Scottish Ministers.

Benefits

3.29 Applicants will have the certainty that Scottish Ministers receive all pertinent documentation on the planning authority's handling of the case from the pre-application stage onwards. Planning authorities will also benefit from the knowledge that Ministers will be able to consider all relevant evidence. As discussed above, including the potential notification in a processing agreement would provide certainty for major developments. Communities, individuals and other stakeholders who may be concerned about the impact of certain developments, may have increased trust and confidence in the system through additional scrutiny of such proposals.

4. Processing agreements

Purpose and intended effect

4.1 *Modernising the Planning System* (2005) introduced the concept of processing agreements. These agreements are intended to provide a framework for processing national and major developments. The intention is that for such developments, the applicant and the planning authority would agree the approach for handling the application including the anticipated timescale and set this out in a processing agreement.

4.2 Planning performance statistics clearly show that major developments take longer to determine than more minor or household developments. Delays in the system can lead to lack of certainty for applicants, investors and communities; cause difficulties; and bring the planning system into disrepute. Processing agreements can provide more certainty about the means of handling national and major applications and about the likely timescale for determination.

Consultation

4.3 **Within Government** – Processing agreements have been discussed within Government between Planning Directorate and the Directorate for Planning and Environmental Appeals, Transport Scotland and Historic Scotland. We have also discussed with all statutory consultees.

4.4 **Public consultation** – The responses to *Modernising the Planning System* indicated a clear majority of respondents favoured this proposal, although local authorities were the most ambivalent about the potential advantages. While the concept was generally held to be useful, the ability to achieve its purpose in practice was considered to be more problematic

and the need for more guidance was stressed. In advance of formal public consultation, discussions have taken place with local authorities on processing agreements, and with representatives from the development industry who have been involved in pilot processing agreements.

Options

Option 1 Do Nothing

Option 2 Make all major and national developments eligible for processing agreements

4.5 Option 1 would lead to all major development proposals continuing to be managed through the normal development management process. There are not specific provisions governing processing agreements in the 2006 Act. Under Option 2 planning authorities should facilitate processing agreements for applications for major and national development wherever it is practical to do so.

Costs and benefits

Sectors and groups affected

4.6 Applicants and developers would have the potential to enter into processing agreements with the planning authority. This could provide a more project managed approach; greater certainty on the handling of the application; the required information and the responsibility for tasks. Planning authorities would be expected to facilitate arrangements for processing agreements for national and major developments. Statutory consultees would be expected to take part in discussions about processing agreements early on in the process. This may require them taking part in discussions and considering what information they would require to assess the proposal prior to any application being submitted.

Benefits

Option 1

4.7 There are no additional benefits for planning authorities or applicants in maintaining the status quo.

Option 2

4.8 Processing agreements can offer a number of benefits, including setting out clearly the process which will be followed, creating greater certainty amongst all parties and a shared understanding about timescales.

4.9 There is the opportunity for early identification and discussion of key issues through engaging in processing agreements at the outset of the project, including with statutory consultees. Having identified the key issues, any further studies can be carried out or information gathered to respond to and resolve any issues. The processing agreement provides a means for clarity and agreement about what additional information is required to determine the application(s). It should therefore reduce the scope for incremental requests for information throughout the process on an unplanned basis, and create efficiency savings within the process.

4.10 The processing agreement can promote a more collaborative approach to handling the proposal and can be used as a means to bring different parts of the local authority who

may have involvement in a particular development together to agree and adopt a joined-up corporate approach. The agreement could be used to assist in managing workloads and resources.

Costs

Option 1

4.11 There are no new costs in maintaining the current position. However, there are existing costs associated with this approach as, when major developments take longer than the statutory period to determine, there may continue to be uncertainty about the procedures and likely timescales after the statutory period has expired. Lack of certainty in the process, and the ad-hoc extension of timescales may mean that costs to business increase.

Option 2

4.12 The responses to the White Paper indicated a general agreement that the proposal to have processing agreements would generate significant extra work for local authorities and there were calls for additional resources.

4.13 Costs of preparing processing agreements are likely to vary depending on the circumstances of the particular proposal, and the ease with which agreement can be reached. Processing agreements may require differing levels of input from the different statutory consultees depending on the nature of the proposal.

4.14 An agreement may require the applicant to provide fuller information when submitting the application. The level of take up of, and interest in, processing agreements by applicants will influence the number of processing agreements in the system and the volume of work required by local authorities and statutory consultees. In areas of greatest development pressures for major development there may be more demand for processing agreements, whilst in other areas there may be few processing agreements entered into each year. As processing agreements allow the statutory period for determining applications to be extended, there is the potential that local authorities may enter a significant number of processing agreements, and that the work required to prepare the different processing agreements could impact on the anticipated efficiencies.

4.15 It is not intended to charge applicants for processing agreements. But research is currently being carried out on fees and there will be revised Fees Regulations in due course. Our intention is that planning authorities should be able to recover the full costs of putting in place processing applications and that fees for major developments should be increased to reflect this.

5. Planning permission in principle

Purpose and intended effect

5.1 The section on Planning Permission in Principle (PPP) covers:

- the replacement of “reserved matters”;
- additional information as part of an application for PPP; and
- new provisions in relation to applications for approval required by conditions attached to a PPP requiring neighbour notification and notification of those who made representations on the related application for PPP.

5.2 In view of apparent confusion over the role and procedures around "reserved matters" in relation to outline planning permission (OPP), new section 59 of the 1997 Act replaces the previous provisions on OPP with provisions on planning permission in principle (PPP). While both PPP and OPP relate to recognising that a proposal is acceptable in principle, without all the detailed elements of a proposals being considered, the main change is the withdrawal of "reserved matters" as a concept.

5.3 "Reserved matters" were matters specified in conditions attached to OPP relating to the detail of the siting and design of buildings, access to such buildings and landscaping not specified in the application for OPP. Applications for approval of "reserved matters" were subject to a statutory application process. There was some confusion over the role and approval of "reserved matters" as distinct from other conditions attached to OPP which required the approval, agreement or consent of the planning authority regarding issues not classified as "reserved matters". A range of approaches to the content of reserved matters conditions and to the manner in which approval was sought and granted evolved, with a mixture of formal and informal processes at work.

5.4 In future planning authorities will simply attach conditions to PPP which require matters specified in the conditions to be subject to further approval by the planning authority. These do not relate solely to matters not specified in the application for planning permission in principle, nor are they limited to issues of siting, design or external appearance of any buildings, access to such buildings or landscaping of the proposal site.

5.5 The removal of this distinction means that where conditions attached to a PPP specify matters which require the further approval of the planning authority, approvals will require a formal application.

5.6 As far as these regulations are concerned, the replacement of provisions on applications for OPP and for reserved matters with applications for PPP and applications for approval of matters specified in conditions, introduce a number of changes. These are apart from the changes covered elsewhere in the RIA which will apply to applications for planning permission in principle – e.g. design and access statements, pre-application consultation, changes to neighbour notification.

5.7 Applications for planning permission in principle will require additional information to be submitted relating to the issues of detail not covered in the application for PPP. This is to provide greater clarity for developers, planning authorities and communities as to the nature of the proposal under consideration. It will also help to frontload the system, ensuring a reasonable amount of information is provided at the outset in the processing of an application. These changes, together with the new requirements around design and access statements should also help to improve the quality of development.

5.8 Applications for approval of matters specified in conditions will have additional requirements for neighbour notification and notification of parties who made representations and objections on the initial application for PPP. This is to improve community involvement and the transparency of the process.

Consultation

5.9 The White Paper proposed the removal of outline planning permission and its replacement with 'Approval in principle' in development plans. This would mean that where proposals were allocated in development plans, the principle of development for those uses on that site would have been accepted. In response to a number of concerns, principally from applicants and businesses about the need for an outline consent to provide certainty in

the development process, these proposals were dropped. The PPP proposals therefore seek to build on and improve the current procedures for outline planning permission.

Options

5.10 The removal of the concept of reserved matters flows from the changes to the 1997 Act. No other options were considered with regard to additional requirements on information accompanying applications for PPP and for additional publicity for applications for approval of matters specified in conditions. These changes are a necessary part of increasing efficiency, the increased role of design and improvements in community involvement.

Costs and benefits

Sectors and groups affected

5.11 The additional information required in relation to applications for PPP relates to:

- where layout is not shown in the application, a statement of the approximate location of buildings, routes and open spaces included in the development proposed;

- where scale is not defined in the application, a statement of the upper and lower limit for the height, width and length of each building included in the development proposed;

- where access is not shown in the application, a statement of the area or areas where access points to the development proposed will be situated;

5.12 Where the detail of these issues is included in the application for PPP there will be no need to provide this approximate and outline information. This will mean developers may have to progress their proposals further than at present before seeking PPP. Planning authorities are less likely to have to go back to applicants seeking basic information before making a decision and so delaying that decision.

5.13 The additional requirements around publicity for applications for approval of matters specified in conditions should ensure interested parties have an opportunity to comment on important matters of detail. Applications for which PPP is sought are likely to be of significant scale and where PPP is granted it is important that local communities have an opportunity to comment on the detail which may be of concern to them.

5.14 Also, while applications for PPP are subject to requirements on pre-application consultation with local communities, applications for approval of matters specified in conditions are not. It is important therefore that communities who may have engaged rigorously in pre-application consultation on the application for PPP are made aware of the applications on detailed matters. Not to do so would undermine the policy intention of ensuring that communities have meaningful opportunities to make their views known on developments which affect them.

5.15 These new requirements on publicity will mean costs for the planning authority in notifying neighbours and those who commented upon the applications for PPP. However, the information on who should be contacted should be readily available from the information on the application on PPP (see further consideration in section on Neighbour Notification).

6. Content of applications and validation

Purpose and intended effect

6.1 Anecdotal evidence suggests that there can be wide variations among planning authorities in terms of what they regard as a valid application, when it should be entered on the register and the time period within which a decision should be made commenced. In order to clarify and standardise the approach to validation, we have considered the legislation on content of applications, the process of validation and entry on registers.

Consultation

6.2 The proposed approach is similar to the existing provisions on valid applications and has not therefore been subject to specific consultation.

Options

6.3 Section 32 of the 1997 Act as amended allows the Scottish Government to specify in subordinate legislation the content of a planning application, and how that application should be processed. Three options have been identified in preparing the new development management regulations:

Option 1 Retain the current statutory provisions and use guidance to try to encourage a more consistent approach.

Option 2 Seek to prescribe more detailed plans and drawings that would make up a valid application.

Option 3 Detail all the types of plans and drawings required to accompany a planning application, the level of textual detail and all the various assessments that might be required to accompany different types of applications in various circumstances.

Option 4 Allow the processing clock to be stopped while the authority asks for and waits to receive additional information to make an application valid.

Costs and benefits

Sectors and groups affected

6.4 This will impact primarily on how planning authorities validate planning applications. There will also be implications for applicants and businesses in the way that their applications are handled and the range of information required by the planning authority to validate the application.

Benefits

Option 1

6.5 Current procedures are well known within individual authorities. Option 1 would allow these procedures to remain in place.

Option 2

6.6 There should be greater certainty around what constitutes a valid application and when processing of the application should start. This includes publicity arrangements, so that the public is invited to get involved only once the basic information has been provided and can be made available to them for inspection.

Option 3

6.7 It will be set out in statute what information is required to form a valid planning application. This should provide clarity and certainty to planning authorities and developers alike.

Option 4

6.8 The authority is not penalised in terms of overall determination time for situations where more information is required in order to make a decision on the application.

Costs

Option 1

6.9 This does not allow for clarification and standardisation of the approach to validation thus leading to potential inefficiencies in the planning system.

Option 2

6.10 Additional plans and drawings would be required for all planning applications which could result in additional information being provided where it was not always necessary. This could increase costs for applicants.

Option 3

6.11 This would generate overly complex, multiple layers of information, which in turn would be likely to generate disagreement over which requirements apply in a particular case and subsequently create delays in getting applications validated and processed.

Option 4

6.12 This would give authorities much discretion to seek further information and applicants would have little certainty at the outset over what was required in the application and how quickly it would be processed. By stopping the clock indefinitely, it could undermine the applicant's right to appeal against non-determination after the statutory determination period has elapsed, thereby potentially adding to delays in applicants getting a decision on their proposals.

7. Design and access statements

Purpose and intended effect

7.1 As a part of the Government's design agenda, Ministers have recognised the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. Prior to the 2006 Act, there was no statutory requirement for either a design or access statement to accompany a planning application which would explain the design

principles and concepts that have been applied to the development; and how issues relating to access for disabled people to the development have been dealt with.

Consultation

7.2 The decision to introduce statutory access statements into the planning system for prescribed applications formed one of the proposals in the White Paper. The requirement to extend this to design elements was introduced following Stage 2 consideration of the Planning etc. (Scotland) Bill (2006).

Options

7.3 We have considered three options to address the objectives set out above in relation to design and access.

Option 1 Require design and access for a wide range of planning applications.

Option 2 Require a design and access statement for major applications and a design statement where development impacts on a sensitive area.

Option 3 Do not make design and access statements a statutory requirement and rely on existing guidance.

7.4 Option 1 would introduce a statutory requirement to ensure that certain applications are accompanied by a design and access statement. Many householder, change of use and engineering and mining operations applications would not be covered by this requirement. Option 2 would also introduce a statutory requirement but for a narrower range of planning applications, namely major applications and those where there would be a potential impact on areas designated as being sensitive. Option 3 would retain the non-statutory status of statements on design and access issues.

Costs and benefits

Sectors and groups affected

7.5 Both Options 1 and 2 will impact on how planning authorities consider and assess planning applications though the potential impact will be different, depending on the outcome of the consultation. For developers promoting major developments, the impact of these options may not be substantial. In terms of access, the requirements would essentially formalise existing guidance and best practice. The major effect will be on developers of local developments or development with a sensitive area as these developments would not currently be expected to set out the rationale on design and access. For developers of sites in sensitive areas, the requirement to produce a design statement, while new, also reflects current guidance.

Benefits

Option 1

7.6 There will be a statutory requirement for a statement setting out how design and access issues have been considered when bringing forward the development proposal hopefully leading to better designed and accessible development. Information will be readily available for communities explaining design and access issues for most planning applications.

Option 2

7.7 Although design statements are encouraged through advice, they are not a statutory requirement under current Scottish planning legislation. This option would put into statute what is already advised as being good practice – leading to better designed and accessible developments. The focus for both developer and planning authority resources will be on developments with have a potentially major impact either on design or access issues.

Option 3

7.8 Design statements are already promoted through advice to developers and planning authorities in PAN 68. This is supplemented by advice in PAN 78 which recognises the value of access statements. Leaving the current arrangements undisturbed ensures that planning authorities and developers remain familiar with development management processes and procedures. There would be no additional burden in the preparation and assessment of such statements.

7.9 However, planning authorities and developers would lose potential efficiency and time savings from negotiations around design and access issues not clearly set out with the planning application.

Costs

Option 1

7.10 The major additional cost to business is likely to be the need to prepare a statutory design and access statement where currently one is not suggested through advice. This is therefore likely to impact those developers who seek planning permissions for smaller scale applications. In the early period after implementation there are likely to be increased costs associated with delays whilst planning authorities and developer become acclimatised to the new validation arrangements

7.11 There may also be additional costs should the assessment lead to additional processing burdens on the planning authority which would be translated into higher planning application fees in the future.

Option 2

7.12 Some of the costs attributable under Option 1 are likely to accrue under this option. In addition, some planning applications where design and access issues may be important factors in the consideration of a proposal will not be accompanied by a statement which sets out how these issues have been considered.

Option 3

7.13 There will be no additional direct costs to businesses and planning authorities. However, there may be additional costs to the developer should a development be refused permission where the rationale around the design / access issues have not been appropriately set out.

8. Neighbour notification and publicity for applications

Purpose and intended effect

8.1 To implement section 34 of the 2006 Act requiring planning authorities to give notice of:

- applications for planning permission; and,
- applications for a consent, agreement or approval required by a condition imposed on a grant of planning permission.

8.2 The Scottish Government considers that the transfer of responsibility for neighbour notification of planning applications from applicants to local authorities will strengthen public confidence in the planning system and encourage more effective public participation in planning decisions.

Consultation

8.3 Changes to Neighbour Notification procedures were originally subject to public consultation in *Getting Involved in Planning* (2001), following which the White Paper *Your Place Your Plan* set out our overarching proposals for taking these changes forward *Modernising the Planning System* (2005) further clarified our intentions in this respect. A full public consultation on the policy to deliver option 2a is being initiated and this draft regulatory impact assessment forms part of it.

Options

Option 1 Do nothing

Option 2 Detailed provisions on the manner in which planning authorities neighbour notify.

Option 2a Make further changes additional to Option 2.

8.4 Option 1 would lead to the retention of neighbour notification by applicants. Option 2 introduces detailed provisions concerning the circumstances and manner in which planning authorities are required to give notice of certain applications and to whom such notices are required to be given. Option 2a would lead to additional changes including: simplifying the definition of ‘neighbouring land’; removing the requirement to serve notices to neighbours to named individuals; and to provide that, where a planning authority is required to advertise an application which is contrary to the development plan in a local newspaper, that planning authority may recover the cost of the advertisement from the applicant.

Costs and benefits

Sectors and groups affected

8.5 In transferring the responsibility for neighbour notification from the applicant, the burden of the new requirements falls to planning authorities. There will be resulting savings to developers. This will be offset by the anticipated rise in application fees.

Benefits

Option 1

8.6 The current system is understood by planning authorities and by regular users. There would be no need for authorities to adopt new systems to implement new notification provisions or change for businesses.

Option 2

8.7 Proposed changes will address acknowledged weaknesses in the current system and aim to strengthen public confidence and participation.

Option 2a

8.8 The proposed changes aim to strike a balance between ensuring the public has confidence in the notification system and in streamlining aspects of the process to make it less complex.

Costs

Option 1

8.9 The costs of carrying out neighbour notification would continue to be met by the applicant, falling mainly to businesses and to individuals. There would be no change in this respect. This option would not lead to the transfer of responsibility for neighbour notification from the applicant to planning authorities with the loss of strengthened public confidence in the planning system and encourage more effective public participation.

Option 2

8.10 In transferring responsibility for neighbour notification from applicants to planning authorities the cost of implementing the proposed provisions will fall to those authorities. The Scottish Government has previously announced its intention that these costs should be recovered through increased planning fees. In its report of July 2006, the Neighbour Notification Working Group concluded that the actual costs of neighbour notification will vary according to the nature, scale and location of the proposed development, the number of neighbours to be notified and the forms of notification employed by the planning authority. Nevertheless, a consensus of costs per application emerging from local authorities' calculations suggested an average cost across Scotland of £75 per application. If this figure is multiplied by 54,597 (that is the total number of applications determined in 2006/07) this gives a figure in the region of £4m. That figure is reduced if taking into account proposals to extend permitted development rights to certain householder developments which would see the total number of applications for planning permission fall. However, this figure does not take into account applications for approval required by a condition imposed on a grant of planning permission in principle . There are no figures available on the likely number of such applications. Research is currently being carried out on fees and there will be new Fees Regulations. Our intention is that planning authorities should be able to recover the full costs of processing applications. That cost will however be offset by the savings made in removing the responsibility for neighbour notification from the applicant.

Option 2a

8.11 In implementing option 2 we also propose to streamline certain aspects of the process to limit the impact on planning authorities. We are proposing to remove the need to

identify named individuals for the purposes of neighbour notification, and consider that the use of ordinary first or second class post is adequate for the delivery of such notices. In order to facilitate the use of IT systems by planning authorities in identifying neighbours who require to be notified of a planning application, we have also proposed a simplified definition of neighbouring land. Whilst this expands the statutory notification distance to a proposed 20m and will therefore catch a larger number of neighbouring properties, we consider that this is balanced by the potential efficiency savings of a simplified definition.

8.12 A further change proposes new provision to recover the cost of advertising fees where an authority is obliged to advertise an application contrary to the development plan. This cost will fall mainly to business and recent figures provided by an individual planning authority suggest that the cost per application required to be advertised is in the region approaching £200 (although the actual fee recovered by that authority - where applicable - is currently set at £100).

9. Lists of applications

Purpose and intended effect

9.1 Although weekly lists are already prepared by planning authorities to inform community councils of the planning applications received that week, Ministers are looking to improve the wider public's awareness of planning applications. The regulations require planning authorities to provide additional information in the weekly list and regularly advertise its availability locally.

Consultation

9.2 Changes to the requirements for weekly lists were originally subject to public consultation in *Getting Involved in Planning* (2001). Further refinement of the Scottish Government's proposals were brought forward in *Modernising the Planning System* (2005).

Options

Option 1 Do nothing – retain the current requirements for the preparation and publicity of weekly lists

Option 2 Extend the information contained in the list and its availability plus require the advertisement of its availability on a monthly basis.

9.3 The primary impact on business of the changes on weekly lists will arise from section 36(A)(4) of the 2006 Act which allows regulations to make provisions for the recovery of costs incurred as a result of preparing, publishing and advertising the availability of the list of applications. We considered two options as to how the provisions could be taken forward.

Costs and benefits

Sectors and groups affected

9.4 Planning authorities will be required to provide additional information on the weekly list which will be ostensibly derived from the information provided by the applicant. In the majority of cases, this is information which is already provided by applicants and so there will be no additional cost to business. The impact of these proposals will be upon all applications for planning permission.

Benefits

Option 1

9.5 The procedures for the preparation and publicity of the weekly list are well understood. There would be no need for a change in procedures for planning authorities. There would also be no additional costs for business.

Option 2

9.6 The provisions will lead to additional information to all, including business interests, on development proposals. Ministers' policy is that the cost of considering an application should be recovered in the fee provided to the planning authority. The provisions will be beneficial in that they will help planning authorities recoup the costs of preparing the list which they do not do at present.

Costs

Option 1

9.7 The cost of preparing and publishing the list of applications falls to the planning authority which is not recovered as part of the application fee. There would be no direct additional costs to planning authorities or business. However, it would not fulfil Ministers' policy intention of making the planning system more inclusive and transparent by making information more widely available to the public.

Option 2

9.8 Research is currently being undertaken on the appropriately level of planning application fee. This additional information will help identify the possible direct cost of this proposal and will feed into the final RIA. However, the cost of the preparation and advertisement of the availability of the list on a monthly basis has been estimated to be in the region of £5 - 6 per application.

10. Statutory consultees

Purpose and intended effect

10.1 Regulation 29 of these regulations sets out the statutory requirements for consultation on planning applications. The bodies to be consulted and the criteria for triggering consultation in particular cases are the same as the current GDPO. It is proposed that consultation is required "before the determination of an application for planning permission" rather than "before granting planning permission", as under the current GDPO. This means that even if the planning authority is clear from the outset that it wishes to refuse planning permission, it must carry out the statutory consultation.

10.2 This change is required with the introduction of local reviews. It would be inappropriate for a local review body to potentially grant planning permission on a case refused permission by the officer who dealt with the application, where an application for the same proposal should be notified to Ministers prior to a grant of planning permission. Such cases will not be subject to the scheme of delegation which leads to local reviews. In order to identify such cases, planning authority officials will need to consult statutory consultees, even where they intend to refuse planning permission from the outset, in order to identify those cases where notification to Ministers would be required as a result of an outstanding objection from a statutory consultee.

Consultation

10.3 This is a consequential change which has not been subject to consultation in advance.

Options

Option 1 Do nothing.

Option 2 Amend procedures as drafted.

10.4 Option 1 would retain the status quo whilst Option 2 would require planning authorities to consult statutory consultees irrespective of the likely decision.

Costs and benefits

Sectors and groups affected

10.5 This will impact upon all applications for planning permission which require consultation with statutory consultees.

Benefits

Option 1

10.6 The relationships between planning authorities, developers and statutory consultees would not be disturbed.

Option 2

10.7 The change ensures that where there are appeals against refusal of planning permission, or indeed local reviews of such decisions, the views of statutory consultees are available to the authority considering the appeal or local review. Anecdotal evidence suggests that many authorities will consult statutory consultees on an application as a matter of course when the criteria are triggered, even if ultimately they decide to refuse planning permission. This implies that the provision puts into statute what is already seen as being good practice.

Costs

Option 1

10.8 There would no direct additional costs for parties.

Option 2

10.9 The costs that may arise relate to additional processing by the planning authority and statutory consultees. Also, there might be a delay in the applicant receiving notice of refusal in cases where the planning authority is clear from the start that it will refuse planning permission, although such cases are likely to be rare.

11. Time periods for decision

Purpose and intended effect

11.1 Previously, planning applications had to be determined within 2 months from the submission of a valid application (extended to 4 months where an environmental impact assessment was required under the Environmental Impact Assessment (Scotland) Regulations 1999 (EIA Regulations)). After that period had elapsed without a decision on the application being issued, the applicant had a right of appeal on the grounds of non-determination. Planning authority performance was measured primarily with reference to the 2 month period.

11.2 With the introduction of processing agreements for applications for major development, there is a recognition that planning authority performance in such cases should be measured with reference to the time period for a decision set out in the agreement. We also wish to recognise that, even in the absence of a processing agreement, the processing of applications for major development are likely to take longer than just 2 months. The new DMR therefore include a statutory 4 month period for applications for major development.

11.3 The rationale for choosing 4 months as the basic period is that this is already used in relation to cases requiring EIA in recognition of the additional complexity in such cases.

Consultation

11.4 The proposed change to 4 months is consequential on the proposals for processing agreements and therefore no advance consultation has take place on this issue.

Options

11.5 The options considered were:

Option 1 Retain the previous 2 month/4 month (EIA) period except where a processing agreement had a negotiated extension.

Option 2 Option 1 plus a recognition that the extended processing necessary for major developments should be accommodated in cases where no processing agreement was reached.

Costs and benefits

<u>Sectors and groups affected</u>

11.6 The benefits of processing agreements are considered in the relevant section above. Option 2 has the additional benefit that even where there is no processing agreement, a reasonable amount of time is allowed for the determination of complex cases. This should benefit planning authorities to the extent that there performance would not be judged on time periods which are unrealistic in more complex cases. Applicants will benefit from greater certainty to the extent that a 2 month time period was entirely unrealistic for major developments and that a decision within 4 months is more likely to be achieved. It also reduces the risk of appeals on the grounds of non-determination in such cases being premature.

11.7 The risk is that planning authorities might end up being less efficient when processing major developments subjected to an extended statutory time period, which would

mean delays for applicants. However, given the nature of the developments specified in the hierarchy as major developments, a 4 month period does not represent an excessive extension and it is questionable to what extent planning authorities would seek to meet the 2 month deadline in cases where it is entirely unfeasible.

11.8 Given the nature of the developments to which this extended time period applies, should any of the costs in terms of delay arise, they are unlikely to affect small/ micro firms.

12. Decision notices, reports of handling and registers

Purpose and intended effect

12.1 People are often unsure whether their comments on a proposal have been brought to the attention of the decision makers. The regulations require planning authorities to prepare a report on each application. Such a report, available on the public register, will ensure that planning authorities provide a full record of the relevant factors considered in determining each application for inclusion in the planning register.

Consultation

12.2 Following on from public consultation on *Getting Involved in Planning* (2001), Ministers published their response in *Your place, your plan* (2003). *Modernising the Planning System* (2005) proposed that planning authorities would be required to prepare a report on each application.

Options

12.3 The provision requiring the preparation of reports by the planning authority may have a minor impact on costs for business. Planning authorities are not currently required to prepare a report for the planning register but would prepare a report to the relevant decision making committee. It is not clear whether this cost is currently passed on to the developer through the planning application fee. We have considered two options

Option 1 Do nothing – retain the current requirements for information to be placed on the planning register.

Option 2 Introduce the requirement that a report detailing how the application has been considered by the planning authority is to be placed on the planning register.

Costs and benefits

<u>Sectors and groups affected</u>

12.4 Planning authorities will be required to prepare a report on the handling of the application. We envisage that this will be similar in content to the reports currently prepared for planning committees. There will be no additional information required from the applicant in order for the planning authority to complete the report. The impact of these proposals will be upon all applications for planning permission.

Benefits

Option 1

12.5 The procedures for the preparation of information are well understood. There would be no need for a change in procedures for planning authorities who already provide a report to councillors. There would also be no additional costs for business.

Option 2

12.6 The provisions will lead to additional information to all, including business interests, on how development proposals have been considered by the planning authority. This will hopefully improve confidence in the way that development proposals have been considered.

Costs

Option 1

12.7 The cost of preparing the report would remain the same and potentially be met through the planning application fee. However, it would not fulfil Ministers' policy intention of making the planning system more inclusive and transparent by making information more widely available to the public.

Option 2

12.8 Research is currently being undertaken on the appropriate levels of planning application fees. This additional information will help identify the possible direct cost of this proposal and will feed into the final RIA.

13. Bad neighbour development

Purpose and intended effect

13.1 Bad neighbour developments are those which are more likely to give rise to wider impacts on amenity by virtue of noise, increased pedestrian movements or traffic and so on. The effect of being classed as a bad neighbour development is simply that an advert is required to be placed in a local newspaper. This advert should indicate that a planning application has been made for the development in question and giving the location of the site to be developed and indicating that people can make their views known to the planning authority before they determine the application.

13.2 The changes proposed in the consultation paper by and large update the terminology used in the current legislation and add several suggestions to the list.

13.3 The section on neighbour notification above indicated the cost of an advert for an application to be in the region of £200. Where new development is involved in relation to most of the additions suggested in the consultation paper, this figure is unlikely to be a significant part of the costs associated with the development. In some of the smaller ones, or where an application is for a change of use of an existing building then this sum may be appear to be more onerous, but is unlikely to deter applicants for planning permission or increase the overall costs of pursuing an application.

13.4 Where advertising of the application is required because the proposal meets a number of criteria, for example, is a bad neighbour development, represents a departure

from the development plan and where neighbour notification cannot be carried out, only one advert needs to be placed.

14. Miscellaneous Issues

14.1 There are a number of issues arising from new provisions included in the 2006 Act which are not covered in these regulations. In addition, issues around certain provisions in relation to the GDPO which are described in this section.

Standard application forms

14.2 Under the current GDPO an application for planning permission is made on a form issued by and obtainable from the planning authority. However, the 1997 Act as amended by the 2006 Act will allow us to specify a standard planning application form or forms for use across Scotland. Work on standard application forms is progressing with the work on e-forms for electronic submission of planning applications. Until that work reaches a conclusion, there will be no statutory requirement and applicants will be expected to use forms provided by the planning authorities, as at present, or e-forms available from the Scottish Government.

Powers of direction

14.3 The current GDPO provides Scottish Ministers with powers of direction so they can direct:

- that a development which is listed in Schedule 2 to the EIA Regulations and of a class described in the direction requires EIA.
- that planning permission may not be granted by a planning authority either indefinitely or during such period as may be specified with regard to a development or class of development specified in the direction.
- that the planning authority must consider imposing a condition specified in the directions when minded to grant planning permission for a development or class of development specified in the direction, and unless the directions have been dropped, satisfy Scottish Ministers that consideration has been given and if the condition will be imposed.
- that the planning authority pass to persons prescribed in the direction information, also specified in the direction, on applications for planning permission made to that authority, including information as to the manner in which the application had been was dealt.

14.4 These powers to make directions or equivalent powers are contained in the new DMR. These powers to give a direction also include powers to vary or cancel the direction with a subsequent direction. All directions in force under the GDPO and its predecessors prior to the coming into force of the new DMR will remain in force.

14.5 Powers of direction are already contained in the current GDPO so no new costs are being introduced. Current costs however include:

- when an EIA is required it is the applicant who must produce an Environmental Statement for the planning authority to consider and bear any costs associated with that and the EIA process in delaying their plans for development;

- under the directions restricting the grant of planning permission where it may not be granted by a planning authority either indefinitely or during such a period specified in the direction there is the potential cost to the planning authority through costs associated with the process of notification of applications to Ministers;

- under the directions requiring consideration of conditions for an application the planning authority may incur a cost through their consideration of imposing conditions when minded to grant planning permission and the case they will be required to put to Ministers to satisfy them that such consideration has been given;

- the costs to the planning authority of the notification process when they require to pass to persons specified in the direction, information also specified in the direction, on applications for planning permission made to that authority, including information as to the manner in which the application had been dealt with.

Variation of applications

14.6 The 2006 Act introduces two new provisions to the 1997 Act regarding the variation of applications. New section 32A of the 1997 Act specifies that planning applications may, with the agreement of the planning authority, be varied after submission. Where the planning authority consider such a variation to be substantial, they must not agree to it. The planning authority may give such notice of the variation as they consider appropriate.

14.7 Although new sections 32A and 32B specify powers for making further provisions in subordinate legislation with regard to variations, there are no such further provisions as part of this package.

14.8 Where the planning authority decides to give notice of the variation of an application under new section 32A they will incur the cost of paying for the notification. This is a voluntary cost as they are not required to do this under the 2006 Act.

Crown immunity provisions

14.9 With the removal of Crown immunity from planning control in 2006, provisions were put in place to allow applicants to withhold information that may be sensitive on national security grounds. Similar provisions will be applied to the new requirements in these regulations. Certain provisions of the current GDPO are also applied to planning applications made by the Crown directly to the Scottish Ministers on the grounds that the development is of national importance and is required urgently. Again the like provisions will be applied to urgent Crown applications. No additional costs are expected to arise from these provisions.

CLUD provisions

14.10 The GDPO, as amended, currently contains provisions on the making of applications for certificates of lawful use or development (CLUDs) and the revocation of same. Equivalent provisions are contained in these regulations. These have been updated but

make no significant changes to the procedures for CLUDs and so are not expected to present any additional costs.

Marine fish farming provisions

14.11 Marine fish farm development was brought within planning control this year through *'The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (SSI 268/2007)'* and amendments were made to the provisions of the GDPO as a result. These relate to amendments to take account of these developments being at sea and changes included removing requirements for neighbour notification and requiring all applications in this regard to be advertised. Similar provisions will apply in relation to the new development management regulations subject to any consequential amendments. It is not expected that there will be any significant additional costs as a result of these amendments.

E-enablement of development management

14.12 The current GDPO allows most of the statutory procedures to be carried out electronically and the intention is that the new development management regulations should be similarly e-enabled.

Powers to require further information

14.13 Planning authorities will still have powers to require additional information in order to determine planning applications. The use of these powers does not affect the information which is required to make an application valid.

14.14 In relation to planning permission in principle, planning authorities will retain a power to require within a month from submission of a valid application that additional detail on certain aspects of the development proposal, will need to be submitted before processing can continue.

15. Transitional arrangements

15.1 The draft development management regulations do not go into the detail of transitional arrangements. There are a number of issues still under consideration in this regard, for example: how to treat applications in the system when new requirements take effect; how to commence aspects of the new system relating to the pre-application phase to avoid disadvantaging applicants; and how to deal with applications for reserved matters made after the new provisions on PPP come into effect. There is also the broader question of how we stage the introduction of the various elements of modernisation of development management processes.

15.2 We will consult with planning authorities and a sample of stakeholders on these issues prior to the legislation being laid before the Scottish Parliament. We will also ensure there is publicity for any transitional arrangements prior to the coming into force of the legislation. The finalised RIA will contain more detailed information on the transitional arrangements and the options considered.

16. Small/micro firms impact test

16.1 Most small and micro businesses will only occasionally deal with the planning system, and all small businesses should benefit from our proposals to improve efficiency in the planning system.

17. Legal Aid impact test

17.1 These Regulations do not create new rights or responsibilities that could give rise to increased use of legal processes. The regulations will not impact on an individual's right of access to justice through availability of legal aid.

18. "Test run" of business forms

18.1 The Scottish Government is proposing a template for processing agreements to highlight the intention the agreements should be kept as straightforward as possible. It will not compulsory to follow this layout, and as processing agreements are agreements between parties it is open to them to determine the form and content of the written part of the agreement. Therefore no 'test run' of business forms is considered necessary in relation to this proposal.

19. Competition assessment

19.1 The regulations relate to all applications for planning permission. We do not believe these regulations will distort or restrict competition between firms or suppliers selling the same or similar products or services.

20. Enforcement, sanctions and monitoring

20.1 We will be monitoring the way planning authorities implement the changes resulting from the 2006 Act and the secondary legislation stemming from it. This will form part of our overall monitoring of authorities' performance which is already carried out by the Planning Directorate of the Scottish Government. Section 30 of the 2006 Act gives Scottish Ministers powers to conduct, or appoint a person to conduct on their behalf, an assessment of the planning authority's performance of functions under the planning Acts.

DRAFT REGULATORY IMPACT ASSESSMENT

THE TOWN AND COUNTRY PLANNING (INCREASE IN GROSS FLOOR SPACE) (SCOTLAND) ORDER 2007

1. Title of proposal

1.1 The Town and Country Planning (Increase in Gross Floor Space) (Scotland) Order 2007.

2. Purpose and intended effect

2.1 The aim is to bring within the definition of "development" and therefore subject to planning control, the installation of additional floor space within a building above a specified level. The secondary legislation defines the circumstances in which an increase in floorspace would require planning permission.

2.2 Under the 1997 Act, alterations which only affected the interior of a building or which did not materially affect the external appearance of the building, were not considered to fall within the meaning of 'development' and therefore did not require planning permission. This would include internal increases in the gross floor space of the building, however in the wrong locations uncontrolled increases in retail floor space, can undermine policy objectives for sustainable land use, travel patterns and accessibility and may undermine the Government's key objective set out in Scottish Planning Policy 8: *Town Centres and Retailing* to promote the vitality and viability of town centres. To respond to the practice of operators of out-of-town stores or retail parks adding mezzanine floors, planning authorities now often attach conditions to planning consents which limit the amount of permitted floorspace. However, as many earlier permissions did not have such conditions - controls are considered necessary to help protect town centres.

3. Consultation

3.1 The White Paper *Modernising the Planning System* set the context for the 2006 Act. It trailed proposals to bring the installation of mezzanine floors within the planning system. The draft development order has been the subject of internal discussion within the Planning Directorate. There have been further discussions with key stakeholders such as the Scottish Society of Directors of Planning plus individual planning authorities in advance of the formal public consultation.

4. Options

Option 1 Do nothing and maintain the status quo.

Option 2 Introduce controls for operations where the proposed increase would result in an aggregate increase in the gross floor space of the building of 200 square metres or more, in specified circumstances.

Detailed choices within Option 2 were:

- **Applying the controls to different types of use** – The Act provides the powers for Scottish Ministers to specify any circumstances or description of circumstances in which subsection 26 (2) of the Act – exclusions from the definition of development - does not apply to operations mentioned in paragraph (a) of that subsection, which have the effect of increasing the gross floor space of the building. The Scottish Government intends to apply the development order to buildings used for the retail sale of goods. We are not

aware of other types of use raising significant issues through use of internal floorspace increases.

- **Using a set amount of floorspace in square metres or a fixed %** – The Act allows the development order to describe the circumstances by such amount or percentage as is so specified. The draft order uses set amounts in square metres rather than a percentage. It was considered that use of a percentage figure would be a less precise tool, and would favour existing large-scale developments. The use of set amounts in square metres will also help ensure consistency in approach.

- **Limiting the amount of additional floorspace which can be increased once a set level has already been previously added** – The approach proposed by the Scottish Government would allow operators to increase the gross floor space of their building by 200 square metres without the need for consent. It would then restrict the ability for operators to incrementally increase the floorspace of their building in chunks of up to 200 square metres without applying for consent. Incremental uncontrolled increases of a significant size would undermine the provisions in the development order and have the potential to have more significant cumulative impacts. It is therefore proposed there should be a different level, of what is defined as development, after previous works to increase the gross floor space of the building by 200 square metres or more have taken place, and that this level would be 10 square metres.

4.1 Option 1 would retain the current position and leave it to planning authorities to use their powers to include conditions to planning permissions to control such developments. Option 2 would set out the extent of internal retail floorspace which was considered as being development and therefore subject to a formal application for planning permission.

5. Costs and benefits

Sectors and groups affected

5.1 The main impact of the Order will be on retail operators or property professionals looking to increase the floorspace of buildings in their portfolio used for the retail sale of goods. We expect this group to include medium to large businesses, particularly property developers and businesses carrying out major expansions in areas such as the retailing and service sectors, though small family building firms and self-employed architects and agents may also fall into this group. There will also be an impact on planning authorities as the changes may lead to a small increase in the number of planning applications.

Benefits

Option 1

5.2 This would not alter the current arrangements which are understood by planning authorities and developers.

Option 2

5.3 This provision will help support Scottish Government planning policy by reducing the likelihood of inappropriate uncontrolled development taking place in unsustainable locations to the detriment of town centres. It will allow for an appropriate consideration of the full effects of such development.

Costs

Option 1

5.4 There would be no additional costs to parties as the status quo would be retained. However, this option would not allow for implementation of the policy intention to regulate such matters as set out in provisions contained in the 2006 Act.

Option 2

5.5 In the circumstances set out in the Order, the requirement for full planning permission will lead to an additional cost to developers attributed to the cost of preparing a planning application and the fee for submitting it to the planning authority.

6. Small / micro firms impact test

6.1 The main impact will be on retail operators or property professionals looking to increase the floorspace of buildings in their portfolio used for the retail sale of goods. We expect this group to include medium to large businesses, particularly property developers and businesses carrying out major expansions in areas such as the retailing and service sectors, though small family building firms and self-employed architects and agents may also fall into this group.

6.2 The draft Order provides that operators can increase the gross floor space of their building used for the retail sale of goods by 200 square metres, without the need to apply for planning permission. The 200 square metre threshold is primarily to exempt small businesses and shops from the need to apply for permission when looking to increase the floorspace of their premises for ancillary uses such as storage or other facilities. The draft Order only applies to buildings used for the retail sale of goods.

7. Legal Aid impact test

7.1 The draft Order does not create new rights or responsibilities that could give rise to increased use of legal processes. The draft Order will not impact on an individual's right of access to justice through the availability of legal aid.

8. Competition assessment

8.1 The draft Order relates to buildings used for the retail sale of goods. It should not limit the ability of operators of different types of retail businesses to compete. The reference to a building used for retail sale of goods will include buildings used as a retail warehouse club, but does not include a building used only for the retail sale of hot food. We do not believe the draft Order will distort or restrict competition between firms or suppliers selling the same or similar products or services.

9. Enforcement, sanctions and monitoring

9.1 We will be monitoring the way planning authorities implement the changes resulting from the 2006 Act and the secondary legislation stemming from it including the Town and Country Planning (Increase in Gross Floor Space) (Scotland) Order 2007. This will form part of our overall monitoring of authorities' performance which is already carried out by the Planning Directorate of the Scottish Government. There will also be scope to alter the circumstances or amount for which increases in the gross floor space of the building count as development, in order to maintain the effective operation of the system.

ANNEX E

DEVELOPMENT MANAGEMENT CONSULTATION: PARTIAL EQUALITIES IMPACT ASSESSMENT

1. Equality Impact Assessment (EQIA) is about considering how policy (by policy we mean activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

2. The Scottish Government is committed to ensuring that the planning system is designed and delivered in a way that is sensitive and relevant to the diverse needs and experiences of all people living in Scotland. We will consider and address the impact of policy on particular groups of people (whatever their age, race, gender, sexual orientation, religion or belief or whether disabled or not) This partial EQIA recognises that we are not currently able to identify in all cases **who** these people might be and **what** specific needs they may have.

3. The Scottish Government has developed the following 10 step process to aid the EQIA process.

Step 1	Define the aims of the policy
Step 2	What is already known about the diverse needs and/or experiences of the target audience?
Step 3	What else do we need to know to help us understand the diverse needs and/or experiences of the target audience?
Step 4	What does the information we have tell us about how this policy might impact positively or negatively on the different groups within the target audience?
Step 5	What, if any, changes will be made to the policy?
Step 6	Does the policy provide the opportunity to promote equality of opportunity or good relations?
Step 7	Based on the work we have done – rate the level of relevance of the policy – HIGH, MEDIUM OR LOW
Step 8	Do we need to carry out a further impact assessment?
Step 9	Explain how we will monitor and evaluate this policy to measure progress
Step 10	Sign off and publish the impact assessment

4. This partial EQIA covers the first four steps and where we have information, step 6 is also included. We are seeking your views on the conclusions made and particularly where you consider that the policy may impact disproportionately on equality groups.

Step One

Defining the aims of the policy

What is the purpose of the proposed policy (or changes to be made to the policy)?	To make amendments to legislation for the determination of applications for planning permission by planning authorities and define the scope of the addition of internal floor space as development. Whilst fitting into the aims of the modernisation agenda, these proposals are primarily aimed at making the planning system more inclusive.
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	Policy changes will primarily affect how planning authorities interact with developers and communities. There are also specific requirements on developers particularly in relation to pre-application class screening, pre-application consultation with communities and the preparation of design and access statements. Additionally the changes will, in defined circumstances, bring the addition of internal floor spaces to developments into the planning system. By improving efficiency, inclusion and transparency in the planning system, it is intended that this policy will benefit all sectors of society.
How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?	The changes will be brought in through secondary legislation which will be accompanied by appropriate guidance. It will be for planning authorities primarily to undertake the procedural changes though communities and developers will also have a role to play.
How does the policy fit into our wider or related policy initiatives?	This policy particularly fits into three of the Scottish Government's five strategic objective's: • Wealthier and fairer; • Safer and stronger; and • Greener. These proposals form part of the wider modernisation of the planning system, the key aims of which are to make it: • fit for purpose; • more efficient; • more inclusive; and • play its part in delivering sustainable development.
Do you have a set budget?	No

Step Two

What is already known about the diverse needs and/or experiences of the target audience?

To understand the different needs and experiences of those affected by the policy, we have gathered the following information about the target audience. The evidence and information contained in this EQIA primarily comes from consultations undertaken over the past few years by the Scottish Government on modernising the planning system. It is supported by work of the Scottish Parliament's Communities Committee in its consideration of the Planning etc. (Scotland) Bill and specific research projects. A summary of the range of information can be found in the summary table with specific evidence and information highlighted below.

Do we have information on				
Age	Yes	X	No	
Disability	Yes	X	No	
Gender	Yes	X	No	
Lesbian, Gay, Bisexual & Transgender	Yes		No	X
Race	Yes	X	No	
Religion and Belief	Yes		No	X

Age	Evidence: Research contained in *Planning and Community Involvement* indicated that generally the people likely to volunteer their views on a planning application come from an age profile dominated by the middle aged and the elderly. Consultation: In its pre-legislative consultation on the Planning Bill, the Parliament's Communities Committee heard from a representative of the Scottish Youth Parliament that there is a need to consider how the planning process can be made more open and transparent so that it is easier to understand and that young people should be consulted in a proactive and non-tokenistic manner.
Disability	Evidence: Bodies representing disabled people made representations to Parliament's Communities Committee whilst it was considering the Planning Bill. Whilst the then Disability Rights Commission (DRC) welcomed the consultation provisions in the Bill, it wished to see that consultation activity was supported by information accessible in a range of formats. The Scottish Disability Equality Forum (SDEF) looked to see disabled people involved at the pre-application consultation stage. Both organisations were supportive of the introduction of access statements and awaited further details. Consultation/Involvement: Both organisations commented on the proposals in the draft Planning Advice Note (PAN) 81: *Community Engagement*. The DRC wished to see connections with broader requirements under the Disability Equality Duty. There was also a general theme that information should be accessible.

	During the pre-consultation phase, both the DRC and SDEF were invited to engage in the formulation of the provisions on design and access statements.
Gender	Evidence: Defra funded focus groups (organised by the Women's Environmental Network) aimed primarily at looking at environmental decision-making for women. *Women in decision-making* sets out views of women on barriers to participation. These include a view that there was a lack of information on opportunities to participate and a concern with the use of jargon. In addition, research contained in Planning and Community Involvement showed that women were slightly more likely than men to become involved in the planning process, but significantly more likely to oppose a planning application. Although not looking specifically at planning related matters, *A Gender Audit of Statistics* suggested that, as citizens, men and women are equally active, but that their patterns of activity differ in some respects. Consultation: Results from the Scottish Household Survey set out in *Getting Involved in Planning: Summary of Evidence* showed that broadly men and women were equally interested in the planning of their area and considered it was important that people should be involved in the planning of their area.
Lesbian, Gay, Bisexual & Transgender	Evidence: None Consultation: In light of limited information on the views of the LGBT community on the potential impacts of the policy, the Scottish Government sought to raise awareness by advising a number of representative organisations of the draft proposals during the pre-consultation stage.
Race	Evidence: Representative bodies for race equalities groups made representations on the Planning etc. (Scotland) Bill either at the pre-legislative event or at Stage 1. The then Commission for Racial Equality (CRE) was concerned that whilst the aspiration to strengthen the involvement of local communities within the planning system which underlies the Planning Bill was welcome, measures needed to be put in place to ensure that it did not strengthen the involvement of some sectors of the community to the detriment of others. The CRE was particularly concerned about the relationship of the gypsy traveller community with the planning system. Consultation: This was undertaken to support the preparation of PAN 81 with a workshop comprising a group of Black and Minority Ethnic young adults. Additionally, a similar workshop was held with a group of gypsy travellers in the Grampian area. These groups put forward views on encouraging participation in the planning

	process. There was a particular concern relating to access to information and a need to simplify language.
Religion and Belief	Evidence: None Consultation: In light of limited information on the views of religious and faith groups on the potential impacts of the policy, the Scottish Government sought to raise awareness with such groups by advising a number of representative organisations of the draft proposals during the pre-consultation stage.

Step Three

What else do we need to know to help us understand the diverse needs and/or experiences of the target audience?

Age	We have limited information on the potential impact of this policy on this group. We will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate the broad age category they are in. We will also look at the arrangements during the public consultation to engage with organisations representative of such groups.
Disability	We have some information on the views of organisations representative of disabled people on the broad principles of the overarching primary legislation. Such organisations particularly wished to see more information and detail on the policy relating to access statements. In its response to the draft proposals, the DRC noted that councils, as public authorities, should be impact assessing policies around such statements in light of the Disability Equality Duty. We are looking for views on the more detailed proposals set out in the secondary legislation. Additionally we will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate whether they consider themselves to be disabled.
Gender	We have some limited information on the potential barriers to engagement for a part of this group. We will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate their gender. We will also look at the arrangements during the public consultation to engage with organisations representative of such groups.
Lesbian, gay, bisexual and transgender	We have no information on the potential impact of this policy on this group. We will look at the arrangements during the public consultation in an attempt to engage with organisations representative of the LGBT community. We will particularly encourage this group to engage in the consultation process.
Race	We have limited information on views regarding the broad principles of the overarching primary legislation. We have no information on the proposals contained in the secondary legislation. We will seek to disaggregate the views from individuals on the proposals by asking respondents to indicate their ethnicity. We will also look at the arrangements during the public consultation in an attempt to engage with organisations representative of such groups.
Religion and Belief	We have no information on the potential impact of this policy on this group. We will look at the arrangements during the public consultation in an attempt to engage with organisations representative of religious and belief groups. We will particularly encourage this group to engage in the consultation process.

Step Four

What does the information we hold tell us about how this policy might impact positively or negatively on the different groups within the target audience?

In Step Four we have looked at the information collected to assess what it is telling us about the needs of different groups of people.

Age	Evidence shows that the people likely to volunteer their views on a planning application come from an age profile dominated by the middle aged and the elderly. As one of the key aims of the proposals is to make the planning system more inclusive for all of society, then there is the potential for the under representation of other age groups to be addressed. Although provisions relating to access statements are aimed at disabled people, there is the potential for such considerations to have a wider positive impact on, for example, those with a mobility impairment due to age or for families using buggies / prams. We would therefore see that there will be a generally positive impact on this group of these policy proposals.
Disability	The provisions relating to the access element of design and access statements are aimed particularly at impacts of the built environment on disabled people. The aim is that the provision will lead to issues around access being considered at the outset of the development process rather than considered once planning permission has been granted. We would therefore see that there will be a generally positive impact on this group of these policy proposals.
Gender	Evidence from the responses to the Scottish Household Survey would indicate that there was very little gender imbalance with regard to the interest that men and women had in the planning of their area. Additionally, the concerns coming from the Women's Environmental Network paper on barriers to participation reflect similar issues raised regarding the availability of accessible information. As the provisions seek to improve access to information on planning matters for all, we would see that there will be a generally positive impact for all individuals and communities of these policy proposals.
Lesbian, Gay, Bisexual & Transgender	Although we do not believe there are any particular concerns relating to the potential impact on the LGBT community, one of the key aims of the proposals is to make the planning system more accessible for all of society and LGBT people will benefit from this.
Race	Evidence shows that there is concern that some minority

	ethnic groups may be disadvantaged in relation to access to information. One of the key aims of the proposals is to improve access to information on planning matters through the provision of more information on weekly list and statutory planning application reports. We would therefore see that there will be a generally positive impact on this group.
Religion and Belief	Although we have no specific evidence relating to the potential impact on religious or faith communities, one of the key aims of the proposals is to make the planning system more inclusive for all in society. One of the key aims of the proposals is to make the planning system more accessible for all of society and religious and faith communities will benefit from this.

References to Published Information

A Gender Audit of Statistics (Scottish Executive 2007)
http://www.scotland.gov.uk/Publications/2007/03/27104158/1

Draft PAN: Community Engagement – consultation responses (Scottish Executive 2006)
http://www.scotland.gov.uk/Publications/2006/12/08125517/0

Getting Involved in Planning – Summary of Evidence (Scottish Executive 2002)
http://www.scotland.gov.uk/Publications/2002/10/15638/12159

Planning and Community Involvement (Scottish Executive 2004)
http://www.scotland.gov.uk/Publications/2004/07/19666/40347

Scottish Parliament Communities Committee: *Reports of Pre-legislative events: Planning etc. (Scotland) Bill* (Scottish Parliament 2006)
http://www.scottish.parliament.uk/business/committees/communities/reports-06/cor06-05-Vol02-01.htm#6

Women in decision-making (Women's Environmental Network 2007)
http://www.wen.org.uk/general_pages/resources.htm

ANNEX F

FULL LIST OF CONSULTATION QUESTIONS

Q1: Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?

Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?

Q3: Is the information required in a pre-application screening notice sufficient?

Q4: Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances?

Q5: Do you agree with the proposed content of the proposal of application notice?

Q6: Are the requirements to notify community councils and neighbours of the proposal of application notice sufficient or should others be notified at this stage as a statutory minimum?

Q7: Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?

Q8: Do you agree with the requirements on the content of pre-application reports?

Q9: Do you support the classes of development which will be subject to pre-determination hearings?

Q10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?

Q11: What arrangements would need to be made to convene full councils to make these decisions?

Q12: Do you support the view that processing agreements should be in place before submission of the application?

Q13: Do you agree that where there is to be a processing agreement that it should be entered into not later than 28 days after validation?

Q14: Do you agree with the suggested components of a processing agreement?

Q15: Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think there is scope for statutory consultees to also sign the agreement?

Q16: Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?

Q17: Do respondents consider the approach to the content of planning applications to be appropriate or are any of the other options in paragraph 5.3 preferable?

Q18: What other measures could help to ensure that applications are supported by adequate information at the start of the planning process whilst still encouraging efficiency in the development management system?

Q19 Do respondents consider that the draft regulations on the content of applications for Planning Permission in Principle are pitched at an appropriate level of information?

Q20: Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?

Q21: Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?

Q22: In addition to those considered in the options, in what circumstances might statements consider only one element – design or access?

Q23 How can access panels be used most effectively in considering design and access?

Q24: Do you consider that there is sufficient clarity in the regulations to allow for effective and timeous validation of applications where design and/or access statements are required?

Q25: What role can local authority access officers play in assessing the access element of statements?

Q26: What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?

Q27: Do you consider the proposals on service of notice to neighbours to be appropriate?

Q28: Do you agree that, in order to minimise costs and potential delay, a single notice sent to the address of the neighbouring land is sufficient for these purposes?

Q29: Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?

Q30: Do you support the proposed definition of neighbouring land?

Q31: Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?

Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?

Q33: Are you content with the Scottish Government’s proposals for the public availability of the list?

Q34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?

Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?

Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months?

Q37: Is the level of information to be provided in the decision notice appropriate?

Q38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?

Q39: Is the information to be contained in the report of handling appropriate in order to provide a robust summary of how the application has been dealt with and the reasons behind the planning authority's decision?

Q40: Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?

Q41: What might be an appropriate alternative name for "bad neighbour development"?

Q42: Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have other suggestions?

Q43: Are there any others uses which you consider should also be subject to controls on increases in gross floorspace ?

Q44: Do you support our proposal to have different approaches depending on whether other increases in the internal floorspace have taken place?

Q45: Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?

Q46: For the purpose of controlling internal floorspace, do you support the decision to use amounts in square metres rather than a percentage?

Q47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?

Q48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?

Q49: Do you have any other comments to make on the draft development management regulations or the mezzanine floors order?

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