

## EXECUTIVE NOTE

### THE TOWN AND COUNTRY PLANNING (DEVELOPMENT PLANNING) (SCOTLAND) REGULATIONS 2008 (SSI 2008/426)

### THE TOWN AND COUNTRY PLANNING (GROUNDS FOR DECLINING TO FOLLOW RECOMMENDATIONS) (SCOTLAND) REGULATIONS 2009 (DRAFT SSI)

### THE PLANNING ETC. (SCOTLAND) ACT 2006 (DEVELOPMENT PLANNING) (SAVING, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) ORDER 2008 (SSI 2008/427)

1. These statutory instruments put in place the regulatory framework required to allow the development planning provisions of the Planning etc. (Scotland) Act 2006 ('the Act') to be commenced. The Act introduced major changes to the development planning regime in Scotland. The main changes were:

- A new duty on planning authorities to exercise their development planning function with the objective of contributing to sustainable development;
- The replacement of structure plans and local plans by strategic development plans (SDPs) (in only the four biggest city regions) and local development plans (LDPs);
- A new duty to review development plans on a five-yearly basis;
- The elevation of some supplementary guidance to the status of being part of the development plan;
- A new requirement for authorities to prepare a development plan scheme setting out their programme for preparing new plans and involving the public;
- A requirement for plans to be accompanied by action programmes; and
- The removal of the right to be heard at examinations.

2. The Act contains detailed procedures for many aspects of the new system, and these are not repeated in the regulations. A draft circular has been prepared (and copies sent to the Local Government and Communities Committee) which explains the requirements of the Act and the regulations as a single coherent process. It also sets out Ministers' intentions for the operation of the new system.

3. The **Grounds for Declining to Follow Recommendations regulations**, which are to be dealt with under affirmative procedure, set out the circumstances in which planning authorities can depart from the recommendations of a report prepared following an examination into a proposed LDP by a person appointed by Scottish Ministers.

4. The principal matters dealt with in the main (negative) **Development Planning Regulations** are:

- procedural aspects of preparing SDPs and LDPs;
- development plan examinations;
- development plan schemes;
- action programmes;
- supplementary guidance; and
- designating key agencies (who must cooperate in the preparation of plans).

References in this Note to regulations are to this set unless otherwise stated.

5. The **Saving, Transitional and Consequential Provisions Order** primarily deals with how old-style local plans and structure plans that are currently in preparation can be taken forward after the commencement of the new system.

6. Scottish Ministers will make a separate commencement order to confirm that the new development planning system will be commenced on 28 February 2009.

### **Policy Objectives**

7. The planning modernisation programme, as reflected in the Act, aims to create a system that is fit for purpose, efficient, inclusive and sustainable.

### ***Fitness for Purpose***

8. In preparing these regulations, Scottish Ministers' general approach has been to minimise the amount and complexity of prescription. The intention is to increase local authorities' freedom to respond in their own way to the particular circumstances of their areas, and to allow good practice to evolve over time. Simpler regulations will also be easier for planning authorities to follow.

9. An important function of these regulations is to put in place the necessary procedures and definitions to allow the new development planning system to operate. The Act requires regulations to be produced to cover such matters as minimum publication requirements (regulations 5, 7, 12, 16 and 17) and the definition of key agencies (regulation 28).

10. A number of regulations also address achieving high quality development plans. Plans are required to contain maps or diagrams (regulations 2 and 8) in order to emphasise the spatial nature of development planning and to help engage the wider community. Regulations 3 and 10 require authorities to have regard to a range of other statutory strategies in order to ensure that development plans are properly integrated with the plans of other sectors. So that SDPs and LDPs can focus on key issues, the Act allows authorities to adopt supplementary guidance containing matters of detail. To ensure that the use of supplementary guidance is not abused, regulation 27 ensures that authorities prepare statements on their consultation on such guidance, and regulation 28 defines how the guidance must properly flow from the SDP or LDP.

### ***Efficiency***

11. To be effective leaders of change, development plans must be able to respond to new opportunities by being as quick to prepare as they can be, and regularly reviewed. They can thus assist the delivery of the Scottish Government's central purpose of increasing sustainable economic growth. The Act sets out a multi-stage process, incorporating requirements for engagement and examination that must, of necessity, take some time. However, within that framework, the regulations will act to aid the efficient preparation of plans.

12. In the past, public local inquiries have significantly delayed the adoption of many local plans. Regulations 18 to 23 deal with the new examination process, and enshrine a number of principles that should ensure a speedier process in the future. These include:

- limiting the scope of the examination to issues raised in representations to avoid it becoming a wider test of soundness of the plan;
- focussing on a summary of unresolved issues, rather than the appointed person having to address every individual representation (which could run to many thousands); and
- requiring documentation to be submitted at the start of the process and giving the appointed person the power to request further information from parties in the course of the examination.

13. Development plan schemes will act as a project management tool for the authority in preparing the plan and will be required (regulation 24) to publicly set out the months the authorities expect to publish the plan at key stages. Action programmes will set out what needs to be done, by who, and by when, to deliver the policies and proposals of the plan (regulations 25 and 26). The transitional arrangements allow plans that are already well advanced to proceed to approval or adoption after the commencement of the new system in order to ensure that existing work is not wasted and authorities are not needlessly sent back to square one.

### ***Inclusivity***

14. A strength of development plans lies in the manner in which agencies, communities and other stakeholders are involved in their preparation. The publication and consultation requirements set out in regulations 4 to 7, and 11 to 17 provide a minimum standard, but the Act requires authorities to set out their detailed proposals for engagement in participation statements. These will be able to respond more flexibly to the particular issues being addressed in a plan at a particular time than would be possible in a static set of regulations. Regulations 14 and 15 require planning authorities to directly notify the owners, occupiers and lessees, and neighbours, of site-specific LDP proposals of any such proposals, where there is likely to be a significant effect on the use or amenity of the site or the neighbouring land. Regulation 28 defines 8 'key agencies' who are required to cooperate with the planning authority in the preparation of the plan and action programme. The list is limited to agencies outside government that are regulated by Scottish Ministers, but the expectation is that key internal agencies would have an equivalent level of involvement.

15. Regulations 18 to 23 relate to examinations, which are the principal opportunity for holding authorities to account for the content of development plans. The recommendations of the person appointed by Scottish Ministers to examine a LDP are largely binding on the planning authority, but the Act allows Ministers to define exceptions to this. The Grounds for Declining to Follow Recommendations Regulations introduce a strictly limited set of such exceptions in the belief that the integrity of the process is best maintained where planning authorities cannot lightly ignore the findings of the examination. The regulations do however ensure that authorities can reverse recommendations that:

- would make the LDP inconsistent with the national planning framework, the SDP or a national park plan;
- can be shown by an appropriate assessment to have an adverse effect on a European site; or
- represent clear errors (including factual errors) by the appointed person. This ground is not intended to relate to occasions where the appointed person has reached a different planning judgement to the authority's.

### ***Sustainability***

16. The Act contains a requirement for planning authorities to carry out their development planning functions with the objective of contributing to sustainable development. They must also have regard to any guidance Scottish Ministers may issue for this purpose. Scottish Ministers intend to publish such guidance, and so sustainability is not directly addressed in the regulations. However, regulations 3 and 10 do require SDPAs and planning authorities to have regard to transport strategies, river basin management plans, local housing strategies and the national waste management plan, and so support a coordinated approach to these aspects of environmental, social and economic impact.

### **Consultation**

17. Draft regulations were consulted on between October 2007 and April 2008, and the reaction to most proposals was mainly positive. Analyses of the responses may be viewed on the Scottish Government website. A stakeholder workshop was held in August 2008 to discuss issues arising out of the consultation. The principal change made following the consultation has been a significant simplification of the requirements. The total amount of regulation has been reduced to 30 regulations over 17 pages (excluding transitionals), compared to 39 regulations over 22 pages in the 2007 drafts.

18. Specifically, the following changes have been made:

- No longer regulating for the content of SDPs or LDPs, in the interests of simpler regulations and to increase the freedom of planning authorities to respond to local circumstances;
- Allowing SDPs to illustrate their proposals with either a key diagram or a proposals map, and simpler requirements for LDP mapping;
- Simpler procedural requirements for SDP or LDP preparation, including removing the requirement to publish in the Edinburgh Gazette;
- No longer restricting who the person examining the plan can seek further information from;
- Further limiting the grounds a planning authority may cite for declining to follow the recommendations of an examination report;
- No longer requiring development plan schemes to be scrutinised by Scottish Ministers before adoption, but adding requirement to identify expected date of plan submission to Ministers;
- Limiting the topics that can be dealt with in supplementary guidance to those specifically identified in the SDP or LDP, and which expand on policies or proposals already included in the SDP or LDP; and
- Adding Health Boards to the list of key agencies.

### **Regulatory Impact Assessment and other impacts**

19. The regulations are expected to facilitate the efficient preparation of high quality development plans that have properly involved communities and other interests. A regulatory impact assessment has been prepared, and will be made available on the Scottish Government website. Research commissioned at the time of the Planning Bill estimated an additional net cost to each planning authority of approximately £100,000 per year. These additional costs result from provisions in the 2006 Act, not the regulations. No significant additional costs for business have been identified. No adverse impacts on different societal groups have been identified.

## **Financial Implications**

20. The introduction of the new development planning system will have limited direct financial implications for the Scottish Government. The requirements in the Act to review plans every five years and scrutinise supplementary guidance may lead to an increase in casework. Though the current 17 structure plans are being replaced by only 4 SDPs, these will (unlike structure plans) now be subject to mandatory examination. In general, the new examinations of LDPs should be more efficient than the outgoing public local inquiries of local plans.

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Directorate of the Built Environment  
16 December 2008

# **Development Planning Regulations**

## **Regulatory Impact Assessment**

**The Scottish Government  
December 2008**

# REGULATORY IMPACT ASSESSMENT

## 1. Title of Proposal

- 1.1. The Town and Country Planning (Development Planning) (Scotland) Regulations 2008.
- 1.2. The Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009.
- 1.3. The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008.

## 2. Purpose and intended effect

### Objectives

- 2.1. Part 2 of the Planning etc. (Scotland) Act 2006 (2006 Act) created the framework for development planning and these regulations are required to implement the provisions. They will ensure that development plans are delivered in an effective and consistent manner across Scotland, whilst minimising the complexity of the preparation process and the regulatory burden on plan-making authorities. They have been drafted to meet the expectations of Scottish Ministers and other stakeholders as expressed during the passage of the 2006 Act, particularly as regards to improved community engagement and greater transparency in the decision-making process. The Regulations also support the Scottish Government's aims of improving sustainable economic growth and supporting the new Scottish Government – Local Authority Concordat. The aim is to bring regulations into force by 28 February 2009. The intention is that there will be an up-to-date framework of development plans across Scotland as quickly as is practicable.
- 2.2. The regulations are also required to implement Sections 12 and 19 of Part 2 of the 2006 Act regarding development plan examinations. They seek to ensure that development plan examinations are carried out fairly and efficiently. The regulations will be in place before the first examinations are held under the new development plan system.

### Background

- 2.3. Currently, the form, content and preparation of development plans, and other related aspects of the development planning system, are regulated by the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983. The passage of the 2006 Act represented the most significant change to the Scottish planning system in over 60 years, and requires the comprehensive replacement of the 1983 regulations.
- 2.4. The independent testing of development plans under the outgoing planning system is by means of public local inquiries for local plans, and by Scottish Ministers for structure plans. Examinations in public have occasionally been held into certain structure plan proposals, but this procedure is not mandatory and has infrequently been used. The procedures for holding public local

inquiries and examinations in public are currently set out in guidance rather than secondary legislation (Circular 6/1985 – Code of Practice for the Examination in Public of Structure Plans; Circular 1/1996 – Local Plan Inquiries: Local Plan Service Standards; and Circular 32/1996 – Code of Practice for Local Plan Inquiries (supplemented in March 2006 by further interim guidance)).

2.5. Many of the elements of the new planning system that will be introduced through these regulations have already been aired in the following series of consultation and research papers, as well as in the course of the Parliamentary scrutiny of the Planning Bill itself:

- Review of Development Planning in Scotland research paper - 1998
- Review of Strategic Planning - June 2001
- Making Development Plans Deliver - April 2004
- Modernising the Planning System White Paper - June 2005
- Neighbour Notification Report on the Working Group - July 2006

2.6. Scotland has long had a plan led system but this has been undermined by too many plans taking too long to prepare and being out-of-date. They were also:

- insufficiently focussed on delivery;
- perceived as difficult for the public to get involved in;
- often contained little vision for the future of their areas; and
- were too long and unwieldy.

2.7. All of this has been addressed under the 2006 Act.

2.8. With regard to local plans, the time taken to go through the public local inquiry process has been identified as a major reason for delays in local plans being adopted. Over the past nine years, an average of eight public local inquiries into local plans have been held every year. The length of each inquiry process varies greatly, from under 10 to over 400 days of reporter time (for the Aberdeen Local Plan Inquiry) Current inquiry procedures are therefore thought to contribute to the wider problem of local plans being out-of-date and often failing to effectively lead or manage change. A key aim of planning modernisation is to bolster the role of the development plan at the heart of the planning system by making them more relevant and up-to-date. This will require quicker preparation times and thus a much more efficient examination process.

2.9. Along with efficiency, planning modernisation aims to improve wider inclusion in the planning system. On the local plan side, public local inquiries gave, on the face of it, a great deal of opportunity for individuals and small businesses to have their say before an independent reporter. However, in practice many found the lengthy, bureaucratic and legalistic processes off-putting. Structure plans were rarely examined in public, and so the new Act's requirement that examinations must be held into strategic development plans where there are outstanding representations will enhance inclusion at this level.

## **Rationale for Government Intervention**

- 2.10. The regulations are required by the Planning etc. (Scotland) Act 2006. Without them, it would not be clear how the new system would work in practice.
- 2.11. The regulations will achieve consistency in the delivery of development plans across Scotland. This will help individuals and organisations, including businesses and voluntary organisations, that engage with different local authorities across Scotland.
- 2.12. They are a vehicle for ensuring that priorities for development planning are delivered, such as better engagement with stakeholders and more efficient delivery of plans. This should increase the usefulness of the development planning system for businesses and voluntary organisations. Plans will also be:
- focussed on delivery;
  - easier for the public to engage with;
  - contain the authority's vision for the area; and
  - shorter and easier to follow.
- 2.13. If these regulations were not brought into force the benefits listed above would not be achieved.
- 2.14. Sections 12(3) and 19(5) of the 2006 Act give Scottish Ministers powers to make regulations covering examinations. The expectation among stakeholders was and is that these powers will be used. While examinations and inquiries into development plans have not previously been the subject of regulations, the Scottish Government considers that legislation in this area is necessary to deliver more certainty to stakeholders as to how examinations will operate and to ensure that Ministers' priorities for them are achieved. In particular, we believe the principle that evidence should generally be provided as early as possible in the process, and that the appointed person should have discretion as to whether and how any further representations are provided, should be enshrined in secondary legislation. The scope of the examination also needs to be limited to issues raised in representations. These principles require to be universally applied to ensure that examinations are operated consistently over time and across the country, and meet the Scottish Government's intentions that the process is as efficient and fair as possible. If these matters were set out only in guidance, there is a danger that appointed persons could come under pressure from parties to make exceptions from these principles.

## **3. Consultation**

- 3.1. The changes to the development planning system were extensively trailed in a number of consultation exercises carried out between 2001 and 2005. These included the Review of Strategic Planning in June 2001, which set out a proposal on the way forward focussing on structure plans; Making

Development Plans Deliver in April 2004, which set out detailed proposals for modernising development planning and the Modernising the Planning System White Paper which trailed the Government's proposals for modernising the planning system in general and set the context for the 2006 Act. These consultation exercises involved a combination of elements including: publication of the consultation paper on the Scottish Government's website; direct mailing of the consultation paper to a wide range of public and private bodies and individuals and bilateral and multi-lateral seminars with stakeholders.

- 3.2. The 'Review of Strategic Planning' in June 2001 first proposed the introduction of strategic development plans and that these should be subject to mandatory examination, signalling the move away from an adversarial process. It stated that "the planning system is the statutory gateway through which development must pass. Planning is about having a longer term view, so that while the planning system may have to deliver short term programmes or policy initiatives, it can contribute significantly to longer term social, economic and environmental policy development and spending priorities".
- 3.3. A consultation on 'Modernising Public Local Inquiries' in 2003 focussed mainly on development management, but included discussion of development planning. It contained important proposals to improve the examination and approval processes of development plans. This built on the vision for 21<sup>st</sup> Century Government by highlighting the opportunities to enhance development planning through the use of new technology.
- 3.4. This consultation elicited 14 responses from the business sector and 13 from the voluntary sector. The limited outright opposition to the use of hearings in SDP examinations came principally from the development industry. The key concern was that the hearings procedure did not permit a robust test of policies and the assumptions and issues underlying them. A number of other relevant suggestions were made. The most significant of these was simply the need to speed up plan making so that plans were kept more up-to-date. At the time, it was noted that the proposals had the potential to reduce inquiry costs and provide better control over expenditure.
- 3.5. 'Making Development Plans Deliver' in April 2004 consulted on the proposal that appointed persons should have discretion over the style of examination and which issues should be heard orally. It stated that "Development planning is a way of understanding and guiding the dynamic processes of land use change so that these serve the public interest. Development plans are expected to command the support of communities that they serve. They provide the opportunity to bring together all the stakeholders and to balance their competing demands so as to serve better the interests of the wider public. Without development plans, decisions on applications would be made in a policy vacuum". Of the business respondents to this consultation, 63% agreed that the process for the approval of strategic development plans (including the examination process) would be quick and transparent.

3.6. The 'Modernising the Planning System' White Paper published in 2005 included discussion on how to make the examination of development plans more efficient, transparent and accessible. The central aim of the modernisation proposals is to reinforce the primacy of development plans. This is the key to delivering a fairer, more balanced system. Plans are critical instruments for providing clear visions of how our cities, towns and countryside areas should evolve. They must take a long-term view, identify sufficient land to meet the key needs of economic growth and housing development, protect important natural resources, and form the core documents against which planning applications are measured for determination.

3.7. The draft Regulations have been consulted on in the following documents:

3.7.1. Draft Regulations on Development Planning: Consultation Paper which was launched in October 2007 with responses to be received by 20 February 2008. The consultation attracted 98 responses of which 37 were from planning authorities, national park authorities and joint structure plan teams; 19 from businesses and developers; 8 from planning and related professionals; 16 from national and regional agencies; 6 from environment and heritage groups; 4 from community councils; 6 from individuals and 2 others.

3.7.2. The majority of the proposals were supported by the respondents. However, some comments sought to add or remove some requirements. Those proposals receiving particular support included the introduction of development plan schemes (DPS); minimum publication requirements; action programmes and the list of key agencies.

3.7.3. Draft Regulations on Development Plan Examinations: Consultation Paper was launched in December 2007 with responses to be received by 4 April 2008. The consultation attracted 59 responses of which 31 were from planning authorities, national park authorities and joint structure plan teams; 14 from businesses and developers; 3 from planning and related professionals; 6 from national and regional agencies; 2 from community councils; 2 from individuals and 1 other.

3.7.4. The vast majority of respondents supported the principles which will underpin the regulations for development plan examinations, and felt that they would lead to a faster, more transparent and efficient examination process.

3.8. There have also been specific discussions on the draft regulations:

3.8.1. **Within government** - The regulations have been the subject of discussion and internal consultation with the Directorate of Planning and Environmental Appeals, Historic Scotland and Transport Scotland. Various individual points have been discussed with other relevant parts of the Scottish Government.

3.8.2. **Wider consultation** - A sounding board was held with professional planners from local authorities, statutory bodies and private consultancies. In general, local authority representatives favoured a lighter regulatory touch whereas other representatives favoured more prescription. A meeting was also held with the Development Plan Task Group of the Royal Town Planning Institute which consisted of representatives from the public and private sectors. After the consultation period, a workshop was held with key stakeholders from the public and private sectors to discuss emerging thinking on the final form of the regulations.

3.9. The responses to both documents have been analysed and the reports are available on the Scottish Government Website.

## 4. Options

### 4.1. Option 1: Do Nothing

4.1.1. The regulations are required to implement Part 2 of the Planning etc. (Scotland) Act 2006 regarding development plans. The new system cannot operate without the regulations proposed by the Act.

4.1.2. The 1983 Regulations are deemed to be ineffective as they are not producing up-to-date or effective plans. Many of the plans that have been produced are out of date and by an average of over 9 years.

### 4.2. Option 2: 2007 Draft Regulations/Extensive Regulation

4.2.1. Under this option the regulations would take every opportunity to regulate where the 2006 Act allows. This is effectively the approach followed for the 2007 consultation draft regulations.

4.2.2. The Regulations that we consulted on focused on front loading the development plan system by encouraging early engagement in the plan making process. The Regulations include the following provisions:

4.2.3. **Content of Strategic Development Plans (SDPs)** - SDPs are only to be required in the main city-regions. The four city regions are Glasgow and Clyde Valley; Aberdeen and Aberdeenshire; Edinburgh and South East Scotland and finally Dundee, Angus, Perth and North Fife. The draft regulations proposed a number of topics that must be covered by policies in the SDP including housing, economic and retail development. The choice was made to keep the list of topics short to focus on the key cross-boundary issues at the strategic planning level. The inclusion of these specific topics was intended to ensure that the need for new housing, business and retail land is properly considered at the regional scale, but would not limit the freedom of the SDPs to address issues as they see fit.

- 4.2.4. **Key Agencies** - The regulations provided a list of the bodies that will be 'key agencies' and required to engage in the development planning process. Scottish Enterprise and Highlands and Islands Enterprise were included in this list to help ensure that development plans are properly integrated with economic development strategies that affect businesses. The list of key agencies was limited to only those that are considered to offer services, or provide information that is critical to the delivery of the development plan.
- 4.2.5. **Neighbour notification** - The regulations proposed placing a duty on local authorities to notify the owners/occupiers of key, site-specific proposals in local development plans (LDPs) and the neighbours of such sites. While the current definition of neighbouring land in use for development management purposes relates to properties within 4 metres of the site in question (with some exceptions), our proposed definition of neighbouring land has been drawn more widely to encompass land within 20 metres of the proposal site. This should ensure that businesses and other organisations that may be most directly affected by proposals are aware of them and can make timeous representations.
- 4.2.6. **Publication** - The draft regulations set out a minimum set of publication requirements for plans that authorities must adhere to. We expected most authorities to go beyond this statutory minimum, but were minded to leave it to local consideration how exactly plans should be publicised. The draft regulations did not set out a list of statutory consultees for development planning.
- 4.2.7. **Departures from examination reports** - We proposed in the draft regulations to strictly limit the occasions when planning authorities can depart from the recommendations of a report on the examination of a LDP. It was hoped that this would ensure that there were safeguards against the valid concerns of the public and other stakeholders being ignored.
- 4.2.8. **Scope of Examination** - The draft regulations limited the matters to be assessed to matters raised in representations on the plan. This contrasted with the approach in England where reporters are asked to undertake a wider 'test of soundness' of the plan, i.e. to test the plan against various criteria even where no representations were made on that topic. We also considered listing some specific matters that the appointed person should assess, e.g. compliance with the National Planning Framework, but rejected these approaches as acting against the goal of moving through the examination stage quickly. Our approach placed more responsibility on the Scottish Government itself, the key agencies and other stakeholders to raise any issues of concern in duly-made representations.
- 4.2.9. **Treatment of representations** – We envisaged the appointed person drawing conclusions and making recommendations on the issues raised in representations rather than on each individual representation. This approach may make it more difficult for individual members of the public to

access the appointed person's findings on their particular representation, but has been proposed in order to expedite the examination process.

4.2.10. **Limiting issues to be assessed** – We considered further limiting the scope of the examination by allowing planning authorities (in the case of LDPs) or Scottish Ministers (for SDPs) to direct appointed persons only to assess certain of the issues raised in representations. While this could have accelerated the examination stage, we felt that it would have removed transparency and objectivity from the process. Members of the public have a reasonable expectation that the issues they raised in representations would be considered by an independent person.

4.2.11. **Limiting the parties from whom the reporter may take evidence** - In a limited number of cases, the appointed person may feel that he/she does not have all the information he/she needs to make a proper assessment of an issue. In these circumstances, the draft regulations allowed further information, or representations, to be requested. The intention was that the appointed person could seek out the information he/she felt they required from a wider range of parties than under the outgoing system, in which evidence is largely limited to the objector and the planning authority and their witnesses/consultants. For instance, Scottish Natural Heritage could be asked to supply evidence on the landscape impact of a potential development site suggested in a representation and on which SNH had no published view.

### 4.3. Option 3: 2008 Final Regulations

4.3.1. The number of regulations in the final versions have been reduced from those consulted on in 2007 to 38 covering 23 pages. These regulations are similar to those in option 2. However, these have been further stripped back so that they only cover matters that are essential to delivering Ministers priorities and regulations without which the 2006 Act could not function.

4.3.2. The regulations that have been removed allow planning authorities more flexibility to cover the issues in their area. The following regulations contained in the 2007 consultative draft have been removed:

- The requirement to publish in the Edinburgh Gazette. The majority of respondents to the Development Planning Consultation felt that this was no longer a useful requirement. It was felt that the Gazette did not have a large enough, or diverse, readership to add any value to the publication process. It was felt that advertisement in local papers and on the internet was sufficient. Colleagues in Wales have removed this requirement from their development planning regulations without any negative impact.
- The regulation on the content of development plans. SDPAs will be responsible for choosing which topics are covered within their SDPs as they are aware of the development required in their areas. This also

supports the Government's policy of de-regulating as much as possible and allowing planning authorities the freedom to carry out their business as they see fit.

- The regulation relating to whether the proposals map, or text, takes precedence. It was considered that if there is a contradiction then either could be wrong, and it would be inappropriate for the regulations to state a precedence. Most other requirements relating to maps have also been removed to further simplify the process and not over regulate.
- The regulation relating to who the appointed person can seek further information from has been reduced to allow them to seek information from anyone as they see fit.
- Requirements for development plan schemes have been significantly reduced.
- A regulation has been added to limit the subjects that can be addressed in Supplementary Guidance to those identified in the LDP or SDP. This is to avoid any controversial policies going through without the proper level of scrutiny.

## **5. Costs and benefits**

### **Sectors and groups affected**

5.1. The regulations will mainly impact upon local and national park authorities who are responsible for preparing development plans. Impacts on business, charities and the voluntary sector will be secondary and focussed around any requirements for engagement between the plan-making authority and the wider community, and on any impact of the regulations' success in delivering efficient, high-quality development plans. The preparation of SDPs and LDPs will focus around two stages: early engagement around a report on the key issues, followed by the preparation of a single 'proposed plan.' It is in response to the proposed plan that formal objections, or expressions of support, can be made.

5.2. Also affected by these regulations will be those who may potentially wish to make representations on a proposed development plan. Among the business and voluntary sectors, these are likely to be companies and organisations with a particular interest in the development and use of land, for instance housebuilders, housing associations and amenity organisations. Other groups who are currently extensively involved in local plan inquiries are professional consultants e.g. planning, transport or landscape consultants, and the legal profession.

### **Benefits**

#### **5.3. Development Plans**

- 5.3.1. The Government's proposals for modernising development plans were trailed in the consultation paper Making Development Plans Deliver in 2004. 32 responses (22% of the total) came from business and development interests, and most respondents supported the general tenor of the proposals. Many business respondents, like the CBI and Homes for Scotland, declared that in view of the urgent need for up to date plans, timetables should be set and fully complied with.
- 5.3.2. The regulations aim to ensure that the 5 yearly reviews of development plans are delivered efficiently. This will ensure that the policies and proposals of the development plan remain relevant and up-to-date. Businesses, charities and voluntary sector organisations should benefit from this clarity as to what the local spatial strategy is, and where development will, or will not, be supported. Relevant regulations include those for setting out a programme in development plan schemes, and the involvement of key agencies.
- 5.3.3. The enhanced requirements for early and effective engagement in the plan-making process will allow businesses and charities to have a stronger input into the content of development plans. Relevant regulations include those around publication of the main issues report.
- 5.3.4. As regards the impact on local authorities, regulations for the new development planning system are aimed at providing a framework that will both lead to greater confidence and speed in the system. Efficiency savings are expected in terms of the removal of the need for two tiers of development plan across most of Scotland, reducing the number of strategic development plans from 17 to 4. Speeding up plan preparation by replacing the current two stages of draft and finalised plans with one proposed plan, and requiring the preparation of shorter and more focused local development plans that are fit-for-purpose should also result in efficiencies.

#### **5.4. Development Plan Examinations**

- 5.4.1. We anticipate that our proposals will bring significant savings to businesses and voluntary groups seeking to make representations on development plans. The greater reliance on the content of the original representation, greater use of written representations and less use of formal inquiry sessions should bring about significant savings in terms of professional and legal fees. Overall, a quicker examination process will contribute to a national framework of more responsive and up-to-date development plans. These in turn should be a positive tool for efficiently delivering the development the country needs and the certainty that developers and the wider business community expect.
- 5.4.2. We expect broadly the same number of LDP examinations to take place per year as local plan inquiries take place currently (around eight). However, given the requirement for all plans to be reviewed on a five-yearly cycle, we can expect these to have a wider geographic spread and

for around a fifth of all businesses in Scotland to be located in the area of a plan undergoing examination in any one year. Businesses that wish to engage actively in every plan may therefore be involved in more examinations than at present. However, this is unlikely to bring extra costs given the streamlined procedures that are proposed and in any event should be offset by the benefit of having more opportunity to influence local planning policy.

## **Costs**

### **5.5. Development Plans**

- 5.5.1. No direct mandatory financial costs on business have been identified. Where businesses and other organisations choose to engage in the development plan process, the new system, as enabled by these regulations, will allow them to do so in a more constructive and less repetitious fashion. For instance, the 'front-loading' of engagement activities to the new main issues report stage should enable businesses to express their opinions on how areas should develop in a more informal and fruitful manner. More regular reviews of plans i.e. at least every 5 years, could involve greater effort and cost for businesses and other organisations. It will, however, be for them to decide which plans, if any, that they wish to engage in. The move to electronic publication will make it easier for them to view the plan without travelling to a local library or planning office.
- 5.5.2. Achieving resource efficiency will require development planning teams within local authorities to be much more focused. If this can be achieved, the general conclusion of research carried out by Arup in 2005 on Planning Reforms: An Impact Assessment was that authorities could potentially already have sufficient staff to resource the development plan system as reformed. This was especially the case outside the city region areas as resources were being released from work to prepare separate structure plans – down from 17 to 4.
- 5.5.3. The main likely exceptions to the ability of authorities to manage within current resource levels are in terms of specialist skills required to prepare, monitor and review action programmes, ensuring statutory timescales are met, and the costs of neighbour notification of new site specific proposals in local development plans. There are also other resource demands arising from more effective engagement of key stakeholders and members of the public in the preparation of development plans. The planning reform research carried out by Arup suggests that in total these costs might reach £3.35m per year across all authorities. The organisation of the transition from the existing to new system will also present additional demands in terms of staff training and management.
- 5.5.4. Overall, the planning reform research carried out by Arup estimates that the additional costs of development plan provisions equates to

around one additional middle ranking staff member per authority when savings and reallocation of resources are taken into account. Including local authority overheads this equates to approximately £3.35m across the system as a whole, or on average £100,000 per authority per annum. The extent to which efficiencies can be expected to be achieved in the early years of reform is difficult to predict. To smooth the adjustment process, the research suggests that an additional 15%-20% above the total additional cost estimates might be prudent to allow for the time taken to achieve efficiencies.

## **5.6. Development Plan Examinations**

5.6.1. No additional financial costs have been identified in relation to the Development Plan Examination regulations. The regulations aim to simplify current practice and reduce the number and scale of procedures to be gone through by parties seeking to make effective representations on development plans. Individual companies and voluntary organisations will, by virtue of the Act, lose their automatic right to be heard at examinations, but it is not considered that this will impact disproportionately on these sectors.

5.6.2. There are costs associated with the provisions for mandatory examination of strategic development plans. The costs of examinations have been consulted on and the majority of respondents felt that the sharing of costs between the local authority and Scottish Government, provided for in the regulations, was appropriate.

## **6. Small/ Micro Firms Impact Test**

6.1. No specific information is available, or research undertaken, on the impact of the proposals specifically on small businesses. However, the enhanced opportunities for early and effective engagement in the process, particularly as potential neighbours of specific LDP development proposals, should assist small businesses by ensuring that development plans reflect their needs and aspirations.

6.2. The consultation papers on these regulations contained a question relating to the impact on businesses but little comment was received. However, some respondents were concerned about the ability of businesses to engage in the increased number of consultations that the new system would produce, especially in the early stages when the majority of local authorities are commencing the production of new LDPs.

6.3. The existing inquiry system often demands a significant outlay of time and funds by objectors, so the simpler, faster and more transparent procedures in the regulations should reduce costs for businesses involved in inquiries, and mean that small companies are not disadvantaged in comparison with better resourced firms.

## **7. Legal Aid Impact Test**

7.1. The impact of these regulations on the legal aid system should be minimal. Civil legal aid will not be available for legal representation at planning examinations. It will remain available for appeals to the Court of Session on points of law but there is nothing to suggest that the regulations will increase the likelihood of that. Initial Advice and Assistance under Legal Aid will still be available to enable eligible individuals to receive advice from a solicitor concerning a planning matter. The new planning examination system is, however, intended to be less legalistic in its operation. Its introduction should not, therefore, increase the requirement for legal advice for individuals engaging with it.

## **8. “Test Run” of business forms**

8.1. These regulations do not contain business forms.

## **9. Competition assessment**

9.1. The regulations are not considered to have any competition impacts.

## **10. Enforcement, sanctions and monitoring**

10.1. The regulations will have the strength of law and so the proper exercising of the proposed duties contained in them can ultimately be tested in the courts. The principal responsibility for the proper running of an examination will lie with the particular appointed person involved. He/she will be appointed from the Directorate for Planning and Environmental Appeals under the Minister for Transport, Infrastructure and Climate Change. The Scottish Government continually monitors development plan progress and so if the expected reduction in the time taken to hold examinations does not materialise this should become apparent. The Directorate for the Built Environment also liaises closely with local authorities and representatives of the business community and so the Government will be made aware of any dissatisfaction with the way the new examination system is operating.

10.2. Major improvements in development plan performance require a raised profile for development planning, and effective management of the process. We shall therefore require a development plan scheme to be prepared as a means of setting the programme for producing and reviewing local development plans and strategic development plans. This will be updated annually and publicised widely, as well as submitted to Scottish Ministers for information. It will provide greater certainty and predictability for local people and businesses about the timescales for plan revision.

## **11. Implementation and Delivery Plan**

11.1. In terms of timescales for bringing forward the first round of new development plans, all planning authorities and SDPAs should publish their first Development Plan Schemes (which indicate the programme for plan

preparation) by 31 March 2009. The Act requires LDPs to be prepared as soon as practicable after the act comes into force. Thereafter, all plans will be reviewed at least every 5 Years.

11.2. The regulations will be accompanied by a Circular to explain the process. It is also intended that Scottish Government Planners will visit local authorities to deliver the key messages contained within the new regulations and a number of implementation events will be held.

## **12. Post-Implementation Review**

12.1. It will not be clear how effective the regulations have been until the first round of development plans has been adopted. This will mean a review cannot be undertaken for at least 5 years after the implementation date. Good practice and innovative ways of engaging, publishing etc the plans will be displayed on the Scottish Government website. .

### 13. Summary and Recommendation

Option	Total Benefit per Annum: economic, environmental & social	Total cost per annum: Economic, environmental, social policy and administrative
1	Of no benefit. Current regulations cannot operate under 2006 Act and regulations are required. Current regulations are not producing up-to-date plans.	Out of date plans and lack of clarity of where local authorities would like to promote development.  No additional cost.
2	<p>The regulations will ensure that development plans are delivered in an effective and consistent manner across Scotland, whilst minimising the complexity of the preparation process and the regulatory burden on plan-making authorities.</p> <p>More up to date plans. Businesses, charities and voluntary sector given greater clarity as to local spatial strategy. Early and effective engagement will allow businesses and charities to have a stronger input into process.</p> <p>Speeding up the process of plan preparation</p>	<p>Including local authority overheads it is estimated that approximately £3.4m across the system as a whole, or on average £100,000 per authority per annum. In addition, staff training on new system will be required.</p> <p>However, this will be offset in part by savings made in those authorities who no longer need to produce a structure plan.</p> <p>No direct mandatory costs on business have been identified. Where businesses choose to engage there will be costs involved but they will be able to do so in a more constructive and less repetitious fashion.</p> <p>Costs for undertaking SDP examinations to be split between Government and SDPA.</p>
3	As above but with fewer regulations allowing local authorities the power to respond more flexibly to local circumstances. Only regulations that are required by the 2006 Act, or are key to delivering Ministers expectations, are included. This should deliver a more responsive, flexible development planning system.	As above.

### **13.1.Recommendation**

13.1.1. It is recommended that option 3 be implemented. This option supports the Government's aims of de-regulating where possible and allowing local authorities the freedom to carry out their business as they see fit. The regulations set out the minimum that local authorities are required to do to produce LDPs and SDPs. They also set out a streamlined approach to the examination of LDPs and SDPs.

### **14. Declaration and Publication**

14.1. I have read the Regulatory Impact Assessment and I am Satisfied that the benefits justify the costs.

**Signed.....Date.....**

**Stewart Stevenson, Minister For Transport, Infrastructure and Climate Change**

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