

# **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

## **Title of Proposal**

1. The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2017.

## **Purpose and intended effect**

### **Objective**

2. The Scottish Government recognises the importance of planning in supporting economic growth, in the delivery of quality homes and in community empowerment.
3. The objective of these Regulations is to ensure that planning fees for major applications are increased substantially so that the service moves towards full cost recovery.

### **Background**

4. The resourcing of the planning system has long been an issue. There has been widespread agreement that fee levels are too low and in many instances not proportionate to the work involved in processing applications. This was identified by the independent review of planning carried out in 2016, which contained 2 recommendations on fees:
  - That fees on major applications should be increased substantially
  - That consideration should be given to further discretionary charging, for example in the area of pre-application processes.
5. The Scottish Government Response to the report, published 11 July 2016, stated that the Scottish Government would consult on enhanced fees. We began this engagement process with key stakeholders at the first meeting of the Leadership, Resources and Skills Working Group on 12 and 13 September 2016. A formal consultation was carried out between November 2016 and February 2017.
6. The consultation indicated that we intend to take forward the independent review recommendations regarding fees in 2 stages, with this rise in the fee maxima being stage 1 and we propose to review the planning fee structure once the current planning reform programme has identified changes to the planning system.

## **Consultation**

### **Within Government**

7. In light of the independent review of planning last year and also *Places, People and Planning* the recent consultation on the future of the Scottish planning system carried out between January and April 2017, the Scottish Government has worked with key stakeholders through a series of working groups to consider a wide range of planning issues including resourcing including fees.
8. Scottish Government colleagues in other policy areas such as energy and marine fish farming were also fully consulted about the proposal.

### **Public Consultation**

9. A 3 month public consultation on the proposed increase was carried out between November 2016 and February 2017.

### **Business**

10. A number of working groups, workshops and one to one discussions covering planning issues including the specific issue of fees with a wider range of business stakeholders have all been carried out during the independent review of planning in 2016 and during the *Places People and Planning* consultation in 2017.

### **Options**

11. The consultation on raising planning fees invited responses to a single question: Do you agree with the proposed maximum fee level? Planning authorities were broadly in favour of the proposed new maximum (with a few suggesting it should be higher) and business stakeholders were largely against raising the maximum.

#### **Option 1: Do nothing**

12. Do not raise the current fees maximum. This would result in a continuing gap in resources between income received from planning applications and the costs of processing and making decisions.

#### **Option 2: Introduce a new set of planning fees regulations**

13. This would significantly increase the current fees maxima. The proposed regulations would help ensure that planning fees cover a greater proportion of the work involved in processing and deciding an application than is currently the case.

### **Sectors and groups affected**

14. The sectors most likely to be affected by the proposals are:
  - Planning authorities that are required to resource their development management service.

- Those who submit a major planning application.

## **Benefits**

15. The fee increase proposed is intended to provide increased resources to planning authorities to help support ongoing performance improvement.

## **Costs**

16. The costs for developers submitting major planning applications will rise for those applications which currently meet the maximum fee cap as this is being increased from between current caps of £18,270, £20,055 and £30,240 depending on the category of development to a revised cap for most categories of development of £125,000.
17. There is no change proposed to the current planning fee per unit of £401 for residential developments up to 50 units. Housing developments containing 50 residential units would pay £20,050 and any additional unit will be charged at £200 per unit until the fee maximum of £125,000 for 575 houses is reached.
18. There is no change proposed per hectare up to the current fees maxima (£18,270, £20,055 and £30,240 depending on the category of development) and additional hectares are proposed to be charged at a lesser rate until the fee maximum of £125,000 (4.3 hectares) is reached. The introduction of a lower rate which will apply over a specified amount should help moderate the impact on major projects of the higher fee maximum.
19. For applications for planning permission in principle (PPP) we propose similar changes per house or by per 0.1 hectare. The maximum for PPP will be raised to £62,500.
20. We have modelled the impact of the proposed changes on planning application data for major projects in 2015 provided by planning authorities. We applied the new fee maxima to a sample of 20% of all major applications. On the 20% sample of major projects the current fee income is £871,556. Applying the proposed new fee maxima the fee income would be £2,980,984 which is an increase of £2,109,428. Therefore we estimate that based on this 20% sample the total increase for major applications in 2015 would be £10,547,140.

## **Scottish Firms Impact Test**

21. As part of the consultation process on fees, the independent review of planning which reported in 2016 and *Places, People and Planning* a consultation on the future of the Scottish planning system carried out between January and April 2017, we have consulted with a range of businesses to understand the direct impacts of this change to legislation on their business.

## **Competition Assessment**

22. The proposals are not expected to impact significantly more on some firms than others nor restrict new entrants to the market. The need to produce detailed plans is not impacted by these changes.
23. We consider that the freedom of firms to choose the price, quality range or location of their products will be unaffected.

## **Test run of business forms**

24. No new forms will be introduced as a result of this legislation therefore there is no requirement for a test run.

## **Legal Aid Impact Test**

25. As far as we are aware these proposals have no impact in relation to Legal Aid, as the policy does not introduce any new procedures or right of appeal to a court or tribunal.

## **Enforcement, sanctions and monitoring**

26. An application for planning permission is not valid unless the appropriate fee has been paid. Where the fee is incorrect or missing the planning authority can turn the application away.
27. Where a developer considers they have paid the correct fee but this is disputed by the planning authority then they can seek either a local review or appeal against non-determination.
28. As the consultation notes fee income and planning authority performance are inextricably linked. With an increase in resources through fee income Ministers expect to see an increase in performance and service delivery. As part of this planning authorities will be monitored and assessed against the Planning Performance Framework.

## **Implementation and delivery plan**

29. It is anticipated that the amendments will be laid before the Scottish Parliament in April 2017 and will come into force on 1 June 2017.

## **Post-implementation review**

30. The Government will monitor how the changes have impacted on planning authority resources, the number and type of developments that come forward and whether the increased income has impacted on service and performance. We will continue to have close dialogue with all stakeholders to assess how the new fee regime is working and whether there are any particular areas of ambiguity. The Government will liaise

specifically with Heads of Planning Scotland to understand the effects of the changes.

### **Summary and recommendation**

31. It is recommended that these regulations are implemented to help ensure that the planning fees regime becomes more proportionate, fit for purpose and accurately reflects the developments coming forward in modern Scotland. Planning authorities will see an increase in resources for larger more resource intensive developments. There will be an impact on developers' costs with such an increase but there is an expectation that any increase in resources will see an increase in performance level from authorities and the service they provide to business. We indicated in the consultation that we propose to review the planning fee structure once the current planning reform programme has identified changes to the planning system.

### **Declaration and publication**

32. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

### **Post Implementation**

33. Following the implementation of the above regulations which increased the maximum planning fee for most types of development from £20,055 to £125,000 it has been highlighted that hydroelectric power developments have been adversely impacted. They currently fall to be charged under the fee category for 'plant and machinery'. Due to the nature of such hydro development the fee increase has led to relatively minor applications potentially being subject to paying a fee which is disproportionate to the value of development. Industry representatives have signalled that the new fee maximum is reached too easily and jeopardises the viability of new hydro development. To resolve this issue amendment regulations are being brought forward which will have the effect of creating a new category of development for hydro developments which will be subject to a fee of £401 per 0.1 hectare up to a maximum of £20,055.

34. The change is made through: The Town and Country Planning (fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2018.

35. We will continue to monitor the impact of the increase in planning fees and remain committed to reviewing the planning fee regime following the passage of the Planning Bill.

**Signed:**

**Date:**

**Kevin Stewart, Minister for Local Government and Housing**

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