PLANNING REFORMS – CONSULTATION ON DEVELOPMENT MANAGEMENT

1. Reason for Report

The Scottish Government is seeking responses to its consultation on the proposed new arrangements for Development Management, which form part of the Planning Reform programme.

2. Report Summary

2.1 The consultation takes the form of explanatory text and a number of specific questions on details of the Draft Development Management Procedure Regulations. This text, together with recommended answers to the questions is detailed in **Appendix 1**. The consultation also includes copies of the related Draft Regulations, Increase in Floor Space Order, and Regulatory and Equalities Impact Assessments. Due to their length, the latter are not attached to this report, but they have been made available for inspection in the Members' Lounge, and can also be viewed online at **http://www.scotland.gov.uk/Publications/2008/01/08133709/0** .

2.2 The 2006 Act introduces a large number of important changes to the way in which planning applications are dealt with, and the draft Regulations set out further details of the changes introduced by the Act. The Scottish Government currently estimates that the changes will take effect in November this year.

3. Glossary of Terms

The 2006 Act:	The Planning etc. (Scotland) Act 2006.
DMP Regulations:	The draft Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

4. Recommendations

Members are asked to:

4.1 note the proposed procedures for Development Management as outlined in section 11 of this report; and

4.2 agree that the recommended answers to the Scottish Government's questions, (**Appendix 1**), be notified to the Scottish Government as this Council's response to the consultation.

5. Corporate Plan Links and Contribution

The proposed responses in this report are consistent with the principles and values in the Corporate Plan.

6. Resources/Value for Money Assessment

6.1 The changes to Development Management are intended as an exercise in improving the operation of the system, not in simplifying it, and a significant number of new procedures are being introduced, which will make the system more

complicated and expensive to run. One example is the requirement for planning authorities, rather than applicants, to undertake Neighbour Notification, which, coupled with the requirements of e-Planning, is likely to require additional administration staff to deliver.

6.2 However, in estimating that Neighbour Notification is likely to cost an average of £75 per application, the consultation states that *“This will be offset by the anticipated rise in application fees.”* With regard to the intended rise in fees, the consultation also says: *“Our intention is that planning authorities should be able to recover the full costs of processing applications.”* If these undertakings are honoured, the changes should be cost-neutral. The consultants Arup are currently working for the Scottish Government on the necessary changes to the application fee structure.

6.3 It should be noted, however, that this does not mean that all the costs of Development Management will be met by application fees – the Scottish Government has made it clear that fees are intended to cover application-processing only, and not, for example, work on appeals or enforcement. It is important that the promised additional fee income is allocated to enabling the service to meet the additional demands of Planning Reform

7. Risk Assessment

7.1 As indicated above, the Scottish Government has promised to fund the cost of the principal Development Management changes through increased application fees. The costs are difficult to estimate on a national scale, and there must be a degree of risk that a fee increase based on national average costs may not meet the actual costs in this area. Rural authorities operating decentralised systems are likely to have higher expenses than centralised urban authorities.

7.2 More importantly, it will be seen from this report that there are to be very many changes to the processes involved in dealing with planning applications, all happening at once, and mostly commencing in November/December this year. The radical e-Planning changes will also be taking place this year, causing a further overload. It will inevitably take some time for staff to be trained and become familiar with the changes, for the new systems to ‘shake down’, and for teething troubles to be ironed out. Applicants, agents and elected members will also take time to assimilate and adjust to the changes, which will place an added burden on staff.

7.3 In this already challenging situation, it is unfortunate that, in the first half of next year, several of the Council’s most experienced senior planning staff will become eligible for retirement, and are likely to retire. The difficulty of recruiting experienced planners at all, especially at this level, is well known. This will put great pressure on those who are left. The retention of these members of staff will become a critical issue.

7.4 The Directorate’s management has been doing what it can, within current constraints, to promote succession planning and ‘grow your own’, with some degree of success. However, it is considered that difficulties in operating the statutory planning system in Dumfries and Galloway will be difficult to avoid next year against this national perspective. In the worst case, failure to meet statutory processing requirements could result in planning permissions being legally void, potentially giving rise to civil liability for the Council. Failures could also result in findings of maladministration, or the exercise of Ministerial default powers. In order to avoid

such consequences, issues of recruitment and retention, including the value placed upon the professionalism of staff, need to be taken very seriously.

8. Authorities and Legal Implications

The draft regulations are based on the Town & Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

9. Consultations

The Acting Director of Finance, Governance, the Operations Manager Legal Services, the Group Manager Sustainable Development, the Group Manager Economic Regeneration and the Service Manager Development Planning and Strategic Housing have been consulted and are in agreement with the terms of this report.

10. Background

This consultation is being carried out as part of the Scottish Government's Planning Reform programme. Its key underlying themes are to increase the rights and opportunities for the public to participate in the development management process (alongside their increased involvement in development planning), and to further strengthen the status of development plans through the enhanced scrutiny measures.

11. Key Issues

11.1 Taking them in the order in which they appear in the consultation, the principal changes being introduced are as follows.

11.2 Enhanced Scrutiny - Under this heading, there are four new procedures:

(a) A requirement for applicants to carry out Pre-Application Consultations with local communities in respect of all national developments, all major developments, all developments requiring Environmental Impact Assessment (EIA), and all local developments listed in Schedule 1 of the DMP Regulations. The latter include various developments, e.g. more than 5 houses, where *"there is no proposal in the development plan for such development on the land in question"*. There will be a procedure for prospective applicants to seek a formal screening opinion from the planning authority as to whether this requirement will apply. The Pre-Application Consultation process will require applicants to notify neighbours, consult the local Community Council and hold at least one properly publicised public meeting before submitting such an application. After doing so, applicants will have to submit a report on the completed consultation process to the local planning authority for confirmation that it was sufficient.

(b) A requirement for Pre-Determination Hearings. Not all planning authorities currently allow the hearing of representations. This new provision makes it mandatory for a hearing of representations by *"a committee of the Council"* in respect of developments which *are "significantly contrary to the development plan"* and cases requiring Environmental Impact Assessment.

(c) Decisions by the full Council. In the same categories of cases, i.e. developments significantly contrary to the development plan, or developments requiring Environmental Impact Assessment, the proposed changes will require the planning authority's decision to approve such applications to be made by the full Council. It has been made clear that, in this context, it is the significance of the departure from the development plan which matters, not the size of the development, so it will apply even to small developments which are clearly contrary to the development plan. This new procedure will obviously create a

new workload for the full Council. It will also require consideration as to what committee will conduct any Pre-Determination Hearing prior to the full Council's consideration of the application.

(d) Notification to Scottish Ministers. Even if the full Council resolves to approve an application in these categories, it cannot grant planning permission until the application has been notified to Scottish Ministers, to give them the opportunity to consider whether or not they should intervene to call-in the application for their determination. This requirement is not a proposal: it has already been put in place by the 2007 Notification Direction. The Scottish Government acknowledges that this will be likely to lead to 'a major increase in the number of applications notified to Scottish Ministers'.

11.3 The clear intention of these changes is to ensure that any proposals to carry out development which does not accord with the development plan will in future be subject to much greater scrutiny by the public, by Councils themselves, and by Ministers. This approach is consistent with the Scottish Government's previously-reported intention to front-load the planning system, so that development plans are widely consulted upon, command widespread public support, and, once adopted, are authoritative and are unable to be set aside without a more rigorous process of scrutiny.

11.4 Processing Agreements. These are an optional agreement between an applicant and the planning authority in relation to the processing of national and major applications. Such agreements would set out roles & responsibilities, information requirements, the decision-making framework, key milestones and timescales. They would, in effect, embody 'best practice' in dealing with an application, and would seek to avoid any surprises in the process. The current legislation sets a period of two months for determining a planning application before an applicant has a right of appeal. This period is plainly unrealistic for major applications, and it is to be changed to four months for major applications. However, a processing agreement would be able to set a longer (or shorter) period by mutual agreement. A processing agreement would relate solely to matters of process, and would not commit the planning authority as to the eventual decision.

11.5 Although not yet a firm proposal, the Scottish Government is floating the idea of a possible financial penalty, in the form of a return of fees, if a planning authority fails to meet the agreed timescale. There is as yet no suggestion regarding an equivalent penalty if it is the applicant who is responsible for delay. In fact, the advantages of a processing agreement would seem to accrue more to the applicant than to the planning authority, to whom the negotiation of an agreement would be one more burden on scarce staff resources. If there is any suggestion of a financial penalty, it is unlikely that Councils will be prepared to enter into such agreements.

11.6 Planning Permission in Principle (PPP). This will replace the current term 'Outline Planning Permission'. New minimum requirements are made for the level of information to be provided with such applications. However, the main substantive change is that any matters which are not resolved at the PPP stage and have to be reserved by condition will in future have to be the subject of a formal application for 'Approval of matters specified in conditions'. At present, there is an untidy situation whereby some such details are submitted as formal 'Reserved Matters' applications, but other minor matters are submitted and agreed by letter. The purpose of the change is to formalise the process so that neighbours have to be notified in all

cases. Once again, this is part of the 'enhanced scrutiny' agenda. It is likely to result in an increase in the number of formal applications.

11.7 Content of Applications and Validation. The consultation examines various options for the requirements as to what is required to constitute a valid planning application. It does not make any radical changes to current requirements, other than to specify that a wide range of applications will have to be accompanied by a 'design statement', explaining the design principles and concepts that have been applied to the development, and/or an 'access statement', explaining how issues relating to disabled people in the development have been dealt with.

11.8 Some planning applications cannot properly be considered without supporting information such as a flood risk assessment, retail impact assessment, traffic impact assessment or bat survey. It is extremely disappointing that the consultation does not propose to include such supporting information in the requirements for a valid application in cases where this information is necessary. It does not give any good reason for this omission. This means, as the consultation acknowledges, that in cases where such studies are requested, the time period for a decision will have commenced while the information is being prepared. (The consultation merely suggests that this provides a good reason for entering into a processing agreement. Since processing agreements can only apply to major developments, this will be of no assistance in respect of local developments.) Since this type of information often takes months rather than weeks to prepare, and since bat surveys cannot be undertaken at all at certain times of year, the inevitable result will be that Councils will have to register such applications as valid, and then promptly refuse them on the grounds that insufficient information has been provided to allow the planning authority to make a proper judgement. It would be far more constructive to exclude applications from validation in cases where such information is required but not submitted. Applications should be kept out of the system until such time as all necessary information has been provided to make them fit for purpose.

11.9 Neighbour Notification & Publicity for Applications. It is proposed to transfer the responsibility for notifying neighbours of planning applications from applicants to planning authorities. This is clearly intended to address the issue of applicants deliberately or otherwise failing to notify neighbours, and it will certainly prevent the deliberate omissions which no doubt occur from time to time. However, it will create a substantial new workload for planning authorities, and will mean that anyone claiming not to have received notification about a development will be able to complain to the Ombudsman, creating still more work. Where the adjacent properties have an address, a single notice addressed to "the Owner, Lessee or Occupier" will be required. Where there is no address (e.g. an open field), a press notice will be required, to be paid for by the applicant. This is certainly simpler than it might have been. The Scottish Government estimates that it will cost planning authorities an average of £75 per application, and proposes to increase application fees to cover this. Coupled with other new requirements, e.g. the scanning of applications and documents for e-Planning, additional administration staff are likely to be required.

11.10 Similarly, planning authorities are to be required to serve any necessary notices on the owners or agricultural tenants of the application site itself, but, in this case, applicants will have to identify them to the planning authority.

11.11 Lists of Applications. All planning authorities currently prepare weekly lists of planning applications. New requirements are being made regarding the information

to be provided in these lists, and the publication and availability of the lists for public inspection.

11.12 Statutory Consultations. Currently, statutory consultees have to be consulted before planning permission is granted. If an application is being refused, there is no need for consultation. However, in future, statutory consultations are to be required to be carried out before an application is determined. This is so that, in the event of an appeal against refusal, the Reporter or Local Review Body will be aware of the views of statutory consultees when determining the appeal

11.13 Time Periods for Decisions. The 14 day period following submission of an application, during which it may not be determined, is to be extended to 21 days, to give neighbours more time to make representations. The 2 month period during which applications should be determined is to remain the same for local applications, but, subject to some minor exceptions, is to be extended to a less unrealistic 4 months for national and major applications.

11.14 Decision Notices. The proposals specify a range of information to be included in decision notices, including a statement of the reasons for the decision (including reasons for approval). A requirement to send a copy of the decision notice to representors is being considered.

11.15 Reports of Handling. The statutory planning register will be required to include a ‘Report of Handling’ for all planning applications, and the matters to be covered in this report are specified. This will provide an audit trail as to the issues and policies addressed in all determinations. This will not create any problems in this authority, as we already produce both Committee reports and reports on delegated applications, which include this kind of information.

11.16 Control of Increase in Gross Floor Space – Mezzanine Floors. As a general rule, internal works within a building do not fall within the statutory definition of ‘development’, and do not, therefore, require planning permission. Supermarket operators have been taking advantage of this provision by adding mezzanine floors within their buildings, thus greatly enlarging their retail floorspace to the detriment of town centres. This loophole is to be closed by proposed new regulations, which will limit internal increases in floorspace within buildings used for retail purposes to 200 square metres. Planning permission will be required for any increases above this limit.

David W. Bell - Report Author Operations Manager Development Management Tel: 01387 260176 Date of Report: 19 March 2008 File Ref: dwbra13dm	Alistair M. Speedie Group Manager Sustainable Development Kirkbank House English Street Dumfries DG1 2HS

APPENDICES – 1

Appendix 1

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?

Answer 1: Yes.

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

Answer 2: No.

Pre-application consultation - the process

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.

Screening for pre-application consultation

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?

Answer 3: Yes, except that the reference to "a description <u>in general terms</u> of the development to be carried out" could result in material components of the proposed development being omitted from the description. What would the implications of this be for the validity of the planning authority's subsequent screening decision?

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

Answer 4: Yes, except (as proposed) in cases where further information has to be requested.

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?

Answer 5: Yes.

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?

Answer 6: The proposals are sufficient as a statutory minimum.

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

Answer 7: Yes.

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?

Answer 8: Yes, but it is suggested that the applicant should also be required to provide the planning authority with a copy of any written material presented or distributed to community councils or public meetings, as a safeguard against the provision of partial or misleading information about the proposed development.

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?

Answer 9: Yes.

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

Answer 10: The applicant and/or his or her agent should be allowed to respond to any representations made at the hearing.

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?

Answer 11: This Council currently exercises scrutiny by means of a system whereby Development Management decisions taken by Area Committees contrary to policy (which normally means contrary to the development plan) are referred to the Planning, Housing and Environment Services Committee, which currently considers an average of 4 such applications per month. Adding in EIA applications would increase this to approximately 5 applications per month, which would all have to be considered by the full Council under the Planning Reform proposals. The full Council currently meets 7 times a year, and this would have to increase to 12 if unacceptable delays are to be avoided. This would increase costs, as meetings involving all 47 members are the most expensive to call and to hold. There would also be effects on the Council's calendar of meetings and on how the Council manages its business.
Insofar as the proposed changes to Development Management are concerned with making processes fit for purpose and responsive, a requirement for planning applications to be considered by the full Council would be an additional administrative burden, and could be argued to run contrary to the principles of the modernisation programme. However, modernising processes is not the only aim of the Reforms. Another of the key principles is to enhance the primacy of the development plan, and it is recognised that this proposal is intended to raise the level of scrutiny of decisions to depart from the development plan.

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.

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?

Answer 12: Yes, if there is going to be one.

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?

Answer 13: Yes.

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?

Answer 14: Yes.

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?

Answer 15: The statutory consultees would need to sign up to it, as their requirements could easily de-rail the agreed timescale. However, the point needs to be made (in respect of para. 3.17 above) that, if any financial penalty such as the return of fees is imposed on local authorities, they will simply decline to enter into processing agreements at all. There are too many imponderables in processing a planning application to justify the risk. Potential loss of fees would inevitably cause argument and, potentially, litigation about where the blame lay for any failure to meet the agreed timescale. A processing agreement may have advantages for applicants, but it would appear to be of little benefit to planning authorities, and the staff time taken up with negotiating an agreement would be better spent in dealing with the application.

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 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?

Answer 16. Yes in principle, but not in detail. The intention to formalise the process of seeking approval for details reserved by condition is supported, as the current situation is confusing. However, if the intention is to formalise the process properly, the new type of application should require completion of a purpose-designed application form. The requirement in Draft Regulation 14 that the application must be 'in writing' suggests that it is intended to be, or could be, done by letter, which is too similar to the current informal method of dealing with details which do not fall within the category of Reserved Matters. These applications would also benefit from a snappier title than "Application for approval of matters specified in conditions", as they are described in the Regulations. "Approval of details" might be preferable. The proposal will, of course, result in an increase in the number of formal applications being submitted to planning authorities, and so will create additional work in relation to validation, registration and neighbour notification. Appropriate fees will therefore require to be charged.

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; and
  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); and
  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; and
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; and
  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?

Answer 17: Some applications cannot properly be considered without the type of 'additional assessments' listed in 5.3(b) above – flood risk assessments, traffic impact and retail impact assessments, plus, increasingly, bat surveys – and the planning authority's continuing power to require the submission of such information (as currently under Article 13) appears to be contained in Regulation 28. The need for this sort of supporting information is normally identified in pre-application discussions, but nevertheless is not always provided when the applications are submitted. In cases where such information is required, there is no point whatever in allowing an application to be validated until the information has been received. Applications should be kept out of the system until such time as all necessary information has been provided to make them fit for purpose. At the very least, Draft Regulation 29(6)(b) should be amended by adding the words 'or regulation 28'. This would mean that the time clock would not start ticking until the required information had been received. If this is not done, planning authorities' only recourse will

be to refuse the applications on the grounds of insufficient information (as officers of this Council currently do under delegated powers if requested information of this kind cannot be provided within 21 days).

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?

Answer 18: See Answer 17 above.

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 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?

Answer 19: No. Regulation 15(2) is too restrictive. The current equivalent provision (Article 4(3) of the 1992 Procedure Order) allows authorities to require further details on 'all or any of the reserved matters', which is wider in scope. Why has this restriction been introduced?

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 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?

Answer 20: The requirements are clear enough, but no satisfactory reason has been given for not including a requirement for flood risk assessments, retail impact assessments, etc. in cases where they are considered by the planning authority to be necessary. In the cases where they are necessary, they are more important than design statements, which are being made compulsory for validation. See Answer 17 above.

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; and
- 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?

Answer 21: Option 1 is too wide, and would include many minor local developments for which it is not necessary. Option 2 is too narrow, and would exclude many developments for which it would be desirable, e.g. medium to large housing developments on sites which do not fall within a 'sensitive' category, but where a raising of design standards is still needed. Either a better-targeted 'middle way' option should be devised, or planning authorities should be able to require such statements when they consider them necessary, under Regulation 28. The clock should not start until they are received.
As far as access statements are concerned, it is noted that disabled access is already very well regulated by the detailed requirements of the Building Standards regulations, and it has not been explained what advantages would be gained by duplicating this within the Planning system. The system's resources are already limited, and it makes no sense to burden it with responsibility for regulating a matter which is already regulated very competently by Building Standards.

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?

Answer 22: It should be a matter for the judgement of the planning authority on a case by case basis. See Answer 21 above.

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?

Answer 23: Access panels have a wealth of knowledge and experience of access matters. They should be used, as is the case in Dumfries and Galloway, to comment on design proposals prior to application to the planning authority. There would need to be a framework agreement between the planning authority and the access panel on the method and timing of consultation.

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?

Answer 24: There is sufficient clarity for effective validation. However, planning staff do not have the technical expertise required to ascertain whether information within access statements was correct. Advice from a Building Standards Surveyor with the necessary skills and experience would be required to validate such information.

However, since the Building Standards Regulations already make comprehensive and robust requirements for disabled access, the question has to be asked, why create unnecessary work by duplicating within the Planning system a process which is properly regulated already?

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

Answer 25: Local Authority Access Officers are more often than not Chartered Building Standards Surveyors, having the necessary knowledge and skills to carry out the function of assessing the access element of the statements. However, the number of such statements to be assessed would be likely to exceed the capacity of a single Access Officer to deal with, and advice would need to be sought from other Building Standards officers. Since these officers will already be processing, inter alia, the disabled access aspects of Building Warrant applications for the same developments, this would be an unnecessary additional workload for them.

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

Answer 26: Planning authorities and communities would need to ensure that the person carrying out the assessment was suitably qualified and experienced (e.g. Chartered Building Standards Surveyor, registered NRAC (National Register of Access Consultants) Consultant or Chartered Architect) in order to ensure that the assessment is thorough and robust. Furthermore, if these proposals go ahead, there should be a requirement that the person preparing the access statement should be similarly qualified.

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

Who will be notified?

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?

Answer 27: They are better than they might have been. A much easier and more accurately targeted solution would be to require applicants to supply a list of the people to be notified, and for the planning authority to then send the notices out, in the same way as is proposed for owners and agricultural tenants.

However, whatever system is adopted, it is inevitable that, once development starts, some people will claim that they did not receive a notice .This may be because they genuinely did not receive one, or because they received one but threw it away without reading it, or because they received one but subsequently regretted their failure to object once they saw the development

taking place. At present, that is a matter between them, the applicant and the police. Once planning authorities become responsible, the complaints will go to the Ombudsman, wasting much public time and money. It is appreciated that the change is intended to address concerns that applicants may deliberately omit to notify particular neighbours, but, in practice, such allegations have been very few, and the 'solution', which will be onerous upon planning authorities, is considered to be disproportionate to the actual size of the problem.

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?

Answer 28: Yes, subject to the above comments.

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?

Answer 29. Yes.

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?

Answer 30: Yes.

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?

Answer 31: Yes to site notices. However, since local newspapers already publish ‘weekly lists’ of new planning applications (normally as a news item, at no charge to the planning authority), it is questionable whether any value is added by publishing a formal advertisement as well, which has to be paid for. If additional publicity is considered necessary, would the planning authority’s website not suffice?

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?

Answer 32: (a) See comments above (in Answer 31) regarding the usefulness of press advertisements.
(b) If the applicant has to identify owners and agricultural tenants, why not neighbours as well?

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?

Answer 33: No. In this age of ePlanning, the availability of this information on the planning authority's website should be sufficient, and this is where most people will expect to find such information.

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

Answer 34: No, it would be an unnecessary expense – see Answer 33 above. The recent Cabinet Office publication 'Informing the Public in a Multi Media Age' quotes research indicating the low level of readership of paid-for local newspapers, and the low effectiveness of publishing statutory notices in them, and proposes a move away from this method in favour of website publication. It would seem to be a retrograde step for new legislation to perpetuate outdated methods which do not provide Best Value.

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?

Answer 35: Not in general. However, Draft Regulation 30(p) requires consultations with SNH, HSE and SEPA in respect of development involving new and existing 'establishments'. This is not currently a recognised planning term, and does not appear amongst the definitions in Draft Regulation 2. What does it mean?

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?

Answer 36: Yes.

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?

Answer 37: Yes. It is assumed that the requirement to state in decision notices the reasons for granting planning permission will be satisfied by a statement that the proposal complies with the development plan as assessed in the Report of Handling required under Schedule 4(4) of the Draft Regulations.

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

Answer 38: Even with applications involving a large number of representations, this authority currently writes to all representors advising them that planning permission has been granted or refused, as the case may be, and that a copy of the decision notice may be inspected at the local planning office. In order to avoid a major additional burden of printing and postage, it is suggested that there should not be a requirement to post a paper copy of the decision notice to representors, but that a letter should be sent along the same lines as at present, but with the addition that the details of the decision may also be inspected on the Council's website, as this will be possible under ePlanning. For the ever-diminishing number of people without direct access to a computer, this facility is available in public libraries, and the letter could also state that a paper copy can be provided if specifically requested.

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.

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?

Answer 39: Yes.

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

Answer 40: Yes. Most applications, of course, are delegated and do not have Committee reports. However, in this authority, case officers already produce a 'delegated report' to satisfy the Area Planning Manager (who actually exercises the delegated power) that all relevant issues have been addressed. This provides a necessary audit trail, and the requirements of Schedule 4(4) could easily be incorporated in a checklist / template format to act as the delegated report.

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"?

Answer 41: "Development with potential amenity impacts" might be a suitable term.

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?

Answer 42: The proposed alterations are supported. The more general categories set out in para.(8) of Schedule 7 are usually sufficient to catch potential nuisance developments which are not specifically named.

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); and

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?

Answer 43: No.

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?

Answer 44: Yes.

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

Answer 45: Yes.

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?

Answer 46: Yes.

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?

Answer 47: No.

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

Answer 48: No.

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

Answer 49: It is noted that there are two proposed statutory forms of letter to be sent to applicants on receipt of a planning application (Forms 1 & 2 – Notification to Applicant on Receipt of Application - as set out in Schedule 5 of the draft DMP Regulations). One advises the applicant that his or her application will be determined by the planning authority and that any appeal

against non-determination will be to Scottish Ministers. The other advises that the application will be determined by a person appointed by the planning authority under a Scheme of Delegation, and that any appeal will be to a Local Review Body. This implies that it will not be possible for Councils to adopt a Scheme of Delegation which incorporates a mechanism whereby the receipt of objections or a call-in by members could remove an application from delegation. Is this the intention, or will it be possible for the status of an application to be changed at a later stage? What would happen if an application which appeared initially to fall within a Scheme of Delegation was found subsequently to be contrary to the development plan, and was therefore ineligible for a delegated determination?

Finally, it is considered that it would be beneficial for the Scottish Government and local authorities to monitor the impact and effectiveness of the Planning Reforms once they have been implemented.