

Final Business and Regulatory Impact Assessment

Title of Proposal

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2013

Purpose and intended effect

- **Background**

The resourcing of the planning system has long been an issue. There is a general agreement that fee levels are too low and in many instances not proportionate to the work involved in processing applications. Having consulted on the issue in Resourcing a High Quality Planning System (2010)¹ there was support for the retention of the fees structure but that it required to be modernised and updated to reflect the development types coming forward in Scotland².

The Consultation on Fees for Planning Applications (2012)³, proposed a new fee structure and level for planning applications in Scotland. Many respondents, with the exception of planning authorities, indicated their opposition to the proposed fee increases. Many argued that they were disproportionate and lacked justification. Others felt that they would act as a disincentive to development and ran counter to the Scottish Government's economic objectives⁴.

Given the current economic climate and performance of the planning system, Ministers announced in December 2012 the proposal to increase, subject to parliamentary approval, planning fees by approximately 20%.

- **Objective**

To 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.

- **Rationale for Government intervention**

Audit Scotland in their report, Modernising the Planning System (2011)⁵ concluded that the funding model for processing planning applications is becoming unsustainable as the gap between income from fees and expenditure increases, putting pressure on already constrained council budgets. Over the six years to 2009/10 the report reflected that the overall gap between income and expenditure had increased in real terms from £6.7 million to £20 million.

1 Resourcing a High Quality Planning System: A Consultation Paper

<http://www.scotland.gov.uk/Publications/2010/07/07154028/0>

2 Resourcing a High Quality Planning System Analysis of Consultation Responses

<http://www.scotland.gov.uk/Publications/2011/03/18151009/0>

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

4 Consultation on Fees for Planning Applications 2012 Analysis of Consultation Responses Main Report

<http://www.scotland.gov.uk/Publications/2012/09/7926>

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

Consultation

- **Within Government**

The Scottish Government has worked with Heads of Planning Scotland (the umbrella body of local authority planning managers), planning authorities and COSLA. We have also worked with colleagues in other relevant policy areas, such as energy and marine fish farming.

- **Public Consultation**

Fees regulations are already in place, the draft SSI seeks to further increase planning fees by approximately 20%. There have been discussions with key stakeholders including COSLA, Heads of Planning Scotland, and the development industry.

- **Business**

In January 2013, 14 telephone interviews were carried with the following businesses to discuss the impact and benefits of the proposal to increase fees by approximately 20%.

- Angle Park Sand and Gravel
- Asda
- Banks Group
- Barr Limited
- Kinegar Quarry
- Mactaggart and Mickel Group
- Sainsbury's
- Scottish Land and Estates
- Scottish Power
- Scottish Salmon Producer's Organisation
- Tesco
- Turley Associates
- Walker Group
- 2020 Renewables

Options

Option 1: Maintain the status quo. This option would mean that the current fee regulations would remain in place. This would result in a continuing gap in resources between income received from planning applications and the costs of determining applications.

We do not consider this is a viable option. Audit Scotland and financial returns indicate an ever-widening gap between costs of determining planning applications and income received.

Option 2: Modernise planning fees regulations. This option, was the basis of the Consultation on Planning Fees Applications (2012), would mean modernising and simplifying the fee regulations as well as a significant increase in planning fees.

We do not consider this is a viable option. Given the current economic climate and performance of the planning system, it is not clear that the benefits would outweigh costs.

Option 3: Increase planning fees by 20% by amending current regulations. This option would mean increasing fee levels, and the maximum, by approximately 20%.

Following discussion with COSLA, 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.

- **Sectors and groups affected**

The main impact of the regulations will be on developers. We expect this group to include individuals as well as small, medium and large businesses, particularly property developers and businesses carrying out developments in the housing, retailing, manufacturing and service sectors. There will also be an impact on planning authorities as an increase in fee will raise additional revenues as well as expectation of an improved and more efficient service.

- **Benefits**

Option 1: Maintain the status quo. Applicants would not have to pay increased fees but the planning system would remain under-funded and it is anticipated that this would continue to affect effectiveness and efficiency of the planning authorities.

Option 2: Modernise planning fees regulations. The exact amount of increased income is not known exactly as the volume and type of applications have been changing over the last few years. It is impossible to accurately model the impact of these proposed changes, however from the limited information that we have analysed we estimate that proposals could generate an additional £10m-£15m. Updating and simplifying the regulations would ensure that the legislation reflects current development types. Planning authorities could use the additional funding to improve the quality of service they provide.

Option 3: Increase planning fees by 20% by amending current regulations. The exact amount of increased income is not known exactly as the volume and type of applications have been changing over the last few years. Income for 2010-11 for local authorities, from Local Finance Return 7, was £22.4m. Assuming application numbers and types remain similar, a 20% increase in fees will increase income by £4m-£5m. The increase in fee income could address the gap between income and costs and provide additional resources to aid authorities to implement measures to improve the quality of service. Maintaining the current regulations will reduce implementation costs since most developers and planning authorities and developers are familiar with the regulations and categories

of development.

- **Costs**

Option 1: Maintain the status quo. There will be no direct additional costs, as applicants would not have to pay higher planning fees. The planning system may remain underfunded and it is likely that this would continue to affect the quality of service and delays in determining applications, which may have costs to potential developers.

Option 2: Modernise planning fees regulations. The planning service may receive additional income and will start addressing the current shortfall between costs and income. Examples of the new fees are provided in Table 1 below. It is also anticipated that overall application numbers may drop.

Table 1: Examples of the consulted planning fee for a selected number of development types

Comparison between current and consultation proposal		Examples
Householder		
Current	£160	Many extensions and other householder developments may not require permission under new permitted development rules. If they do the fee will be either £100 or £300.
Proposed	£100 for minor developments and £300 for extensions.	
New dwellings		
Current	£319 per dwelling up to a maximum of £15,950.	Single house = £800
Proposed	£800 for one dwelling >1 dwelling but less than 49 dwellings = £800 + £500 for each additional dwelling in excess of one. >49 dwellings = £24,800 plus £200 for each dwelling in excess of 50, up to a maximum of £100,000.	15 house development = £7,800 60 house development = £ 26,800
Retail & Leisure		

<p>Current</p> <p>Less than 40 sq. m = £160. >40 sq. m but less 75 sq. m =£319. >75 sq. m = £319 per 75 sq. m up to a maximum of £15,950.</p> <p>Proposed</p> <p>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.</p>	<p>Small 1,500 sq. m = £8,000 (e.g. Local or Express super market) Medium 5,000 sq. m = £33,000 (e.g. Supermarket) Large 10,000 sq. m = £73,000 (e.g. Superstore)</p>
Business & Industry	
<p>Current</p> <p>Less than 40 sq. m = £160 >40 sq. m but less 75 sq. m =£319 >75 sq. m = £319 per 75 sq. m</p> <p>Proposed</p> <p>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.</p>	<p>Small 1,500 sq. m = £4,800 Medium 5,000 sq. m = £15,300 Large 10,000 sq. m = £30,300</p>
<p>Overall many of the respondents to consultation, with the exception of planning authorities, indicated their opposition to the proposed fee increases. Some argued that they were disproportionate and lacked justification. Others felt that they would act as a disincentive to development and ran counter to the Scottish Government's economic objectives. However, some planning authorities felt that the maximum fee was insufficient.</p> <p>A number of respondents, including house builders and agents/consultants, made reference to the need to ensure that there was a direct relationship between increased fees and improved performance. However, others felt that this could be counter-productive, encouraging</p>	

rushed decision making and depriving poorer performing authorities of the resources to improve.

These views were re-enforced and elaborated during the interviews we held in September, October and November with the following business organisations to discuss the impacts and benefits of this option.

- Angle Park Sand and Gravel
- Asda
- Banks Group
- British Aggregates Association
- CALACHEM
- Kinegar Quarry
- Loch Duart
- Mactaggart and Mickel Group
- Marine Harvest
- Midgdale Smolt
- Minerals Products Association
- Sainsbury's
- Scottish Land and Estates
- Scottish Power
- Scottish Property Federation
- Scottish Resources Group
- Scottish Salmon Company
- Scottish Salmon Producers Organisation
- Scottish Seafarms
- Scottish Water
- Tesco
- Turley Associates
- Walker Group
- Wester Ross Fisheries

Option 3: Increase planning fees by 20% by amending current regulations. The proposed percentage increase is modest, particularly when placed against the total cost of development. Examples of the new fees are provided in Table 2 below. The proposed increase would affect most applications equitably. The costs of planning fees for larger applications are generally small compared with other costs.

Table 2: Examples of the proposed planning fee for a selected number of

development types

Comparison between current and proposed		Examples
Householder		
Current	£160	Many extensions and other householder developments may not require permission under new permitted development rules. If they do the fee will be £192
Proposed	£192	
New dwellings		
Current	£319 per dwelling up to a maximum of £15,950	Single house = £382
Proposed	£382 per dwelling up to a maximum of £19,100	15 house development = £5,730 60 house development = £19,100
Other buildings non-residential (includes Business & Industry and Retail developments)		
Current	Less than 40 sq. m = £160 >40 sq. m but less 75 sq. m =£319 >75 sq. m = £319 per 75 sq. m, up to a maximum of £15,950.	Small 1,500 sq. m retail = £7,640 (e.g. Local or Express super market) Medium 5,000 sq. m retail = £19,100 (e.g. Supermarket)
Proposed	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.	Large 10,000 sq. m retail = £19,100 (e.g. Superstore, international rugby union field etc.)

There are slightly differing views, between the organisations that we spoke to, regarding the impact of this option. It was generally thought the increase could be accommodated given the need to resource planning authorities. The increase however will still be a factor in terms of investment decisions. Most considered that increased fees must lead to improvements in performance by planning authorities but some doubt that this will materialise.

Scottish Firms Impact Test

The telephone interviews with the 14 business in January 2013, who represented a number of key sectors in Scotland. The discussions focused on the impact and benefits of the proposed 20% increase. Overall, most respondents felt that this approach was more proportionate when compared to option 2 and recognised the current economic climate. They also indicated that the key benefit of performance would not be addressed by this increase. Specific comments by each sector are detailed below.

Housing

The proposed 20% increase is not thought to be huge cost when compared against overall development costs or the proposed fee increase in the consultation paper. The increase is however a significant up-front

cost to some and has to be considered when preparing applications. It is not considered that there will be any certainty that increased fees will lead to increased performance among planning authorities and the importance of establishing the direct link between fees and service levels was acknowledged.

Fish Farmers

The costs to fish farmers submitting applications will rise by 20%. This is considered preferable to the increases proposed in the consultation paper. The high level working group is welcomed in terms of incentivising performance. It is still considered that the fee calculation requires simplification given the current technological position.

Minerals

In terms of major planning applications the increase in planning fees is likely to be in the order of £5,000. The planning fee is therefore thought to comprise some 60% of overall development costs to an individual company in some projects. In the current economic climate the increase is considered unnecessary which could potentially bring into question the viability of projects. Mineral extraction companies consider that they will have to try to continue to function regardless of any increase. No clear benefits of the proposed increase are identified, with current levels of service thought to be variable and no clear link to an increase in fees leading to a dedicated resource for processing minerals applications.

Renewables

There is a range of views regarding the proposed 20% increase from being more proportionate to the fees proposed in the consultation paper to being unacceptable without improvements in performance prior to the increase. There were varying views as to the scale of planning fee in terms of overall development costs from being a relatively small part to being dependant on the specifics of the development. It is not considered that planning authority performance will improve as a result of the fee increases. The discussions on fees and performance were thought to be a benefit in terms of driving performance and focusing on service delivery.

Retail

Whilst there is slightly differing views of the impact of a 20% increase it is generally thought the increase can be accommodated given the need to resource planning authorities. The increase however will still be a factor in terms of investment decisions. The retailers consider that increased fees must lead to improvements in performance by planning authorities but some doubt that this will materialise. In general therefore the benefits of the proposed regulations are unclear.

Rural Business

The proposed increase was a smaller step compared with the proposals within the consultation paper (option 2) which is more proportionate and took cognisance of the current economic climate. The continued emphasis on improving performance through the proposals to link performance with

fees is welcomed.

- **Competition Assessment**

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 are not impacted by these changes. 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**

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

As far as we are aware these proposals have no direct 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

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 fees would increase by 20% in April 2013.

- **Post-implementation review**

We will keep the scale of fees and costs of the planning service under review to ensure that the appropriate levels of fees have been set. The Government will liaise specifically with Heads of Planning Scotland to improve performance and understand the costs of development management in planning authorities.

The formation of a high-level political group will review planning performance and look at proposals to link performance with wider reform of planning fees.

Summary and recommendation

Following discussion with COSLA the Scottish Government consider 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 table**

The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2013 will ensure that planning authorities see an increase in resources. The proposed increase will not adversely impact developers.

Option	Costs	Benefits
1	<ul style="list-style-type: none"> • Delays in determining applications will have varying cost for developers and communities • Fees continue to fall short of costs 	<ul style="list-style-type: none"> • No increase in fees paid by applicants • No implementation costs
2	<ul style="list-style-type: none"> • Significant increase in costs for developers, some planning fees increasing from £15,950 to £100,000 • Unclear if proposed increase in fees would result in commensurate increase in performance • New regulations may increase disputes • Overall, all developers would need to find upfront costs totalling between £10m-£15m 	<ul style="list-style-type: none"> • Planning fees regime is proportionate, fit for purpose and accurately reflects developments coming forward • Simpler regulation to understand and interpret • Reduce number of speculative applications • £10-£15m additional income for planning authorities
3	<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 £4m-£5m – often from capital sources • Unclear if proposed increase in fees would result in commensurate increase in performance 	<ul style="list-style-type: none"> • Provides additional resources to planning authorities • Low implementation costs, since the methodology and categories are unchanged • £4m-£5m additional income for planning authorities

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
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