

Final Business and Regulatory Impact Assessment

Title of Proposal

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2014.

Purpose and intended effect

- **Background**

There is general agreement that fee levels do not cover the overall work involved in processing applications. Audit Scotland in their Report, Modernising the Planning System (2011)¹ concluded that the funding model for processing applications was becoming unsustainable as the gap between income from fees and expenditure increases. Cost recovery (average of fees received against the actual cost of processing applications) in 2009/2010 was 50% compared to 81% in 2004/2005. In real terms this represented a gap between income and expenditure of £20 million in 2009/2010.

In a consultation on Fees for Planning Applications (2012)², the Scottish Government proposed a new fee structure and level for planning applications in Scotland. The aims and principles underlying the consultation paper were;

- that planning fees should be more proportionate to the work involved;
- that planning authorities should be suitably resourced;
- that the regulations should be simpler and easier to administer;
- that the regulations should establish a clear link between fees and the performance of planning authorities; and,
- that the planning service overall should recognise and deliver public value.

Whilst planning authorities welcomed the proposals, other respondents felt the fees proposed were disproportionate, could act as a disincentive to investment and lacked justification on the basis of improved performance.³ Having considered all the responses, the Scottish Government increased planning fees by 20% on 1 April 2013.

To support improved planning performance across the country the Minister for Local Government and Planning and the COSLA Spokesperson on Development, Economy and Sustainability jointly established the High Level Group on Planning Performance in 2013. The group comprises members from Scottish Government, Heads of Planning Scotland, the Society of Local Authority Chief Executives, the Society of Lawyers and Administrators in

¹ Modernising the planning system <http://www.audit-scotland.gov.uk/media/article.php?id=176>

² Consultation on Fees for Planning Applications 2012 <http://www.scotland.gov.uk/Publications/2012/03/3164>

³ Consultation on Fees for Planning Applications 2012 Analysis of Consultation Responses Main Report <http://www.scotland.gov.uk/Publications/2012/09/7926>

Scotland and, latterly, the Royal Town Planning Institute.

As part of the performance agenda, every planning authority submits a Planning Performance Framework (PPF) to the Scottish Government on an annual basis. The framework requires them to report on both qualitative and quantitative elements of performance and set out proposals for service improvement. They also report on a set of key markers⁴ which were agreed by the High Level Group. Planning Authorities receive feedback from the Scottish Government on their PPF and have this year been given a red, amber, or green rating against each of the key markers. The Scottish Government's most recent Planning Performance Annual Report (covering the financial year 2012/2013) was published in March 2014⁵ and outlines an overview of authorities' performance against the markers.

- **Recent Progress**

Initial projections based on 2012/13 Local Finance Returns (LFR)⁷ suggested that the overall gap in terms of income and expenditure following the 20% increase (2014/15) is now £12-£13 million in real terms. Cost recovery based on the LFR was 67%.

Heads of Planning Scotland, assisted by the Improvement Service, and funded by the SG, have also undertaken a further time recording exercise with 16 planning authorities. The research indicates that the overall cost recovery in development management is currently approximately 74%. Further research is planned to continue monitoring the costs associated with operating the planning service.

Section 55 of the Regulatory Reform (Scotland) Act⁶ commenced on 30 June 2014. It provides Scottish Ministers with powers to vary the fee payable to different planning authorities where the functions of a planning authority are not being, or have not been, satisfactorily performed. The High Level Group are currently considering the process that would be established for reducing fees.

Planning Statistics⁷ for the first three quarters of 2013/14 against 2012/13 figures shows that there has been improvement in decision making timescales. Additionally, more authorities are committed to, and use, processing agreements which are proving to be a robust mechanism to handle major planning applications. On development planning most plans are now less than five years old, a significant improvement on the position when the Planning etc. (Scotland) Act 2006 was introduced.

⁴ High level Group – Key Markers Paper <http://www.scotland.gov.uk/Resource/0044/00441801.pdf>

⁵ Planning Performance Annual Report 2012/13 <http://www.scotland.gov.uk/Topics/Built-Environment/planning/Roles/Scottish-Government/Service-Improvement/Performance-Annual-Report-2012-1>

⁶ Regulatory Reform (Scotland) Act 2014 <http://www.legislation.gov.uk/asp/2014/3/enacted>

⁷ Scottish Government – Planning Statistics

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Planning/Publications>

There is no doubt that performance remains a sensitive issue overall. It is also true that performance can vary between authorities and over time. However, the general direction and commitment to improvement is positive.

- **Proposal**

Scottish Ministers agreed, earlier this year, to a further 5% increase in planning fees on the basis that:

- there have been improvements in the performance of the planning service,
- a commitment to continual improvement by Planning Authorities is evident in the recent planning performance frameworks reports and meetings of the High Level Group on planning performance; and,
- there is now a mechanism to lower fees for Authorities that are not performing

A 5% increase in planning fees would increase income by £1.2–£1.4 million and bring the planning service closer towards cost recovery. The increase in fee income would assist continuing measures to address the gap between fee income and costs in development management and provide additional resources to assist authorities to implement measures to improve the quality of service.

- **Rationale for Government intervention**

A well-functioning planning service is essential to achieving the Scottish Government's central purpose of increasing sustainable economic growth. An effectively resourced planning system which is focused on outcomes will deliver benefits to the wider Scottish economy.

A 5% increase in planning fees would increase income by £1.2–£1.4 million and bring the planning service closer towards cost recovery. The increase in fee income will help address the gap between income and costs in development management and provide additional resources to assist authorities implement measures to improve the quality of service.

- **Objective**

To strengthen the resources and the capability of planning authorities to deliver a high performing planning service whilst maintaining a supportive business environment which supports sustainable economic growth.

Consultation

- **Within Government**

We have consulted with colleagues in other relevant departments, including

Solicitors, Energy and Marine Fish Farming.

- **Public Consultation**

Following previous stakeholder discussions on fees in 2012/13, there has been no further formal public consultation on this proposed fee increase. It has however been discussed amongst key stakeholders in the High Level Group. We have also notified key businesses or their representative bodies. The general intention of the Government to move towards cost recovery has been well publicised.

- **Business**

While there has not been formal public consultation, we have notified the businesses and representative bodies that engaged in the previous discussions on fees in 2012/13. The following businesses and representative bodies also took part in discussions regarding the costs and benefits of the proposed regulations.

- 2020 Renewables
- Banks Group
- Barratt Homes
- British Aggregates Association
- Homes for Scotland
- Minerals Product Association
- Scottish Council for Development and Industry
- Scottish Salmon Producers Organisation

Options

Three specific options have been considered:

- Option 1: Maintain the status quo.

This option would mean that the current fee regulations would remain in place and that fees would remain at the current levels.

- Option 2: Revise planning fees regulations.

This option formed the basis of the 2012 Consultation. It would mean revising and simplifying the fees regulations as well as an increase in planning fees.

- Option 3: Increase planning fees by 5% by amending the current regulations.

Fee levels, and the maximum fee, would be increased by approximately 5%.

Sectors and groups affected

The main impact of the regulations will be on planning authorities and developers,

which would include individuals and businesses submitting a planning application. There will also be an impact on planning authorities as an increase in fee will help to address the costs of each planning application submitted. There is an expectation that this will be balanced by an improved and more efficient service.

Costs

Option 1: Maintain the status quo.

There will be no direct additional costs, as applicants would not have to pay higher planning fees. Funding of the planning service may remain inadequate and it is likely that the continuing funding gap would widen, and adversely affect the quality of service and delays in determining applications. A poor performing planning service may potentially have additional indirect costs to applicants and harm economic development .

Option 2: Revise planning fees regulations.

Based on the 2012 consultation proposals, there would potentially be a significant increase in costs to developers depending on the level of fees and how they were to be calculated. There would also be some costs to planning authorities associated in revising their practices, guidance and procedures. There is a possibility that the additional revenue generated would improve the quality and efficiency of the planning service. A high performing planning service may in turn would reduce indirect costs to applicants in the longer term.

Overall many of the respondents to the original consultation indicated their opposition to this proposal. These views were reinforced and elaborated upon during the BRIA interviews we held in September, October and November 2012 with a number of developers. The consultation set out indicative fees which are reflected in table 1.

Option 3: Increase planning fees by 5% by amending the current regulations.

The proposed across the board 5% increase would affect most applications equitably. Planning fees in general would remain small compared to the overall development costs.

Table 1 Fee levels considered and examples of their impact

Current Scotland <i>(Option 1)</i>	Consultation Proposal Scotland (2012) <i>(Option 2)</i>	Current Scotland + 5% <i>(Option 3)</i>
Householder £192	£100 for minor developments £300 for extensions ½ fee in conservation areas	£202

New dwellings			
£382 per dwelling up to a maximum of £19,100		£800 for one dwelling >1 dwelling but less than 49 dwellings = £800 + £500 for each additional dwelling in excess of 1 >49 dwellings = £24,800 plus £200 for each dwelling in excess of 50, up to a maximum of £100,000	£401 per dwelling up to a maximum of £20,055
Examples			
<i>Single House</i>	£382	£800	£401
<i>15 house development</i>	£5,730	£7,800	£6,015
<i>60 House Development</i>	£19,100	£26,800	20,055
Retail & Leisure			
Less than 40 sq. m = £192 >40 sq. m but less 75 sq. m = £382 >75 sq. m = £382 per 75 sq. m, up to a maximum of £19,100		Less than 50 sq. m = £200 >50 sq. m but less 100 sq. m = £1,000 >100 sq. m but less 2,500 sq. m = £1,000 + £500 per 100 sq. m in excess of 100 sq. m > 2,500 sq. m = £13,000 + £800 per 100 sq. m in excess of 2,500 sq. m up to a maximum of £100,000	Less than 40 sq. m = £202 >40 sq. m but less 75 sq. m = £401 >75 sq. m = £401 per 75 sq. m, up to a maximum of £20,055
Examples			
1,500 sq.m	£7,640	£8,000	£8,020
5,000 sq.m	£19,100	£33,000	£20,055
10,000 sq.m	£19,100	£73,000	£20,055
Business & Industry			
Less than 40 sq. m = £192 >40 sq. m but less 75 sq. m = £382 >75 sq.m = £382 per 75 sq.m, up to a maximum of £19,100		Less than 50 sq. m = £200 >50 sq.m but less 100 sq. m = £600 per 100 sq.m >100 sq.m = £600 + £300 for each 100 sq. m in excess of 100 sq.m subject to a maximum of £100,000	Less than 40 sq. m = £202 >40 sq. m but less 75 sq. m = £401 >75 sq. m = £401 per 75 sq. m, up to a maximum of £20,055
Examples			
1,500 sq.m	£7,640	£4,800	£8,020
5,000 sq.m	£19,100	£15,300	£20,055
10,000 sq.m	£19,100	£30,300	£20,055

Benefit Analysis

Option 1: Maintain the status quo.

This option would mean that the current fee regulations would remain in place and applicants would not have to pay increased fees. Whilst there would be no direct impact to applicants, this option would result in a continuing, and widening, gap in resources between income received from planning applications and the costs of determining applications. It is considered that, over time, this gap would impact on the effectiveness and efficiency of planning authorities and limit their ability to implement service improvements.

This is not considered to be a viable option given the SG intention to reduce the gap between the costs of determining applications and income received.

Option 2: Revise planning fees regulations.

The exact amount of additional revenue that would be generated is difficult to quantify as it would depend on the content of the revised regulations and the volume and type of applications. It is not therefore possible to accurately model the impact of these proposed changes. However, from information previously analysed, it is estimated that proposals could generate an additional £10–£15 million. A percentage of the increased fees would be taken up in costs of implementing any new fee structure.

Planning authorities would be expected to use the additional funding to improve the quality of service they provide. Many of the respondents to the original 2012 consultation indicated their opposition to this proposal. These views were repeated during the BRIA that followed in late 2012.

Given the current economic climate and performance of the planning system, it is not clear that the benefits would outweigh the costs. Revising the fees structure and/or how fees are calculated could also lead to uncertainty and confusion, particularly in the short term. We therefore do not consider this a viable option at this time.

Option 3: Increase planning fees by 5% by amending the current regulations.

The exact amount of additional revenue generated is not known as the volume and type of applications have been changing rapidly over recent years. However we estimate that a 5% increase in planning fees would increase income by £1.2–£1.4 million.

The increase in fee income would help address the gap between income and costs and could provide additional resources to aid authorities implement measures to improve the quality of service. Maintaining the current regulations will reduce implementation costs since most planning authorities and developers are familiar with the regulations and categories of development.

Following discussions with COSLA and other stakeholders through the High Level Group, the Scottish Government considers that option 3 offers the best approach to strengthen resources and the capability of planning authorities to deliver a high performing service whilst maintaining a supportive business environment that promotes sustainable economic growth.

Scottish Firms Impact Test

Discussions on the proposals focused on the costs and benefits of the proposed 5% and what effect those costs and benefits would have on the behaviour of the business or their members business. As most participants in the BRIA discussions were aware of the previous consultations on fees, the discussions did not involve consideration of option 2. Specific comments by each sector are detailed below.

Generally there was agreement that businesses were willing to pay more for a more efficient service. There was however concern whether the increase in fees would deliver meaningful improvements.

Homes for Scotland and Housebuilders in general expressed the view that any increase in fees had to be justified against a range of service improvements as well as planning application processing timescales. They suggested that there should be clear guidance to define the level of service a customer can reasonably expect, and mechanisms to link the payment of fees to the delivery of the promised service. Without such mechanisms, increased planning fees will lead to no discernible improvement in service.

Representatives of the minerals extraction and processing sector considered that planning fees cannot be considered in isolation from the cumulative costs of submitting a planning application, such as those of an Environmental Impact Assessment or archaeological works, and costs for legal agreements. They opposed any increase in planning fees.

Renewables industry representatives shared the general view of housebuilders that, whilst the fee increase could be accommodated, value for money was required. Timescales for decisions were a particular concern. The linking of fees and performance was considered necessary as a part of a package to improve performance.

Competition Assessment

The proposals are not expected to impact significantly more on individual firms than others, neither are they expected to restrict new entrants to the market. The need to produce detailed plans is not impacted by these proposed changes. We consider that the freedom of firms to choose the price, quality range or locations of their products will be unaffected.

Test run of business forms

No new forms will be introduced as a result of these regulations therefore there is no requirement for a test run.

Legal Aid Impact Test

Access to Justice colleagues have confirmed that the regulations will not impact on the legal aid fund.

Enforcement, sanctions and monitoring

Failure to submit the correct fee with an application will mean that the application cannot be validated and will therefore not be considered by the planning authority.

Where a developer considers that they have paid the correct fee but this is disputed by the planning authority then they can seek either a local review or appeal as appropriate against non- determination.

Implementation and delivery plan

Subject to parliamentary approval, the planning fee would increase by 5% on 1 November 2014.

- **Post-implementation review**

The Scottish Government will keep the scale of fees and costs of the planning service under review to ensure the appropriate levels of fees have been set. The Scottish Government has funded the second round of a costing exercise which is being undertaken by HoPS and is scheduled for completion by December 2014.

The High Level Group will continue to work together to improve performance.

Summary and recommendation

Following discussions with the High Level Group on Performance the Scottish Government considers that option 3 will strengthen resources and the capability of planning authorities to deliver a high performing planning service whilst maintaining a supportive business environment that supports sustainable economic growth.

- **Summary costs and benefits of proposed option**

Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
<ul style="list-style-type: none"> • Provides additional resources to planning authorities • Low implementation costs since the methodology and categories are unchanged • £1.2 - £1.4m additional income for planning authorities 	<ul style="list-style-type: none"> • Proposed percentage increase is modest, particularly when placed against the total cost of development • Developers would need to find £1.2 -£1.4 in upfront costs • Unclear if proposed increase in fees would result in commensurate increase in performance

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Derek Mackay, Minister for Local Government and Planning

**Scottish Government Contact point:
David Reekie 0131 244 7825**

