

PLANNING

**Planning  
Modernisation  
Consultation  
Seminars  
January to  
March 2008**

*Seminars Report*

April 2008



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scotland  
SCOTTISH GOVERNMENT

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## INTRODUCTION

1. The Scottish Government is leading a major programme of modernisation for Scotland's planning system. The Government's overarching purpose is the promotion of sustainable economic growth, and Planning has an important contribution to make. Working within the framework of the Planning etc. (Scotland) Act 2006, a package of proposals for implementing secondary legislation and attendant guidance has been brought forward for consultation.

2. One integral element of the consultation exercises has been a series of public seminars on planning modernisation with a wide range of key stakeholders. We conducted six seminars, three open to a range of planning interests with a further three focused on matters of interest to planning authority officers.

3. Directorate officials agreed to record the key questions raised at these events, and to set out the answers in a summary report to be shared with attendees and a wider audience. Some questions raised issues meriting further consideration by policy leads not in attendance, but these have been addressed subsequently by the responsible officials, and are also set out herein. This Directorate report will also be published on the Scottish Government's planning webpages.

4. This report summarises the planning modernisation seminars run between January and March 2008 as part of the following planning consultation exercises:

<b>Consultation</b>	<b>Closing date</b>
SPP 3: <i>Planning for Housing</i>	31/03/08
Development Planning	20/02/08
Development Plan Examination	04/04/08
Development Management	02/04/08
Planning Hierarchy	31/03/08
Modernising Planning Appeals	09/05/08
Enforcement	20/02/08

5. The report does not seek to define or anticipate how Scottish Ministers will deal with responses to the consultations later in 2008. The intention is to offer clarification on current thinking on some of the more detailed or contentious areas of the modernisation package, and to assist consultees in responding to the consultation exercises.

## **FORMAT OF THE SEMINARS**

6. Three seminars for a range of stakeholders interested in planning modernisation were held in Edinburgh (two) and Glasgow. A further three seminars were held with planning authority officers in Linlithgow, Perth and Inverness, with the intention that these would compliment the RTPi seminars for planning authorities held in Aberdeen, Glasgow and Edinburgh.

7. The seminars included: initial presentations on aspects of the modernisation agenda, followed by plenary Question & Answer sessions on development planning and development management issues. Delegates were then invited to take part in one of a range of workshops on particular aspects of the proposed reform package.

8. The seminars in Edinburgh and Glasgow included the option of a session on SPP3 on Planning for Housing. The questions raised following those presentations are also contained within this report with further information on those who attended / enrolled in the seminars at Annex A.

## **NEXT STEPS**

9. Following closure of the above consultation exercises, all responses will be analysed and considered along with any other available evidence to help officials advise Ministers, as they consider their developing positions on policy matters, the draft regulations and associated material.

10. Relevant stakeholders and planning interests will continue to be involved and consulted by officials, on an informal basis, on commencement and transitional matters.

11. We intend that final regulations and supporting material will be laid before the Scottish Parliament later in 2008. Further details on the planned timing of elements of the modernisation process will be available through the Modernising Planning page on the Scottish Government's Planning Homepage at [www.scotland.gov.uk/Topics/planning](http://www.scotland.gov.uk/Topics/planning).

12. The Directorate for the Built Environment would like to thank all the attendees for their contributions to the seminars. We value the comments offered and questions posed, and will consider them along with written responses to the modernisation consultations. For any queries or comments relating to this report, please contact Paul Boylan at [paul.boylan@scotland.gsi.gov.uk](mailto:paul.boylan@scotland.gsi.gov.uk) or 0131 244 7064.

## **SCOTTISH PLANNING POLICY 3**

*Q1. Has the Scottish Government considered that their proposed approach may mean that housing targets won't be met? A 5-year scheme means that efficient alternative means of releasing land for development need to be found?*

A1. The consultative draft of SPP3 – Planning for Housing sets out guidance on how local authorities should assess housing requirements and identify and release appropriate land to meet this requirement. Local housing strategies should reflect assessed housing need, which will in turn be reflected in development plans, which will identify land for housing need in full. The revised SPP3 should make it easier for local authorities to release land for housing. The guidance in the consultative draft of SPP3 provides that in the short-term, where there is an identified shortfall in meeting existing housing land requirements, planning authorities are expected to take steps to secure the delivery of housing to maintain a minimum five-year supply. It may be appropriate to identify additional sites and grant planning permission where, for example, proposals comply with the overall locational strategy and other policies of the development plan.

## **DEVELOPMENT PLANNING**

*Q2. Can standing supplementary planning guidance become statutory guidance once the Local Development Plan has been adopted?*

A2. Supplementary guidance (SG) must be adopted in connection with an approved SDP or adopted LDP. Our view is that pre-existing guidance could be readopted as supplementary guidance following the adoption of a LDP, subject to scrutiny by Scottish Ministers. In these circumstances Ministers are likely to require that the guidance has been subject to reasonably recent and satisfactory consultation, and that a clear 'hook' for it exists within the LDP.

*Q3. Does the Scottish Government envisage delay in production of supplementary guidance in connection with LDPs and SDPs?*

A3. Not necessarily. It could be good practice to prepare SG in parallel with the SDP or LDP to provide context for the plan as it is consulted on and undergoes examination. Such SG could be adopted at the same time as the plan. Action programmes should set out the planning authority's timescales for preparing SG.

*Q4. Can a Local Development Plan be prepared in compliance with an up-to-date structure plan, rather than a SDP?*

A4. We will clarify this in the final version of the transitional arrangements.

*Q5. What is the Scottish Government's interpretation of planning "policy" with the regulations for SDPs? In recent years, we had moved to, and become accustomed to, a targets-based approach.*

A5. We believe policies will still be required at the strategic level, e.g. the retail sequential test, though the emphasis of the document may be more skewed towards the vision and proposals elements.

Q6. *Is a five year review cycle for development plans unrealistic? Current practice suggests that it takes some 2-3 years to get to the stage of adopting a finalised local plan?*

A6. For a plan-led system to work effectively and build and maintain trust, it is essential that the plan-making process can respond quickly to changes in circumstances and that plans are kept up-to-date. We do not accept that five-yearly reviews are unrealistic. The process of rolling forward an existing plan which is itself relatively up-to-date should be simpler than preparing a plan “from scratch”. The 2006 Act sets the five year review period as a maximum: planning authorities may choose to aim for shorter review periods.

Q7. *Could representations be limited to only those parts of the plan that were changing?*

A7. No. The whole plan is available for comment. But we would not expect examinations to devote significant amounts of time to issues that had been thoroughly debated at previous examinations unless there was a change of circumstances.

Q8. *There appears to be no requirement to notify neighbours of SDP proposals even though these may now be site-specific, and may, by inference, proceed to the application stage before going through the LDP process?*

A8. We expect any site-specific SDP proposals to be large and where there are no realistic alternatives. In the absence of a legal requirement to neighbour notify, it would be appropriate for the SDPA to make special efforts to ensure that local people are aware of such proposals.

Q9. *Will the regulations remove the right to be heard from objectors to Local Development Plans?*

A9. The 2006 Act removes this right. Under the new system, the reporter will determine what further evidence he requires and in what form this should be presented to the examination.

Q10. *For the purposes of these draft regulations - what is meant by the term “publish”? How is the relevant period in the requirement to “publish within 3 years” calculated?*

A10. The publication date will be the date the planning authority carries out the actions signalled in section 18(1) of the Act (consulting key agencies etc). The publication date will be the start of the 6 week period for making representations. It is not the date a Planning Committee agrees the content of the plan.

Q11. *In relation to neighbour notification on Local Development Plans, how does an authority justify its view as to whether or not there will be “significant effect”?*

A11. In the final analysis, an authority’s actions will always be open to legal challenge. However, the Scottish Government is considering framing the final regulations and accompanying circular and guidance as to the types of proposal that will require to be neighbour notified more explicitly.

Q12. *Neighbours will be notified of LDP proposals, but not of alternative sites put forward in representations? An imbalance?*

A12. We are aware of this issue. To some extent alternative sites will have been canvassed at the Main Issues Report stage. We may also encourage as good practice that the promoters of alternative sites should submit evidence of community support to examinations. Meanwhile it may not be helpful to raise community concerns about sites that could have very little real prospect of being supported.

Q13. *Is Neighbour Notification required for a proposal within a designated area e.g. a conservation area (as opposed to a site specific proposal)?*

A13. This is not the intention. We will consider how to clarify this in the final regulations.

Q14. *Which elements of Supplementary Planning Guidance will be statutory? What will be left to the local authority?*

A14. Authorities will always have the option of adopting guidance in a non-statutory form without the involvement of Scottish Ministers. The key tests for statutory supplementary guidance will be a proper connection to the SDP or LDP and an adequate level of consultation and public involvement in its preparation.

Q15. *Do the additional requirements to consult with “Scottish Ministers” run counter to the overall stated policy objective of local planning decisions being made locally?*

A.15 No. Consultation with “Scottish Ministers” should improve the quality and consistency of development planning across Scotland. Some Government directorates have a similar role to key agencies in that they are key infrastructure providers such as Transport Scotland or environmental advisors such as Historic Scotland. The Government is also well-placed to ensure that planning policies are being developed in line with national planning policy, and to monitor and disseminate best practice.

Q16. *Is consultation with Scottish Ministers on supplementary guidance contrary to the ethos that Scottish Government wants Local Government to deliver in partnership?*

A16. It is important for Scottish Ministers to be assured that supplementary guidance is not being used to introduce major policy changes outside the framework of the LDP or SDP, or without effective community involvement. In addition, this scrutiny should give the guidance enhanced status once adopted.

*Q17. The expectation that proposed LDPs can be published within one year of the submission of SDPs is ambitious. What if late changes are made to the SDP?*

A17. In the new system there should be fewer 'surprises' late in the process. But the modifications stage does allow for changes to be made to LDPs in these circumstances. We would not expect LDPs to pass the modifications stage before the SDP was approved.

*Q18. The 3 year timescale for publishing the first proposed LDPs may be difficult to achieve, especially where old-style local plans are currently proceeding.*

A18. There is scope for flexibility in exceptional circumstances, but it is unhelpful to have old-style local plans continuing for too many years after the commencement of the new system. Where local plans are up-to-date we would expect the process of rolling strategy forward into a LDP to be more straightforward than where the local plan is clearly out-of-date.

## DEVELOPMENT MANAGEMENT

### Enhanced Scrutiny

*Q19. Concerned that opportunities for additional scrutiny will be seized on by certain enthusiastic communities. This may greatly increase the workload of local authorities in dealing with interest from a wider range of parties, and raises concerns about resourcing.*

A19. The planning modernisation agenda seeks to promote the effective, purposeful inclusion of communities in discussing planning issues that affect them. It will be for individual planning authorities to determine how best to support that aim and meet their statutory responsibilities in the context of particular proposals and applications. The responsibility for conducting the actual direct engagement with communities and other consultees will be with developers.

The Government will assist via further guidance, and we look to support the provision of advice and assistance to affected communities through enhanced support for Planning Aid Scotland. We will also look to clarify and manage expectations among communities, authorities and developers as to the extent of proportionate pre-application engagement, as well as its purpose.

*Q20. How will the qualitative aspects of pre-application consultation be assessed? Can the local authority challenge what has been recorded as having been carried out, and can inadequacies be used as a reason for refusal?*

A20. The planning authority will decide whether an applicant has “complied” with statutory pre-application consultation requirements – as provided by section 39 (1A) of the Act. It is submitted that the proposed components of a validly completed pre-application consultation report will disclose whether a meaningful engagement has taken place – see draft regulation 9 for the proposed elements of that report. However, we would welcome comments or suggestions on this aspect of the regulations.

It is in applicants’ interests to describe accurately what has taken place during the pre-application consultation. If the report does not prima facie meet the compliance requirements, then the application will be returned as invalid. The report will be published as part of the overall planning application, so communities and consultees will be able to see any inaccuracies or distortions for themselves.

*Q21. Schedule 1 identifies certain triggers attracting pre-application consultation requirements for certain applications. The level suggested for residential development is very low, which raises concerns as to the scale of impact. There is a wide divergence in scale between a 2,500 sq.m. retail floorspace threshold and 5 housing units.*

A21. We are consulting on the suitability of the “triggers” for pre-application consultation. They were developed as analogues for those proposals in the local class of developments marking “significant departure” from a given development

plan, included in the 2005 White Paper as a class which would attract the pre-application consultation requirements.

We welcome comments on potential impact on processing efficiency, and would be particularly grateful for views on proportionality and suggestions as to alternative means for giving effect to the commitment to include “significant departures”.

*Q22. Will local authority planning staff be available to brief applicants on aspects of pre-application consultation?*

A22. Planning authorities are responsible for responding to proposal of application notices from prospective applicants. Their responses determine the scope of pre-application consultations. It is reasonable to expect that those responsibilities will be supported by appropriate pre-application discussions between authorities and applicants. Further involvement in individual applications (e.g. by attending consultation events, providing advice to communities or elected members) should be driven by planning authorities’ view as to what is appropriate for a particular proposal.

We are scoping the feasibility of developing a community profiling toolkit for these purposes to promote clarity, consistency and proportionality. In terms of individual planning applications, it is accepted best practice to carry out pre-application discussions with the relevant planning authority.

*Q23. What is the added value in referring a legitimate decision taken by planning committee to a full council for ratification?*

A23. The rationale for including this additional layer of enhanced scrutiny in the 2006 Act was to introduce another element of democratic scrutiny to decisions on complex, significant or high-impact proposals. We have invited comments from authorities on the potential impact of this provision, and will endeavour to ensure that its delivery is practicable.

*Q24. What are pre-determination hearings going to deliver? How many will there be?*

A24. The requirement for pre-determination hearings is aimed at making the planning system more inclusive, allowing the views of objectors and interested parties to be heard before a planning decision is taken. At current application rates, we anticipate that there would be around 2200 annually across Scotland. We hope that the number of applications referred to hearing on the “significant departure from development plan” ground should start to see a marked fall.

For those types of developments significantly contrary to the development plan, and those requiring EIA, the planning authority is to hold mandatory pre-determination hearings so that those who have previously submitted views on the planning application will be able to make their views known to the Planning Committee before the decision is made. They are provided for by section 38A of the Planning etc (S) Act 2006 and draft regulation 37 of the draft Development Management Regulations 2008.

The procedures of pre-determination hearings are part of authorities' consideration of planning applications – so it would not be appropriate to prescribe. We intend to develop, with partners, a model “code of conduct” for the new hearings, drawing on existing good practice and acknowledging relevant requirements of accessibility etc.

*Q25. How does referral to Full Council work in relation to schemes of delegation?*

A25. The nature of the development will determine whether the initial consideration can be delegated to an individual planning officer. The intention is that local developments which are neither complex nor controversial should be delegated for decision by officials to promote efficiency. There will remain a range of applications which should continue to be dealt with by elected members. Certain applications should not be determined under the new schemes of delegation and these include those that are subject to the s38A requirements on enhanced scrutiny, including a pre-determination hearing by the planning authority.

*Q26. Will statutory pre-determination hearings be required to give reasons for the referral to the full council – is there not a prospect of prejudicing the application?*

A26. All decisions made by statutory pre-determination hearings need to be referred to the full council for ratification or reversal. The procedures for arranging and conducting the hearing are to be decided by the relevant authority, but the Scottish Government intends to develop guidance in partnership with planning authorities and other interests on these issues.

## **Processing Agreements**

Q27. *Is there a model for processing agreements?*

A27. A proposed template for a processing agreement was included in the consultation paper Development Management which issued in January 2008.

Q28. *What will the Scottish Government be doing to encourage third party bodies and statutory consultees to get involved in the processing agreements?*

A28. The Scottish Government will continue to work with all parties to promote the benefits of early engagement in the planning process, including contributing to discussions supporting processing agreements.

Q29. *Experience of pre-application agreements has been that it is rare (if not exceptional) for the applicant to submit what was required, in the timescale agreed. There were also issues around the quality of the submission. How would you propose to avoid this situation?*

A29. The success of processing agreements will depend, in part, upon the parties to the agreement respecting the terms of the agreement and delivering in accordance with the roles and responsibilities included in the agreement. This includes providing information to the timescale and quality agreed.

## **Planning Permission in Principle**

Q30. *Crofters rely on outline planning permission in order to access funding from the crofters commission. How will this work under the new Planning Permission in Principle?*

A30. As a concept PPP is no different from outline planning permission. However, the draft regulations indicate that additional indicative information about a proposal will be required as part of an application for PPP where the relevant detailed information does not form part of the application. Obviously, new procedures on neighbour notification, advertising and consultation would apply as they do to other planning applications.

Applications for PPP may also require to be subject to the new enhanced scrutiny procedures and may, depending on their scale, qualify as major developments and be subject to a processing agreement. However the thresholds for pre-application consultation or classifying a development as major would be unlikely to apply to proposals specifically to do with crofting.

Q31. *Greater information requirements need to be thought through. The Scottish Government should consider the impact on proposals being sent to consultees such as the Crofters' Commission?*

A31. The draft development management regulations indicate that an application would consist of an application form, description of the development, the plans necessary to describe the proposal and, where appropriate, a design and access statement and a pre-application consultation report. We are also looking at using IT to facilitate consultation to ease the handling of documents. The Crofters' Commission is not a statutory consultee on planning applications.

Q32. *How does PPP work in relation to sites that extract minerals? Can PPP be refused on the basis of a lack of information?*

A32. There is no statutory bar to applying for Planning Permission in Principle for minerals applications. However, given the nature of such development, the likely need for EIA and for a planning authority to satisfy itself that any effects on amenity or the environment are acceptable before granting planning permission, it seems likely that a planning authority would need to use its powers to require more information than the statutory minimum for applications for planning permission in principle.

Refusal of planning permission on the grounds of lack of information certainly happens in practice. Applicants do have a right of appeal and will, in future, have a right to require a local review, to test such a decision. Where the planning authority does not have sufficient information it would be imprudent to grant planning permission and other than refusing permission, if information requested is not forthcoming the case would simply sit on their books unless the applicant appealed on the grounds of non-determination

### **Content of Applications and Validation**

Q33. *Concerns that under new procedures, planning authorities will not be able to require much of the information that they currently ask for, (such as flood risk assessments), and will have to validate the application as received?*

A33. The new regulations as drafted clarify that a valid application is one that complies with statutory requirements. It will still be open, as at present, for planning authorities to require any further information they need to determine an application. In relation to major developments, planning authorities should agree with applicants the provision of additional information, the timescales for so doing and the overall time period for determining the application.

## **Design and Access Statements**

*Q34. What can a Planning Authority do if it considers a design statement to be inadequate?*

A34. The answer to this depends on the aspect in which the statement is deemed inadequate. If it does not meet the statutory requirements for content as set out in the DMR, then it would be for the planning authority to consider whether the planning application was valid. If a qualitative analysis of the contents of the statement discloses concerns, then the impact of an inadequate statement will be that the developer will have lost the opportunity to suitably explain the design principles and elements relating to access to the planning authority and those interested in the development.

## **Neighbour Notification and Publicity for Applications**

*Q35. Can a planning authority encourage developers to identify neighbours in support of the PA's new responsibility to neighbour notify? For some authorities, the centralisation and automation of services holds the risk of a dilution of local knowledge?*

A35. The duty to notify must rest with the planning authority and they would need to satisfy themselves that they have carried out the requirements of the regulations in full.

*Q36. Is hand delivery of neighbour notification by the planning authority an option?*

A36. We have already indicated in the consultation that we consider the use of first or second class post to be sufficient for these purposes. We will give consideration as to whether we need to clarify further in guidance the other alternative methods of delivery that might also be appropriate.

*Q37. How is the planning authority expected to neighbour notify if there is no building on a given plot of land?*

A37. Where it is not possible for a planning authority to carry out neighbour notification because there are no premises situated on the neighbouring land to which notification can be sent, the planning authority must publish a notice regarding the proposed development in a newspaper circulating in the locality in which the neighbouring land is situated. The form of the notice is set out in Schedule 8 of the draft regulations.

Draft Regulation 23(3) provides that where a planning authority is required to publish a notice in a newspaper in accordance with regulation 23(1), the applicant shall pay the costs to be incurred by the planning authority in arranging such advertisement at the time of submitting the planning application.

*Q38. Has the Government considered that, in certain rural areas, there is the potential for planning authorities to be obliged to advertise in the newspaper more often than issuing individual letters?*

A38. It is possible that planning authorities in rural areas may experience the suggested situation more often than urban based authorities. However, applicants will be required to meet all such advertisement costs and therefore planning authorities should not be financially disadvantaged by these proposed provisions.

*Q39. How will the definition of "neighbouring land" work when the planning application is in relation to one flat in the middle of a tenement or high-rise? 20 metres in all directions?*

A39. We will consider the need to clarify in guidance the various rural and urban situations in which planning authorities may be required to undertake neighbour notification. However, as discussed in the consultation paper, we will encourage planning authorities, in guidance, to issue notices to any other such land as they consider appropriate, taking account of local circumstances and the nature of any proposed development.

*Q40. Repeated neighbour notification at Local Development Plan, pre-application and post-application stages may be too onerous. Please consider transport developments – there is the potential for thousands of notices to be sent on multiple occasions?*

A40. The notification of neighbours of LDP proposals was clearly signalled in the Modernising the Planning System White Paper and during the passage of the Planning Bill as a key way of front-loading the process and countering arguments for a 3rd party right of appeal. There is very little prospect of the Scottish Government drawing back from these commitments at this stage. However the Scottish Government is considering being more explicit in the final regulations and accompanying circular and guidance as to the types of LDP proposal that will require to be neighbour notified.

With reference to development management procedures, we will consider this matter further.

*Q41. Concerned about resource implications around the new neighbour notification proposals. A 20 m boundary may not always be adequate – consider residents at far side of a wide road?*

A41. As regards development management, we have previously acknowledged the need to increase planning fees to cover the higher costs to planning authorities resulting from the transfer of responsibility for neighbour notification. As indicated in the consultation paper, it is our proposed intention that Planning Authorities are 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. However we are not convinced that occupiers of land on the other side of a road over 20 metres wide from a proposal need have a right to be notified in all cases.

*Q42. Concern at “too much detail” prescribed in the draft regulations as to the contents of neighbour notification. Too onerous to respond to handling aspects?*

A42. We have previously acknowledged the need to increase planning fees to cover the higher costs to planning authorities resulting from the transfer of responsibility for neighbour notification. As indicated in the consultation paper, it is our proposed intention that Planning Authorities are 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

*Q43. The information to be sent to neighbours with notification includes information on processing and development plan policies that are relevant to the application. This may not be known at this early stage. Unless there is a very tight scheme of delegation, the processing information may not be available - what should the Planning Authority do?*

A43. It may be clear at an early stage whether an application is of local, major or national significance, although the specific detail of the application process may not yet be determined. Draft Regulation 22(4)(j) states that 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 should be included in the notice sent by the planning authority to identified neighbours. Where the exact processing arrangements are not certain, the explanation should allow for the different possibilities.

We will consider whether additional guidance is required in relation to the implementation of draft Regulation 22(4)(i), which provides for planning authorities to 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.

*Q44. Will further advice be given as to how to use IT systems to assist with neighbour notification?*

A44. Neighbour notification will form part of the online application forms and there will be help text to assist with the process. However, once neighbour notification becomes the responsibility of the planning authority this will be removed from the forms.

### **Statutory Consultees**

*Q45. Why is there no statutory duty on statutory consultees to engage in development management matters?*

A45. The view was that a statutory duty on statutory consultees to engage wholesale in development management matters then we would remove any discretion they might have in deciding to stand back from certain types of planning applications where there was no real requirement for their input. Also, it was felt that the suggested approach might divert resources unnecessarily from those applications where greater scrutiny from consultees might be required.

## LOCAL REVIEW / APPEALS

Q46. *How will local review bodies work? Can objectors be present?*

A46. The proposed framework for local reviews is currently subject of the Modernising Planning Appeals consultation. The process is not intended to be adversarial and in most cases it is envisaged that the review body will be able to reach a decision quickly, based upon the information before the planning authority when the original application was considered, together with the applicant's statement requiring a review. It is envisaged that the review body will meet and take decisions in public.

Q47. *In relation to schemes of delegation, if there is the political will from Members within a local authority to hear all objections and see all householder applications, is there an element of sanction in 43B which would allow Scottish Ministers to stand in?*  
A47. Schemes of delegation will require to be submitted to Scottish Ministers before being adopted by the local authority.

Q48. *Some elected members may not see local review bodies as reviews of the information available, but would stick to the old familiar procedures of appeals and site visits, seeking further information, etc. Will there be measures to ensure similar standards across Scotland for Local Review Bodies?*

A48. The regulations and forthcoming guidance are intended to ensure that there is a consistently high standard of provision across Scotland.

Q49. *Elected members may not wish to delegate authority to officials?*

A49. The Act does enable planning authorities to determine an application that would otherwise have fallen to an officer to determine under the scheme of delegation. However the intention is that elected members will deal with applications that are complex or controversial and these will not generally be within the scope of the new schemes of delegation.

## ENFORCEMENT

Q50. *Many elected members are not aware of the resource implications of the current process. It is felt that proactive enforcement will be resource-intensive. The raised expectations may have yet more resource implications.*

A50. Planning authorities allocate resources to enforcement from within their overall budget. The resources allocated to enforcement varies greatly between authorities down to the level that some authorities have dedicated enforcement officers and others don't. Pro-active enforcement may not make a difference to costs as authorities are required at present to investigate any allegation of a breach of planning control reported to them. Any subsequent action is discretionary to the planning authority, and dependent on the nature of the breach, and the new legislation does not change any of that. Dealing with 'major' breaches would take up more resources, however we would anticipate that if breaches are detected earlier (while they are 'minor' as opposed to 'major') then they could be resolved more quickly and with less drain on resources.

Q51. *Enhanced resourcing to give effect to the new enforcement powers? These are likely to be time-consuming and misused, with the potential to slow down the development process.*

A51. The new enforcement powers are alternatives to existing powers, and there is no statutory requirement on planning authorities to use them. Powers may be used when and if breaches of planning control occur. It is up to planning authorities, when allocating their budgets, to decide what level of resources to allocate to enforcement. There is no evidence to suggest that the new enforcement powers will be misused. In the event that enforcement powers are misused the planning authority would be liable to pay compensation. We envisage that the new arrangements, with the removal of some of the rights to appeal against an enforcement process, are more likely to speed up the process of planning control.

Q52. *In considering a developer's "track record" on compliance, will the authority be able to have regard to local, national, international conduct?*

A52. The only place where a developer's track record will appear is when they fill in the Notification of Initiation of Development which asks as additional information that they declare any formal enforcement action taken against them under the planning legislation. This would be enforcement notices, stop notices, breach of condition notices, interdicts and active temporary stop notices. This would require them to declare anything local and national (i.e. action taken by other planning authorities in Scotland).

*Q53. How long does the developer have to remedy the breach of conditions until the enforcement notice / penalty “bites”?*

A53. That is a matter for the planning authority. When the planning authority issues a breach of condition notice or an enforcement notice, the authority sets a ‘reasonable period’ for the developer to comply with the terms of the notice. Obviously this will vary depending on the amount of work required to remediate the problem, but on average it is about 3 months.

The full timescale is 28 days ‘notification period’ followed by the ‘compliance period’. Once the compliance period expires (if the notice has not been complied with) the planning authority can issue a fixed penalty notice or seek a prosecution. They also have the power to take direct action (in addition to the FPN or prosecution) to carry out the work themselves and then recover the costs from the developer.

*Q54. If the initial fixed penalty notice is for £1000, and the maximum is for £5000, do the increments of £500 mean that a developer has to be issued with 9 notices to incur the maximum fine?*

A54. Yes, but the first notice does not need to have expired before the next one can be issued. You could issue 9 consecutive notices over 9 days for example. The value of £500 was the subject of one of the questions in the current enforcement consultation –Q3 of the consultation paper on Enforcement asked for views on whether the proposed amount is sufficient.

*Q55. If an initial enforcement notice is appealed against within 28 days. Can subsequent enforcement notices also be appealed against?*

A55. Yes, but if the appeal is unsuccessful then, bearing in mind that subsequent notices are going to be virtually identical, it seems unlikely that any appeal would be considered by the DPEA. We are also removing the right to appeal on the grounds that permission should be granted or a limitation lifted. This is the ground on which the majority of appeals are made, and we anticipate that the number of appeals will drop substantially.

*Q56. Can a fixed penalty notice be appealed against?*

A56. No – if the recipient wishes to challenge it then they can withhold payment. If the planning authority then seeks a prosecution then they will have the opportunity to state their case in court.

Q57. *Why are notices of completion of development signed off by developers? It was felt that it would be better if (analogous to Building Standards), these notices were agreed by relevant planning authority.*

A57. The purpose of a planning Notification of Completion of Development is to inform the planning authority that the developer believes they have completed the development. It is then for the planning authority to decide whether to accept this or whether to visit the site to assure themselves that the development is indeed completed.

Q58. *If a planning authority issues a temporary stop notice, are there any adverse potential effects or costs associated with this for the planning authority?*

A58. There is no right of appeal and only very limited grounds for claiming compensation. The grounds for claiming compensation are that the planning authority had already given planning permission for the activity the temporary stop notice prohibited, that the activity was covered by a certificate of lawful use or development (CLUD), or that the planning authority withdrew the notice before it expired. In other words compensation would only be paid if the planning authority made a serious mistake.

## **GENERAL QUESTIONS**

Q59. *Concerns about the complexity of the proposed changes and the challenge for training staff and culture change. The timescale for implementation by the end of 2008 is too ambitious for local authorities. Is there wider awareness of the changes among community councils, stakeholders, etc.? These groups may not be aware of the changes and this may result in a delay down the line which local authorities will have to deal with.*

A59. The Planning Bill received Royal Assent in December 2006 and prior to that the reform proposals had been the subject of extensive consultation as well as being published in the White Paper. Since the enactment of the Bill there has been further consultation on the implementation of the reform proposals in subordinate legislation. There have been additional discussions with individual planning authorities e.g. through the regional seminars and at a meeting with Heads of Planning and with other stakeholder bodies. For over three years we have been discussing the reform proposals with everyone who has an interest in the planning system.

We are aware that planning authorities across Scotland have made varying degrees of progress in their preparations for the introduction of the modernised planning system. At the local level decisions on training staff, disseminating information about the reform programme and the resourcing of planning services are the responsibility of planning authorities. Meanwhile, we are working to provide clear guidance to support the introduction of the new system, and will continue to raise awareness of the changes among users of the system and other stakeholders.

*Q60. Does the approach to establishing the 'need' for national developments within the National Planning Framework undermine the consideration of the developments' planning merits?*

A60. No. Identification of a project as a national development in the NPF is the mechanism for establishing the need for such developments and the new legislation requires planning authorities to take the NPF into account in preparing their development plans. Where applications for national developments fall within the scope of the Planning Act, there will be a new process for their determination, which will give Scottish Ministers the opportunity to intervene where necessary to expedite decisions. However, planning (and other permissions as necessary) will still be required to deal with the details of the developments. As designation establishes the need for the project, any subsequent examination will not be concerned with the principle of the development.

*Q61. Will applications that are called in by Ministers be subject to timescales?*

A61. Called in planning applications will continue to be considered by reporters and will be subject to the same timescales as appeals. There are long-established targets for making final decisions on called in applications after submission of reporters' reports and we have no plans to change those timescales.

*Q62. Will the Government's e-planning strategy apply to cases that are called in by Ministers i.e. will the Government accept ministerial call in information electronically?*

A62. Yes. Planning Decisions Division had hoped to trial this with one planning authority but with no progress so we are now turning to Glasgow City Council who are keen that this part of the process should be enabled.

*Q63. Has some thought been given to the future use of the Edinburgh Gazette?*

A63. Yes. In coming to a view on future use of the Edinburgh Gazette, we have been mindful that use of the Gazette may be appropriate in certain cases. However, what is considered as an appropriate method for advertising a proposal should be tailored to the individual circumstance.

*Q64. The practicalities of knitting together the timescales for comment by the general public may cause difficulty (21 day periods from the time the application is registered; from advertisement/notification; and of publication on public access website). Can a clear cut-off date be established?*

A64. As the planning authority will in future be responsible for registration, neighbour notification, entry on lists, advertisement and publication on web, then it is for them to set a coordinated deadline, minimum of 21 days, within which representations in response to notification, list, advert etc should be made.

*Q65. Can advertising fees attached to application by a developer also include administration fee by planning authority?*

A65. The GDPO already allows for planning authorities to recoup the costs involved in arranging an advertisement.

*Q66. Is it possible for the planning and HMO licencing processes to work in tandem with one another?*

A66. It's not possible for both processes to work in tandem just now, as they are governed by two separate regimes (i.e., planning and licensing). However, current planning guidance on HMOs (Circular 4/2004: Houses in Multiple Occupation – Guidance on the interface between planning control and licensing) recommends that planning and licensing functions should work together to ensure an effective system. The current consultation on SPP3 proposes that local authorities should establish planning policies to control the density of HMOs, where this is considered necessary. This approach allows local authorities to respond to local circumstances, but does not require them to enact such policies where HMOs are considered unproblematic. The consultation seeks views on ways to encourage planning and licensing to work together better, and responses to this question will be considered in taking forward planning guidance on HMOs.

*Q67. What will the interaction be between the new planning system and Listed Building Consents?*

A67. Planning applications and those concerning listed building consent will continue to be processed under separate administrative procedures.

## **ANNEX A: List of Attendees**

### **Names of delegates who signed up for the Seminar on the 15 January 2008.**

Aedan Smith	RSPB Scotland
Alan Farningham	Farningham McCreadie Partnership Ltd
Alan Fitzpatrick	Montague Evans
Alan McCreadie	The Law Society of Scotland
Alan Patterson	Strathclyde Homes
Alastair McKie	Messrs Anderson Strathern LLP
Andrea Ross Robertson	University of Dundee
Andrew Leslie	Royal Incorporation of Architects in Scotland
Angus Gilmore	Argyll & Bute Council
Anne McCall	RSPB Scotland
Barbara Cummins	Edinburgh Council
Ben Wilson	Edinburgh Council
Bob Lumsden	GS Brown Construction Ltd
Brent Quinn	
Bruce Walker	Robertson Homes
Christina Cox	South Ayrshire Council
Christine Gore	Aberdeenshire Council
Clare Symonds	Friends of the Earth Scotland
Colin Campbell	Montague Evans
Colin McPhail	Dalgety Bay and Hillend Community Council
Colin Smith	Turley Associates
Dave Finlay	Royal Burgh of St Andrews CC
Denis Munro	GS Brown Construction Ltd
Douglas Pratt	Scone & District Community Council
Ellen Coats	Farningham McCreadie Partnership Ltd
Emma Dewar	Burness LLP
Fiona McEwan	Strathard Community Council
Frank Bradley	Renfrewshire Council
Geoff Cook	Health & Safety Executive
Graham Finlay	Clackmannanshire Council
Iain Thom	Friends of the Earth Scotland
Ian Duff	SCDI
Ian Duguid	Clackmannanshire Council
Ian Nicol	Scone & District Community Council
Janice Long	Midlothian Council
Jason Gillespie	JMP Consulting
John Paton	Turley Associates
John Sheridan	Quarry Products Association
John Watchman	Scottish Planning & Environmental Law Journal
Kate Colsell	Colliers CRE
Kathy Cameron	COSLA

Keith Bathgate	West Dunbartonshire Council
Kelly Patrick	North Lanarkshire Council
Kenneth Daly	Defence Estates
Lesley Duncan	SEPA
Lindsey Sanderson	Scottish Churches House
Lorraine Jones	GL Hearn Solicitors
Louise Blance	Falkirk Council
Mark Price	The Theatres Trust
Maureen Stewart	United Reformed Church
Michael Greig	DLA Piper Scotland UK LLP
Michael Hyde	Loch Lomond and Trossachs NPA
Pamela Reid	East Renfrewshire Council
Paul Gallagher	Scottish Wildlife Trust (Lothians)
Peter Collins	East Lothian Council
Prof. Francis McManus	Napier University
Robert Drysdale	Robert Drysdale Planning Consultants
Robert Maund	Scottish Council for National Parks
Ronnie Beveridge	Clackmannanshire Council
Stewart Halkett	Moray Council
Willie Oswald	Strathblane Community Council
Yvonne Barr	Scone & District Community Council

**Names of delegates who signed up for the Seminar on the 18 February 2008.**

Alan Muirhead	Auchtermuchty & Strathmiglo
Alasdair Tweedie	The Burrell Company
Alex Millar	Church of Scotland
Andrew Fleming	Barton Willmore
Andrew Wilson	Scottish Water
Ann Coleman	Greengairs Community Council
Audrey Dakin	Architectural Heritage Society Scotland
Bernard Warden	Health & Safety Executive
Bob Moyes	Ogilvie Homes
Carmel Rowlands	Loch Lomond & The Trossachs National Park
Catherine Devlin	Falkirk Council
Catherine Wood	The Brownfield Company
Chris Gardner	GL Hearn Solicitors
Chris Whitehead	Facilitating Change
Claire Burton	West Dunbartonshire Council
Crawford Russell	Renfrewshire Council HQ
Dan Macdonald	Scottish Property Federation
David Bell	Dumfries and Galloway Council
David Cowling	Auchtermuchty & Strathmiglo CC
David H. Wallace	Redrow Homes (Scotland) Ltd
David Weber	Scottish Water

Derek Wilson	David Wilson Homes Scotland
Diana Worthy	Loch Lomond & The Trossachs National Park
Douglas Wheeler	Douglas Wheeler Associates
Emelda Maclean	Emac Planning
Frank Gunning	Association of Scottish Community Councils
G Bruce Smith	Messrs Paull & Williamsons
Gary Leech	Church of Scotland
George Smith	JMP Consulting
Graeme Kerr	Halliday Fraser & Munro
Graham Shankland	East Renfrewshire Council
Greta Roberts	Planning Consultant
Hugh McCafferty	Transport Scotland
Iain Hynde	Turley Associates
Ian Kelly	Graham and Sibbald
Jan Wright	Strutt and Parker
Jane Fox	Elite Homes
Jean Charsley	Hillhead Community Council
Jim McDonald	Historic Scotland
John Bury	Development and Regeneration Services
John R Stirling	Scottish Pollution Control Co-ordinating Committee
Jonathan Hughes	Scottish Environmental LINK
Joyce Learmonth	Midlothian Council
K Drennan	Town & Country Planning Association Scotland
Karen Clark	Elite Homes
Keith Johnstone	Clackmannanshire Council
Kenny Bowes	Edinburgh Council
Lindsay Robertson	Edinburgh Council
Margot Macmillan	Kilsyth Community Council
Mark Price	The Theatres Trust
Martyn McIntyre	Federation of Small Businesses
Matt Greenen	East Renfrewshire Council
Megan Wilson	Sense Scotland
Michael Walker	Terence O'Rourke
Michaela Sullivan	Forth Ports Plc
Mick Stewart	Stirling Council
Mike Mahon	RPS Planning and Development Ltd
Miss Jane Jackson	Edinburgh World Heritage Trust
Mr W Nelson	Musselburgh & Inveresk Community Council
Nicholas McLaren	Inverclyde Council
Oliver Chapman	Oliver Chapman Architects
Pamela Reid	East Renfrewshire Council
Peter Arnsdorf	Midlothian Council
Pippa Gardner	King Sturge
Rab Dickson	Nestrans
Richard Bush	Aberdeen City Council
Richard Hartland	The Highland Council

Ross Nimmo	Jacobs Babbie
Sandra Heberton	Network Rail
Scott Walker	NFU Scotland
Sinead Lynch	Strutt and Parker
Stan Bruce	Midatholl Strathtay & Grantully CC
Stephen Boyd	Scottish Trade Union Congress
Stewart Cargill	SportScotland
Stuart Forrest	Scottish Gas Networks
	Glasgow and the Clyde Valley Structure Plan Joint Committee
Stuart Tait	Jones Lang Lasalle
Stuart Winter	Architectural Heritage Society Scotland
Susan Buchan	Royal Town Planning Institute in Scotland
Victoria Burbridge	Strathblane Community Council
Willie Oswald	

**Names of delegates who signed up for the Seminar on the 7 March 2008.**

Alan Leslie	North Lanarkshire Council
Dr Alastair MacBeth	Helensburgh Green Belt Group
Alex Mitchell	James Barr Ltd
Alisa Graham	South Lanarkshire Council
Alistair Landells	Dawn Homes
Dougie Veitch	Glasgow City Council
Elaine Hamilton	James Barr Ltd
Emelda Maclean	Emac Planning
Fiona Macgregor	McGrigors LLP
Graeme Patrick	Walker Group (Scotland) Ltd
Jim Lennon	South Lanarkshire Council
John Lilley	East Ayrshire Council
John Maclean	3D Reid
John Swanson	Transport Scotland
John Taylor	The National Grid
Linda White	SEPA
Lone Wright	Facilitating Change
Lynda Dickson	South Lanarkshire Council
Lynn Taggart	Scottish Water Solutions
Lynsey Milne	Communities Scotland
Mark Evans	GreenPower
Michael Hyde	Loch Lomond and the Trossachs NPA
Monica Lennon	Kier Homes
Nan McFarlane	South Ayrshire Council
Naomi Cunningham	RPS Planning & Development
Natalie Righetti	Jones Lang LaSalle
Neil Feggans	South Ayrshire Council
Neil Garbutt	Transport Scotland

Nicola Mills	Applecross Properties
Pamela Ashbridge	South Lanarkshire Council
Philip Clarke	Barton Willmore
Richard Todd	Jacobs
Roddy Mackay	Orkney Islands Council
Ross Nimmo	Jacobs
Ruth McCarey	James Barr Ltd
Simon Guest	Applecross Properties
Simon Herriot	James Barr Ltd
	Glasgow and the Clyde Valley Structure Plan Joint Committee
Stuart Tait	
Suzanne Cuzicks	North Lanarkshire Council

**Names of delegates who signed up for the Regional Seminar on the 23 January 2008.**

Adrian Browne	South Ayrshire Council
Alex Gilchrist	West Dunbartonshire Council
Austin Cooke	East Ayrshire Council
Bea Nichol	Scottish Borders Council
Bill Potts	Glasgow City Council
Chris Norman	West Lothian Council
Colin Miller	West Lothian Council
Dave Morris	East Ayrshire Council
Fiona McBrierty	West Lothian Council
Hugh Melvin	East Ayrshire Council
Ian Davidson	Glasgow City Council
	Ayrshire Joint Structure Plan & Transportation Committee
John Esslemont	
Julie Nicol	East Renfrewshire Council
Michael McClelland	South Ayrshire Council
	Ayrshire Joint Structure Plan & Transportation Committee
Nigel Wallace	
Pamela Reid	East Renfrewshire Council
Sean McDaid	East Renfrewshire Council

**Names of delegates who signed up for the Regional Seminar on the 30 January 2008.**

Alan Hunter	Angus Council
Alan Sim	East Dunbartonshire Council
Alison Donald	East Ayrshire Council
Alistair Shaw	Falkirk Council
Brenda Murray	Perth and Kinross Council
Colin Hemfrey	Falkirk Council
David Scott	Angus Council
Gordon Pyper	Angus Council
Gordon Reid	Dundee City Council
Graeme Lee	North Lanarkshire Council

Grant Baxter	Clackmannanshire Council
Iain Ross	Dundee City Council
Jay Dawson	Stirling Council
Julian Thorp	East Ayrshire Council
Juliet Hamilton	Clackmannanshire Council
Nick Brian	Perth and Kinross Council
Nicola Chainey	Fife Council
Nigel Hooper	East Dunbartonshire Council
Peter Morgan	Stirling Council
Scott McInroy	Fife Council
Sharon McAlister	North Lanarkshire Council
Siobhan Johnson	Dundee City Council

**Names of delegates who signed up for the Regional Seminar on the 4 February 2008.**

Alan Short	Moray Council
Alistair Banks	Orkney Islands Council
Andrew Puls	Highland Council
Angus Burnie	Moray Council
Brian Mackenzie	Highland Council
Colin Mackenzie	Highland Council
David Cowie	Highland Council
Derek Laidlaw	Comhairle nan Eilean Siar
Donald Lunan	Moray Council
Gavin Barr	Orkney Islands Council
George Hamilton	Highland Council
Jayne Godfrey	Highland Council
Mark Cross	Moray Council
Morag Ferguson	Comhairle nan Eilean Siar
Phil Mills-Bishop	Highland Council
Raymond Reid	Aberdeenshire Council
Richard Hartland	Highland Council
Robert Gray	Aberdeenshire Council
Robert Patton	Highland Council
Sally Morton	Highland Council



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