EXECUTIVE NOTE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2008 (S.S.I. 2008/432)

This statutory instrument puts in place the regulatory framework required to allow the development management provisions in Part 3 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) as amended by the Planning etc (Scotland) 2006 Act (the 2006 Act) to be commenced. Within the framework of the 1997 Act, as amended, the purpose of the instrument is to set out the procedure for processing planning applications in Scotland. The instrument replaces provisions in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (1992 GDPO). The instrument is subject to negative resolution procedure.

Policy Objectives

Set within the framework of the 2006 Act, the instrument aims to promote efficiency and simplicity where possible to support the Government's central purpose of increasing sustainable economic growth. Changes to development management are intended to ensure that the procedures for applying for planning permission are fit for purpose and responsive to different types of development proposal; that they improve efficiency in developing and determining applications and improve community involvement at the appropriate points in the planning process.

A fundamental element of planning reform is the creation of a hierarchy of development. This aims to provide a means for adopting a more proportionate approach to handling applications. At the top of the hierarchy are national developments as designated in the National Planning Framework. Major and local developments are described in the draft Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 which are also being considered by the Scottish Parliament at this time. As laid in draft those regulations contain a Schedule of major applications (determined by type of development and dependent on a threshold or criteria being met or exceeded). Local developments are those that are neither National nor Major.

The categorisation of developments in the hierarchy is intended to establish a more proportionate approach to determining planning applications. National and major developments in the hierarchy will attract pre-application consultation with the community before the application is submitted to the planning authority and may be subject to further enhanced scrutiny before being determined. These applications may also be project managed more efficiently by greater use of non-statutory processing agreements. Proposals for modernising the planning system also include more effective delegation of applications within the category of local developments to officials and the right of the applicant to require a review of these decisions rather than an appeal to the Scottish Ministers. Procedures for adopting new schemes of delegation and for carrying out related local reviews are set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 which are also being considered by the Scottish Parliament.

The 2006 Act contains some of the procedures for how development management should be undertaken, with regulation making powers to prescribe further aspects of the process. These regulations set out the detailed planning process from pre-application consultation with the

community, where required, to determination of a planning application by the planning authority and issue of the decision notice. The changes to development management include:-

- Pre-application consultation with the community, with a report recording that accompanying the application;
- New arrangements for the planning authority to notify neighbours of applications;
- A longer period for making representations to the planning authority in response to that notification;
- New requirements to provide design, or design and access, statements for certain types of planning applications;
- More information about how planning decisions have been arrived at in reports of handling;
- More information about applications contained in lists of applications and in the planning registers;
- Use of site notices to inform the community more effectively about major works taking place following planning permission.

These areas are all covered by the instrument. They also contain some minor, related issues such as advertising requirements for certain types of developments; amendments to marine fish farm provisions; applications for certificates of lawful use or development; statutory requirements for consultation and enforcement related provisions on notification of intention of development.

Pre-application Consultation

Certain types of development will be subject to enhanced scrutiny, improving the planning system by strengthening the involvement of communities and better reflecting local views on proposals. An applicant considering a large or complex development should, with the assistance of the planning authority, consult appropriately with those communities of interest and geography that will be affected by the proposed development. Early, appropriate engagement should lead to more refined, better quality applications that can then be considered and processed more efficiently by planning authorities.

The first element of enhanced scrutiny is pre-application consultation. In the interests of simplicity and clarity the categories of development that are subject to pre-application consultation are national and major. Section 35A(3) of the Act allows for the developer to seek a statement from the planning authority as to whether pre-application consultation is required, and the Regulations specify the information which, in addition to that specified in the 2006 Act, must accompany these 'pre-application screening' requests. Minimum consultation requirements – i.e. with the relevant and any adjoining community council (where in place), and a public event advertised in a local newspaper circulating in the locality - are also set out in the regulations.

This aspect of the regulations, together with the hierarchy, will come into force on 6 April 2009. This is to ensure that developers have sufficient time to complete statutory pre-application consultation before the rest of the development management system comes into force on 3 August 2009.

The other enhanced scrutiny measure included in the instrument is the requirement to give applicants and those who have made relevant representations the opportunity to air their views at a pre-determination hearing. This applies to all national developments, as well as major developments that are significantly contrary to the development plan. Cases requiring pre-determination hearings must also, in terms of amendments made by section 14(2) of the 2006 Act to section 56 of the Local Government (Scotland) Act 1973, be referred to the full council for determination.

Neighbour Notification

Currently, neighbour notification is carried out by applicants. Notification by planning authorities should ensure greater consistency and public confidence in the process. The instrument makes provision for this, as well as simplifying the definition of neighbouring land. This is to aid clarity in determining the neighbours that require to be notified, but also to facilitate the increased use of IT systems to identify neighbours.

Time Periods

Previously, planning applications had to be determined within 2 months from the submission of a valid application (extended to 4 months where an environmental impact assessment was required under the Environmental Impact Assessment (Scotland) Regulations 1999). After that period had elapsed without a decision on the application being issued, the applicant had a right of appeal on the grounds of non-determination. Planning authority performance was measured primarily with reference to the 2 month period.

With the introduction of major and national developments, there has been a recognition that the processing of applications for such development is likely to take longer than 2 months. The regulations therefore include a statutory 4 month period for applications for major and national development. The rationale for choosing 4 months as the basic period is that this is already used in relation to cases requiring Environmental Impact Assessment in recognition of their additional complexity. In consultation there was general support for extending the period for major developments.

Design and Access Statements

Ministers recognise the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. Prior to the 2006 Act there was no statutory requirement for a statement to accompany a planning application explaining the design principles and concepts that have been applied to the development, and how issues relating to access for disabled people to the development have been dealt with.

The consultation on the draft regulations suggested two options for how design and access statements would apply to planning applications, the essential difference being the number of developments that would be required to provide such statements. As a consequence of concerns that this would be overly burdensome and offer little added value, particularly for smaller developments, the second option of a design and access statement for national and major applications and a design statement where development impacts on a designated area has been adopted.

Information on Planning Applications and Decisions

A key element of planning reform is the desire to make the system more transparent through increased availability of information. Weekly lists are prepared currently by planning authorities to inform community councils of planning applications received that week. The regulations require planning authorities to maintain a list of extant applications and provide additional information in the weekly list.

People are often unsure whether their comments on a proposal have been brought to the attention of decision makers. Planning authorities are not currently required to prepare a report for the planning register but would prepare a report to the relevant decision making committee. The instrument will now require authorities to prepare a report on each application and to make it available on the public register as a full record of the relevant factors considered in determining each application. When the planning authority reach the decision on an application they will be responsible for notifying those who made representations in respect of the application of the decision. It is intended that the planning authority issues the full decision notice to the applicant and that those who made representations will receive a note of the decision and details of where the full decision notice can be viewed. Where the representations form part of a petition, special provisions will be put in place to ensure proportionality. Taken together, these information requirements will allow for greater transparency and engagement with the planning system.

Notification of Initiation of Development (NIDs) and on-site display of notices

The 2006 Act introduces requirements on applicants to notify planning authorities of their intention to start development previously granted permission, and to display notices on site while development is ongoing. The regulations on NIDs and on-site notices cover the information which is required to be submitted, or displayed, in the notice, and in the case of on-site notices, the classes of developments for which a notice has to be displayed.

Consultation

A full public consultation was carried out earlier this year. The draft regulations and supporting consultation paper were published in January 2008 with responses sought by early April. 117 bodies and individuals, including planning and national park authorities, business, developers and retailers, planning and related professionals, key agencies and statutory consultees, national and regional authorities, voluntary and amenity groups, community councils, groups representing equality strands and individual members of the public responded to the consultative draft of the instrument. Particular arrangements were made to consult equalities and 'seldom-heard groups' via a specially-commissioned series of sessions run by Planning Aid for Scotland.

The following bodies were then subsequently consulted during the preparation and post-consultation revision of the instrument: Scottish Property Federation, Royal Town Planning Institute, CBI Scotland, the Administrative Justice Council, the Association of Scottish Community Councils, CoSLA, Scottish Society of Directors of Planning, Planning Aid Scotland and the Royal Institute of Chartered Surveyors. In addition, Scottish Water, Scottish Natural Heritage, Historic Scotland and Scottish Environmental Protection Agency were also involved in 2 day-long workshops to discuss key issues.

In light of responses received, the regulations were simplified further within the framework of the 2006 Act in order to reduce the regulatory burden on planning authorities and on business, while still ensuring that the measures gave communities additional opportunities to be involved. Information on how the regulations were amended following the consultation are noted in relevant sections above, with further detail contained in the RIA that accompanies these regulations.

Overall, we have attempted to limit the scope of activity to be regulated and revised the accompanying material to accord with the Scottish Government's policy direction on minimal regulation. This is a practical recognition of the need to support increased sustainable economic growth by promoting processing efficiency, and by mitigating any new burdens or negative impacts on either the development industry or on planning authorities.

Financial Effects and RIA

There will be financial implications for planning authorities in responding to pre-application notices, in carrying out neighbour notification and in modernising current systems. Developers will incur costs via the enhanced scrutiny regime and in complying with the additional informational requirements. In revising the package, we have ameliorated those impacts wherever possible by limiting classes to which onerous requirements apply, and by prescribing a very basic statutory minimum level of required activity.

Further details of the financial implications for planning authorities and developers are included in the accompanying regulatory impact assessment.

Scottish Government
Directorate of the Built Environment
December 2008

Regulatory Impact Assessment

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

1. Title of Proposal

1.1 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (the Regulations)

2. Introduction

Objectives

2.1 The new procedures for development management stem from provisions in the Planning etc. (Scotland) Act 2006 (the 2006 Act) primarily amending the Town and Country Planning (Scotland) Act 1997 (the 1997 Act as amended).

2.2 The key aims of modernising the planning system are to make it: fit for purpose; more efficient; more inclusive; and play its part in delivering sustainable development. Whilst set within the framework of the 2006 Act, the emphasis of the regulations is on supporting the Government's purpose of increasing sustainable economic growth and efficiency/simplicity where possible. Changes to development management are concerned specifically with: making the processes around applying for planning permission fit for purpose and responsive to different types of development proposal; improving efficiency in developing and determining applications and improving public involvement in the consideration of proposals requiring such permission.

2.3 The 2006 Act specifies a number of the requirements in relation to each aspect of development management discussed in this Regulatory Impact Assessment (RIA). It anticipates some of the detailed features of the new procedures and limits some of the options for detailed prescription in the regulations. The sections below will identify where significant elements of the detailed procedures have been pre-determined by the 2006 Act.

2.4 Due to the number of individual, though linked, policy areas covered by the regulations, this RIA is structured slightly differently to other RIAs. Information on the purpose and intended effect, consultation plus options and their costs and benefits (normally found in sections 2 - 5 of the RIA) are set out under headings for each policy area. Other areas covered by the RIA (normally found in sections 6-11) are considered for the complete set of regulations. In general, the order of the topics in the RIA follows that in the regulations.

3. Enhanced Scrutiny

3.1 This section details the options, costs and benefits of each of the following areas attracting Enhanced Scrutiny measures:

1. Pre-application screening;
2. Pre-application consultation;

3. Pre-determination hearings; and
4. Decisions by the full Council.

Purpose and intended effect of the enhanced scrutiny proposals

3.2 Certain types of development will be subject to enhanced scrutiny, improving the planning system by strengthening the involvement of communities and better reflecting local views on proposals. An applicant considering a large or complex development should, with the assistance of the planning authority, consult appropriately with those communities of interest and geography that will be affected by the proposed development. Early, appropriate engagement should lead to more refined, better quality applications that can then be considered and processed more efficiently by planning authorities.

Consultation

3.3 In addition to formal public consultation, proposals were subject to informal discussion with representatives from the Association of Scottish Community Councils, Planning Aid for Scotland, Homes for Scotland and the Scottish Society for the Directors of Planning. Representatives of the development industry, consultants, planning authorities plus community and representative groups were invited to engage in further discussions held at workshops in August and September 2008.

3.4 The primary issue arising from the formal consultation regarding enhanced scrutiny related to the complexity and scope of the enhanced scrutiny proposals and the perceived potential for delay to the process. A number of respondents suggested, in the interests of clarity and simplicity, restricting the relevant classes to national, major and "bad neighbour" developments – with the rider that the major class within the hierarchy be substantially redefined to encompass smaller residential developments than originally envisaged.

1) Pre-application screening

Options

3.5 New section 35A of the 1997 Act allows for prospective applicants to seek the planning authority's view on whether their proposal is in a category requiring

pre-application consultation. The screening process is not mandatory. The minimum contents of the notice applying for screening are set out in section 35B(4) of the Act – the same default minimum as the proposal of application notice. The Regulations can provide for additional information.

Option 1 Do nothing beyond the requirements set out in section 35B(4).

Option 2 Extension of the statutory minimum

3.6 In Option 1 the content of the pre-application screening notice would contain: a site description, a postal address (if one exists), an outline plan and contact details for the prospective applicant. Option 2 proposes that prospective applicants state additionally whether an EIA Screening Opinion or Direction has been given relating to the proposal.

Costs and benefits

Sectors and groups affected

3.7 The screening process will primarily be a matter for developers of larger scale proposals. Planning authorities will need to respond to these requests.

Costs

3.8 Whilst the form of the notice has been kept as simple as possible, there will be resource implications for prospective applicants in preparing the screening notices, and for planning authorities in responding to them. These have been minimised by making the classes of development requiring pre-application consultation directly referable to the hierarchy and therefore self-evident in most cases.

Option 1 No additional costs beyond that envisaged above.

Option 2 There will be minimal additional costs falling to prospective applicants to indicate whether a Screening Opinion / Direction had been given.

Benefits

Option 1

3.9 There would be no additional cost beyond providing the information required by the 2006 Act. For prospective applicants, this will therefore provide certainty as to whether the proposal under consideration will require pre-application consultation.

Option 2

3.10 For prospective applicants and authorities, this option will also promote an efficient and swift response to those pre-application screening notices where the development has previously been subject to an EIA Screening Opinion or Direction.

3.11 By simplifying the range of developments which are subject to pre-application consultation and linking that directly to the planning hierarchy, the need for screening to be required routinely has been minimised. In light of responses to the consultation paper and the issues raised above, the Government is proposing Option 2.

2) Pre-application consultation

Options

Option 1 Limit to major and national developments

Option 2 Extend Option 1 to other specified developments.

3.12 In coming to a view on possible options, it was not considered that a "do nothing" approach was appropriate in light of the policy intentions expressed in *Modernising the Planning System* and the provisions in the 2006 Act. The latter specifies that developments

of a class specified in regulations must comply with the requirements for pre-application consultation. Option 1 looks to focus pre-application consultation on the most significant proposals while minimising the burden on developers, authorities and communities. Option 2 extends the requirement for pre-application beyond national and major developments to those local developments which would potentially be controversial in communities.

Costs and benefits

Sectors and groups affected

3.13 The proposals would potentially affect communities, developers of major and national developments, community councils and planning authorities.

Costs

3.14 For developers the primary cost of pre-application consultation could relate to compliance with any requirements set out in the planning authority's response to the proposal of application notice. The statutory minimum requirements will be for consultation with the community council (where one is in place), and a public event notified in a local paper circulating in the locality. Whilst an estimate of the cost for undertaking the statutory minimum is calculable, this is not so for any additional requirements set out by the planning authority, which should be proportionate, specific and related to the characteristics, complexity and likely impacts of the proposal.

3.15 The returns for the Planning Performance Statistics, and from planning authorities which have provided more detailed information about the applications they receive, indicate that in the region of 4% of all planning applications will be for major developments.

3.16 Possible costs for developers of a public event are indicated below.

- venue hire – £250
- preparation of materials – contingent on standard, numbers and dissemination
- staff / consultants' time – contingent on staff levels
- advertising – £200

3.17 For both options, there will be some costs to planning authorities in checking that the appropriate documentation has been received prior to validation and that the pre-application consultation was commensurate with the authority's response to the proposal of application notice. In terms of pre-application, it is estimated that planning authority officer time in considering this aspect of development management is estimated to cost between £75 to £100. This is a very small proportion of the overall planning fee for a major application. We have streamlined the mandatory content of both notices and the pre-application consultation reports to minimise the costs on prospective applicants and planning authorities. For communities and community groups, there will be marginal costs in preparing for, travelling to and contributing to pre-application consultation events, although prospective applicants may be asked to consider defraying those costs where appropriate.

3.18 The approach proposed in the draft regulations (Option 2) raises two principal issues. The thresholds set out in Schedule 1 to the consultative draft had a necessarily arbitrary and

artificial aspect, and the range of prospective developments to be covered added complexity to the enhanced scrutiny package. Furthermore, it required developers to undertake statutory pre-application consultation in respect of many smaller, more local developments which carried more risk of unfocused, poorly executed engagements carried out by developers inexperienced in this area that added little value to communities, authorities or the applicants.

Benefits

3.19 Prospective applicants should benefit from constructive, better informed communities engaging constructively with proposals at an early stage. Where the consultation discloses significant community resistance, then developers will be aware of the issues that concern affected communities. Applications submitted to authorities would be more considered, taking into account community views, thereby leading to faster decisions and better outcomes. Communities will have the opportunity to interact with prospective developers, to assist them in understanding views and objections, to refine proposals and to mitigate negative impacts.

3.20 Option 2 would extend the requirement to a range of other developments such as those in the green belt or leading to a loss of open space etc. Whilst local in nature, they could potentially be controversial. The benefits accrued in option 1 would also be applicable.

3.21 In light of attempts to balance system efficiency and community engagement and to ensure that consultation and dialogue with communities is purposeful and proportionate, the Government is proposing to take forward Option 1.

3) Pre-determination hearings / Referral to full Council

Options

Option 1 Do nothing.

Option 2 Developments that are significantly contrary to the development plan and EIA developments to be referred to statutory pre-determination hearings.

Option 3 National developments and major developments that are significantly contrary to the development plan to require a statutory pre-determination hearing.

3.22 In coming to a view on possible options, it was considered that a "do nothing" approach was not appropriate in light of the policy commitment in *Modernising the Planning System.* Not prescribing any classes of case would be equivalent to the non-commencement of primary legislation. Option 2 looks to implement the commitment contained in the White Paper. Regulations are required to specify the classes of development that section 38A(1) of the amended 1997 Act states attract mandatory pre-determination hearings. Beyond the options above, mechanisms and procedures for pre-determination hearings are to be determined by authorities themselves. Following consultation, Ministers are proposing a third option - developed to promote processing efficiency. Many respondents were concerned that the prescription of wider classes for consideration by pre-determination hearings and the statutory linkage to full Council scrutiny would introduce complexity and delay.

Costs and benefits

Sectors and groups affected

3.23 Individuals and agencies making representations, community councils, applicants and planning authorities/planning committees.

Costs

3.24 Marginal costs may fall on individuals, communities, agencies, consultees and applicants in preparing to appear before the hearing and in travelling to them, although ultimately they are not required to appear. There will be costs to authorities in considering whether or not proposals represent significant departures from the development plan, and if so, in constituting, hosting and administering the hearings.

3.25 There will also be costs associated with establishing the rules and procedures particular to local authorities for the pre-determination hearings and the precise interaction of hearings with the full Councils acting as decision-makers.

Benefits

3.26 The hearings address applicant concerns that they are not always able to have sufficient access to planning officers and members before a decision is taken. Communities and others making representations will be able to make their views clearly known in advance of the decision.

3.27 Considering the Scottish Government's need to promote system efficiency and proportionate scrutiny of proposals alongside the responses to the January 2008 consultative draft regulations, the Government is proposing to take forward Option 3.

Decisions by the full Council

3.28 No further regulation or options are being proposed at this stage. The identification of classes of application that require scrutiny by section 38A pre-determination hearings means that that those classes of case will also be subject to decision by full Council.

4. Processing agreements

Purpose and intended effect

4.1 *Modernising the Planning System* introduced the concept of processing agreements. These agreements are intended to provide a framework for processing national and major developments. The intention is that for such developments, the applicant and the planning authority would agree the approach for handling the application including the anticipated timescale and set this out in a processing agreement. The use of processing agreements would not be mandatory.

4.2 The Government has decided that as processing agreements can be realised within the existing regulatory framework, no additional regulations have been included.

5. Planning permission in principle

Purpose and intended effect

5.1 The section on Planning Permission in Principle (PPP) covers:

- the replacement of "reserved matters";
- additional information as part of an application for PPP; and
- new provisions in relation to applications for approval required by conditions attached to a PPP requiring neighbour notification and notification of those who made representations on the related application for PPP.

5.2 New section 59 of the 1997 Act replaces the previous provisions on outline planning permission (OPP) with PPP provisions. While both PPP and OPP relate to recognising that a proposal is acceptable in principle, without all the detailed elements of a proposal being considered, the main change is the withdrawal of "reserved matters" as a concept. In future all conditions attached to PPP specifying matters requiring the further approval of the planning authority will require a formal application, rather than only a subset of such conditions relating to "reserved matters", avoiding any confusion about whether formal applications are required.

5.3 In replacing applications for OPP and reserved matters with applications for PPP and applications for approval of matters specified in conditions, further changes were considered.

5.4 On applications for PPP the issue was the extent of required additional indicative information where detail was not included in the application. This would provide greater clarity for developers, planning authorities and communities as to the nature of the proposal under consideration and helping to frontload the system.

5.5 Applications for approval of matters specified in conditions would have additional requirements for neighbour notification and notification, improving community involvement and the transparency of the process.

Consultation

5.6 Consultation responses indicated both support for and concern about these changes. On additional information on applications for PPP, some planning authorities and other stakeholders welcomed the requirements for more information to flesh out the most basic requests for planning permission in principle. However, there were also concerns about the costs of developing proposals before even the principle of development had been established. This was emphasised at the workshop sessions in August and September, when difficulties due to the emerging economic circumstances underlined the issue.

5.7 On additional notification of applications for approval of matters specified in conditions, while there was general support, there was some concern about the added burden for planning authorities and the repeated notifications of people, perhaps over long periods of time, on various detailed matters.

Options

5.8 The removal of the concept of reserved matters flows from the changes to the 1997 Act. In terms of additional requirements on information accompanying applications for PPP the options were to go with the proposed requirements regarding layout, scale of development and access arrangements; not to go with these requirements, or some intermediate proposal. For additional publicity for applications for approval of matters specified in conditions, the choice was to whether or not to have this requirement.

Costs and benefits

Sectors and groups affected

5.9 The changes relating to PPP will affect any type or scale of development, although PPP will be of particular interest in very large scale developments where outlay on detailed proposals is more costly, and the importance of first establishing the principle of development is acceptable is more important.

Costs

5.10 The full proposals for indicative information on layout, scale and access would have placed considerable burden on applicants to develop proposals before being able to establish whether they were acceptable in principle. With additional requirements to notify parties regarding applications for approval of matters specified in conditions, the burden would primarily be on the planning authority to hold the information necessary to identify the additional parties and to carry out notification.

Benefits

5.11 Greater informational requirements at this stage would mean that parties would be clearer on what eventual proposals might be like, and they would be more able to comment at the outset. Additional requirements on parties to receive notice of issues of detail increase the ability of interested parties to make comments to the authority before it takes a decision.

5.12 In considering the relative costs and benefits of the changes proposed, and in light of the consultation responses and workshops, we conclude that it would be appropriate to reduce the additional information requirements to issues of site access only and to remove the need for additional notification of applications for approval of matters specified in conditions. This is in the interests of retaining an effective route to establishing the acceptability of a proposal without applicants having to invest heavily in detailed proposals and to streamline the processes for approving issues of detail in the current economic climate..

6. Content of applications and validation

Purpose and intended effect

6.1 Anecdotal evidence suggests that there can be wide variations between planning authorities as to what constitutes a valid application, when it should be entered on the register, and the commencement of the time period within which a decision should be made. In order to clarify and standardise the approach to validation, we have considered the legislation on content of applications, the process of validation and entry on registers.

Consultation

6.2 Option 1 reflects the existing requirement that applications should be accompanied by plans sufficient to describe the development. While potential applicants welcomed the clarity of Option 1, planning authorities were concerned that they would have to start the processing clock against which their performance would be judged prior to having the necessary information. Planning authorities wanted more detailed requirements or greater discretion to decide when an application could be considered valid. These issues were raised again at the August and September 2008 workshops.

Options

6.3 Section 32 of the 1997 Act as amended allows Ministers to specify the content of a planning application, and how that application is processed.

Option 1 Retain the current statutory provisions and use guidance to try to encourage a more consistent approach.

Option 2 Seek to prescribe more detailed plans and drawings that would make up a valid application.

Option 3 Detail all the types of plans and drawings required to accompany a planning application, the level of textual detail and all the various assessments that might be required to accompany different types of applications in various circumstances.

Option 4 Allow the processing clock to be stopped while the authority asks for, and waits to receive, additional information to make an application valid.

Costs and benefits

Sectors and groups affected

6.4 This will impact primarily on how planning authorities validate planning applications. There will also be implications for applicants and businesses in the way that their applications are handled and the range of information required by the planning authority to validate the application.

Benefits

Option 1

6.5 Current procedures are well known within individual authorities. Option 1 would allow these procedures to remain in place.

Option 2

6.6 There should be greater certainty around what constitutes a valid application and when processing of the application should start. This includes publicity arrangements, so that the public is invited to get involved only once the basic information has been provided and can be made available to them for inspection.

Option 3

6.7 It will be set out in statute what information is required to form a valid planning application, providing clarity / certainty to planning authorities and developers alike.

Option 4

6.8 The authority is not penalised in terms of overall determination time for situations where more information is required to make a decision on the application.

Costs

Option 1

6.9 There are no additional costs since this option is based on the status quo.

Option 2

6.10 Additional plans and drawings would be required for all planning applications which could result in additional information being provided where it was not always necessary. This could increase costs for applicants.

Option 3

6.11 This would generate overly complex, multiple layers of information, which in turn would be likely to generate disagreement over which requirements apply in a particular case and subsequently create delays in getting applications validated and processed.

Option 4

6.12 This would give authorities discretion to seek further information. Applicants would have little certainty at the outset over what was required in the application and how quickly it would be processed. By stopping the clock indefinitely, it could undermine the applicant's right to appeal against non-determination after the statutory determination period elapsed, thereby potentially adding to delays in applicants getting a decision on their proposals.

6.13 In light of responses to the consultation paper and the issues raised above, the Government is proposing to take forward Option 1.

7. Design and access statements

Purpose and intended effect

7.1 Ministers recognise the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. Prior to the 2006 Act, there was no statutory requirement for a statement to accompany a planning application explaining the design principles and concepts that have been applied to the development, and how issues relating to access for disabled people to the development have been dealt with.

Consultation

7.2 The decision to introduce statutory access statements into the planning system for prescribed applications formed one of the proposals in *Modernising the Planning System*. The requirement to extend this to design elements was introduced following Stage 2 consideration of the Planning etc. (Scotland) Bill.

7.3 In advance of, and subsequent to, the public consultation, bodies representative of disabled people, such as the Scottish Disability Equality Forum, plus architects, developers and planning authorities, were involved in policy development.

7.4 In response to the formal consultation some developers and planning authorities expressed concerns that Option 1 would be overly burdensome and offer little added value, particularly for smaller developments. However, others suggested that this option would allow for the appropriate consideration of design and access in all cases. Under Option 2, seventy percent of planning authorities and almost all responses from business considered that that this option offered the appropriate scope of developments. There were calls for this option to be amended to include more medium sized housing developments and non-statutory sensitive areas. It was also considered more appropriate on resource grounds.

Options

Option 1 Require design and access for a wide range of planning applications.

Option 2 Require a design and access statement for national and major applications and a design statement where development impacts on a sensitive area.

7.4 Option 1 would introduce a statutory requirement to the effect that a wide range of planning applications should be accompanied by a design and access statement. Many householder, change of use and engineering and mining operations applications would not be covered by this requirement. Option 2 would introduce a statutory requirement for a more focussed range of planning applications, namely national and major developments and local developments where there would be a potential impact on areas designated as sensitive.

Costs and benefits

Sectors and groups affected

7.5 All options will impact on how planning authorities consider and assess planning applications, although the potential impact will be different, depending on the Option taken forward. For developers promoting major developments, the impact of these options may not be substantial. In terms of design, the requirements would essentially formalise existing guidance and best practice. For developers of sites in sensitive areas, the requirement to produce a design statement, while new, also reflects current guidance. However, in its response to the consultation, the Federation of Small Businesses noted that there may be a disproportionate impact in rural areas where there are more such businesses. The major effect will be on developers where access issues are required in the statement.

Benefits

Option 1

7.6 There would be a statutory requirement for a statement setting out how design and access issues have been considered when bringing forward the development proposal, hopefully leading to better designed and accessible development. Information will be readily available explaining design and access issues for most planning applications.

Option 2

7.7 Although design statements are encouraged through advice, they are not a statutory requirement under current Scottish planning legislation. This option would put into statute what is already advised as being good practice - leading to better designed and accessible developments. The focus for both developer and planning authority resources will be on developments which have a potentially major impact either on design or access issues.

Costs

Option 1

7.8 The major additional cost to business is likely to be the need to prepare a statutory design and access statement where currently one is not suggested through advice. This is therefore likely to impact upon developers who seek planning permissions for smaller scale developments.

7.9 For relatively routine applications this should be a small amount given that guidance will stress that for a straightforward planning application, a statement, whilst containing the information required by the DMR, should be short and easily prepared. It is envisaged that this additional cost may be offset by not having to respond to requests for further information from planning authorities on such issues at a later stage in the application process.

7.10 The potential additional costs of preparing a statement have been considered. Current good practice with regard to major developments is for a design statement to be prepared and therefore there should be little additional cost in meeting the statutory obligations for a design and access statement.

7.11 We are aware that in preparing regulations for England, CABE was consulted. It suggested that given that design and access issues have o be addressed as part of the normal process of drawing up development proposals, it was not believed that the production of the statement should, on average, take more than an additional 3 - 4 hours, that is, half a day. A+DS agreed with the likely time constraints and it has been suggested that this would equate to a cost of £200 – 250.

Option 2

7.12 Some of the financial costs attributable under Option 1 are likely to accrue under this option, though they will relate to a lower number of overall applications. In addition, it is likely that some planning applications where design and access issues may be important factors in the consideration of a proposal will not be accompanied by a statement which sets out how these issues have been considered. However, there is scope for planning authorities to ask for additional information where they consider it necessary.

7.13 In light of responses to the consultation paper and the issues raised above, the Scottish Government is proposing to take forward Option 2.

8. Neighbour notification and publicity for applications

8.1 Neighbour notification is the formal means by which people with an interest in land or property are directly notified of a planning application relating to a neighbouring site.

Purpose and Intended Effect

8.2 Regulation 18 requires planning authorities to give those with an interest in neighbouring land notice of:

- applications for planning permission; and
- applications for a consent, agreement or approval required by a condition imposed on a grant of planning permission in principle.

Background

8.3 The proposal for planning authorities to undertake neighbour notification in relation to planning applications was first raised in *Getting Involved in Planning* (2001). It suggested that notification by planning authorities would ensure greater consistency and public confidence in the process.

8.4 These proposals were further considered in *Your Place Your Plan* (2003) and in *Modernising the Planning System* (2005). Alongside the proposals for local authorities to have responsibility for neighbour notification, Ministers have proposed further measures, for example, to enhance the information required in notices and advertisements. These aim to strike a balance between ensuring the public has confidence in the notification system and streamlining aspects of the process to make it less complicated and more efficient.

Consultation

8.5 Proposals to amend the neighbour notification arrangements, based on Option 3 (below) were included in the *Development Management* consultation paper (2008). Although some reservations were expressed, the majority of respondents, including most planning authorities, expressed support for the proposed notification provisions. Representatives of the development industry, consultants, planning authorities plus community groups were invited to engage in further discussions held at workshops in August and September 2008.

Options

Option 1 Do nothing

Option 2 Detailed provisions on the manner planning authorities neighbour notify.

Option 3 Make further changes additional to Option 2.

8.6 Option 1 would lead to the retention of neighbour notification by applicants. Option 2 introduces detailed provisions concerning the circumstances and manner in which planning

authorities are required to give notice of certain applications and to whom such notices are required to be given. Option 3 would introduce additional measures including: simplifying the definition of 'neighbouring land' and removing the requirement to serve notices to named individuals and to neighbour notify in respect of applications for planning permission in principle.

Costs and benefits

Sectors and groups affected

8.7 This provision will impact on all applicants for planning permission. Whilst neighbour notification will remain an integral element of the planning system, the burden of the new requirements falls to planning authorities. There will be resultant savings for applicants.

Benefits

Option 1

8.8 The current system is familiar to planning authorities and regular applicants. There should be no requirement for planning authorities to introduce new procedures and processes for neighbour notification or change for Business.

Option 2

8.9 Responsibility for neighbour notification transfers to planning authorities, reducing the financial and practical burden on applicants, with associated cost savings.

Option 3

8.10 Whilst similar to Option 2, the proposed changes aim to strike more of a balance between ensuring that the public can have confidence in the notification system and streamlining aspects of the process to make it less complex and more efficient to administer. This Option will reduce the potential additional financial and practical burden on planning authorities by removing, for example, the requirement, set out in the consultation paper, for both applicants and planning authorities to notify owners and agricultural tenants of proposed developments, including minerals applications. Revised provisions require the applicant only to notify such interests.

Costs

Option 1

8.11 There would be no change in the relative financial responsibilities for neighbour notification. Implementation and costs would remain with businesses and individual developers, who would not gain the benefits identified above.

Option 2

8.12 The transfer of responsibility for neighbour notification would create savings for applicants, but additional costs for planning authorities.

8.13 In its report of July 2006, the Neighbour Notification Working Group concluded that the actual additional costs of neighbour notification would vary according to the nature, scale and location of the proposed development, the number of neighbours to be notified and the forms of notification employed by the planning authority. Nevertheless, a consensus of costs per application emerging from local authorities' calculations suggested an average cost across Scotland of £75 per application. If this figure is multiplied by 54,597 (that is the total number of applications determined in 2006/07) this gives a figure in the region of £4m.

Option 3

8.14 In further streamlining notification requirements, this Option would significantly reduce the possible costs of undertaking neighbour notification for planning authorities. Significantly, it would not require the separate identification of domestic and non-domestic properties and would not require the notification of named individuals. It would also allow for the use of standard post for issuing notification letters. In addition, through the proposed simplified definition of neighbouring land, this Option would also facilitate the increased use of IT systems for the identification of neighbours by planning authorities. Whilst this expands the statutory notification distance to 20m, which will catch a larger number of neighbouring properties, this is balanced by the potential efficiency savings of a simplified definition.

8.15. Initial findings from the, as yet, unpublished research on planning fees suggests that neighbour notification could cost between £50,000 -£100,000 to set up. This research also suggests that the streamlined notification procedures detailed in Option 3 would, on average, cost around £25 per application. Based on the total number of applications determined in 2006/07 (54,597), the cost of neighbour notification would be approximately £40,000 per authority area, although it is appreciated that costs will be higher in more densely populated areas than others. Authorities may save on some abortive time currently spent as a result of neighbour notification being carried out incorrectly by the applicant, or from applications being notified to neighbours prematurely. Proposals to increase householder permitted development could see the annual figure for neighbour notification fall to £34,000, although there will be a corresponding reduction in planning fees.

8.16. We therefore propose to take forward Option 3.

9. Lists of applications

Purpose and intended effect

9.1 Weekly lists are prepared currently by planning authorities to inform community councils of planning applications received that week. Ministers are looking to improve the wider public's awareness of planning applications. The regulations require planning authorities to maintain a list of extant applications and provide additional information in the weekly list.

Consultation

9.2 Changes to the requirements for lists were subject to public consultation in *Getting Involved in Planning* (2001). Following further refinement in *Modernising the Planning System* (2005), finalised proposals were brought forward for public consultation in 2008.

Options

Option 1 Do nothing - retain the current requirements for the preparation and publicity of weekly lists.

Option 2 Set out a requirement for additional information to be contained in a list of applications.

Costs and benefits

Sectors and groups affected

9.3 Planning authorities will be required to provide additional information on lists of applications and in their weekly list. This will be derived from information which, in the majority of cases, is already provided by applicants and so there will be no additional cost to business. The impact will be upon all planning applications.

Benefits

Option 1

9.4 The procedures for the preparation and publicity of the weekly list are well understood. There would be no need for a change in procedures for planning authorities. There would also be no additional costs for business.

Option 2

9.5 The provisions will lead to additional information to all, including business interests, on development proposals.

Costs

Option 1

9.6 The cost of preparing and publishing the list of applications falls to the planning authority which is not recovered as part of the application fee. There would be no direct additional costs to planning authorities or business. However, it would not fulfil Ministers' policy intention of making the planning system more inclusive and transparent by making information more widely available to the public.

Option 2

9.7 Whilst there will be no impact on business, there will be limited additional costs to planning authorities in changing procedures for the processing of the relevant information. E-communication may assist in the preparation and publication of the list of applications on the Planning Authorities website or in public libraries.

9.8 In light of the responses to the consultation and the matters raised above, the Government is taking forward the proposal set out in Option 2.

10. Time periods for decision

Purpose and intended effect

10.1 Previously, planning applications had to be determined within 2 months from the submission of a valid application (extended to 4 months where an environmental impact assessment was required under the Environmental Impact Assessment (Scotland) Regulations 1999 (EIA Regulations)). After that period had elapsed without a decision on the application being issued, the applicant had a right of appeal on the grounds of non-determination. Planning authority performance was measured primarily with reference to the 2 month period.

10.2 With the introduction of major and national developments, there has been a recognition that, the processing of applications for such development is likely to take longer than just 2 months. The regulations therefore include a statutory 4 month period for applications for major and national development. The rationale for choosing 4 months as the basic period is that this is already used in relation to cases requiring EIA in recognition of the additional complexity in such cases.

Consultation

10.3 The proposed change to 4 months was raised in the draft regulations. There was general recognition that extending the period for major developments made good sense, although some applicants were concerned that planning authorities would be encouraged to take the 4 months even if a 2 month determination period was feasible in a particular case. Some planning authorities also felt the 4 months would be exhausted in waiting for information additional to that required as a statutory minimum.

Options

10.4 The options considered were:

Option 1 Retain the previous 2 / 4 month (EIA) periods.

Option 2 Option 1 plus an extended time period to 4 months for major and national developments.

Costs and benefits

Sectors and groups affected

Benefits

10.5 The benefits of processing agreements are reflected in paragraph 4.1 above. Option 2 has the additional benefit that even where there is no processing agreement, a reasonable period of time is allowed for the determination of complex cases. This should benefit planning authorities to the extent that there performance would not be judged on time periods

which are unrealistic in more complex cases. Applicants will benefit from greater certainty to the extent that a 2 month time period is generally an unrealistic period for the consideration of major developments and a decision within 4 months is more likely to be achieved. It also reduces the likelihood of appeals being made on the grounds of non-determination in such cases..

Costs

10.6 There is some risk that extension of any period for determination could result in delays for applicants. However, given the nature of the developments specified in the hierarchy as major developments, a 4 month period does not represent an excessive extension.

10.7 Having considered the costs and benefits in light of the consultation responses, the Government is to take forward Option 2.

11. Decision notices, reports of handling and registers

Purpose and intended effect

11.1 People are often unsure whether their comments on a proposal have been brought to the attention of the decision makers. The regulations will require authorities to prepare a report on each application. The report, to be available on the public register, will ensure that planning authorities provide a full record of the relevant factors considered in determining each application. When the planning authority reach the decision on an application they will be responsible for notifying everyone who made representations in respect of the application of the decision. It is intended that the planning authority will issue the full decision notice to the applicant and those that made representation will receive a note of the decision and details of how the full decision notice can be viewed. Where the representations form part of a petition, special provisions will be put in place. This will allow for greater transparency and engagement with the planning system.

Consultation

11.2 *Modernising the Planning System* (2005) proposed that planning authorities would be required to prepare a report on each application. The content of such reports was subject to formal public consultation along with the proposals on the decision notice.

Options

11.3 Planning authorities are not currently required to prepare a report for the planning register but would prepare a report to the relevant decision making committee. We are aware that a number of planning authorities send letters, or emails, to everyone that has made representations on an application, referring them to the website for further information.

Option 1 Do nothing - retain the current requirements for information to be placed on the planning register, with no requirement for the additional inclusion measures.

Option 2 Introduce the requirement that a report detailing how the application has been considered by the planning authority is to be placed on the planning register. Introduce the requirement to notify everyone that made representation on the application the outcome.

Costs and benefits

Sectors and groups affected

11.4 We envisage that the reports will be similar in content to the reports currently prepared for planning committees. As there will be no additional information required from the applicant in order for the planning authority to complete the report, these provisions will have minor impact on costs for business.

Benefits

Option 1

11.5 The procedures for the preparation of information are well understood. There would be no need for a change in procedures for planning authorities who already provide a report to councillors. There would also be no additional costs for business.

Option 2

11.6 The provisions will lead to additional information to all, including business interests, on how proposals have been considered by the planning authority. This will hopefully improve confidence in such decisions and improve transparency in the planning system.

Costs

Option 1

11.7 The cost of preparing the report will be broadly equivalent. However, it would not fulfil Ministers' policy intention of making the planning system more inclusive and transparent by making information more widely available to the public.

Option 2

11.8 It is anticipated that the changes to the register will not have any major implication in terms of cost and time. Some planning authorities already issue decision notices, and e-planning will also facilitate this proposal's delivery. We anticipate that a notice to someone who made representations will be on one page keeping the environmental and administrative costs to a minimum.

11.9 In light of the issues raised above, the Government is proposing to take forward Option 2.

12. Miscellaneous Issues

12.1 There are a number of issues arising from new provisions included in the 2006 Act which are not covered in these regulations. In addition, issues around certain provisions in relation to the GDPO which are described in this section.

Powers of direction

12.2 Regulations that provide Ministers with powers to make directions, or equivalent powers, are contained in the new DMR. These powers to give a direction also include powers to vary or cancel the direction with a subsequent direction. All directions in force under the GDPO and its predecessors prior to the coming into force of the new DMR will remain in force. As powers of direction are already contained in the current GDPO no new costs are being introduced.

CLUD provisions

12.3 The GDPO, as amended, currently contains provisions on the making of applications for certificates of lawful use or development (CLUDs) and the revocation of the same. Equivalent provisions are contained in these regulations. These have been updated but make no significant changes to the procedures for CLUDs and so are not expected to present any additional costs.

Marine fish farming provisions

12.4 Marine fish farm development was brought within planning control in 2007 through *'The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (SSI 268/2007)'* and amendments were made to the provisions of the GDPO as a result. These relate to amendments to take account of these developments being in the marine environment and changes included removing requirements for neighbour notification and requiring all applications in this regard to be advertised. Similar provisions apply in relation to these regulations subject to consequential amendments. It is not expected that there will be any significant additional costs as a result of these amendments.

E-enablement of development management

12.5 The current GDPO allows most of the statutory procedures to be carried out electronically and the intention is that the new development management regulations should be similarly e-enabled.

Powers to require further information

12.6 Planning authorities will still have powers to require additional information in order to determine planning applications. The use of these powers does not affect the information which is required to make an application valid.

13. Notification of Initiation of Development (NIDs) and on-site display of notices

Purpose and intended effect

13.1 The provisions in regulations 37 and 38 fully implement the provisions to be introduced at Sections 27A and C of the 1997 Act as amended. These Sections introduce requirements on applicants to notify planning authorities of their intention to start development previously granted permission, and the display of notices on site while development is ongoing.

13.2 The regulations on NIDs and on-site notices cover the information which is required to be submitted, or displayed, in the notice, and in the case of on-site notices, the classes of developments for which a notice has to be displayed.

Consultation

13.3 In addition to consultation with relevant Directorates within the Scottish Government, public consultation was undertaken on the draft regulations (Planning Enforcement Regulations 2007 Consultation Paper). Among those consulted and offering comments were planning authorities, community councils, public, business and professional bodies as well as individual businesses and members of the public.

Options

13.4 The Scottish Government has considered options for implementing the provisions of the 2006 Act introducing section 27A and C. The options identified are:

Option 1 Do nothing

Option 2 Implement the regulations as originally set out in the consultation paper with a requirement on developers to provide in the NID, details of any previous enforcement action that may have been taken against them.

Option 3 Implement the regulation as amended following consideration of consultation responses. In this option the requirement to provide information on previous enforcement action would be dropped.

13.5 Option 1 is not considered viable, given the commitment in the White Paper, subsequently confirmed by the Scottish Parliament in approving the 2006 Act, to implement the provisions of sections 27A and 27C.

13.6 Option 2 is also considered not to be viable. The intention in seeking information regarding previous enforcement action was intended to provide information to planning authorities on developers with a 'poor track record' of compliance with planning requirements, enabling the authority to consider whether increased monitoring would be appropriate. A significant number of consultation responses, predominantly from business and planning authorities, expressed the view that providing this information would not be beneficial. It was pointed out that a developer could quite legitimately change their trading name. In addition, checking the supplied information would be time- consuming for planning authorities as, although each authority maintains an enforcement register there is no central database of enforcement action. Major developers also pointed out that there would be difficulties if they were required to supply information on behalf of subcontractors. Logistically, given the potential resource requirement for its implementation, this option is considered unworkable.

13.7 Option 3 would see the removal of the requirement to supply the information on enforcement action.

Costs and benefits

Sectors and Groups Affected

13.8 All those carrying out development for which planning permission has been granted will be required to submit a NID. In addition, developers of national and major developments, as well as Schedule 3 developments, will be required to display on-site notices.

Benefits

Option 1

13.9 The status quo position is well understood by planning authorities and developers alike. There would be no additional costs in preparing NIDs or site notices.

Option 2

13.10 NIDs will provide information on which developments are currently active in their areas, allowing for more effective allocation of planning authority resources to monitoring and pro-active control of development. Earlier identification, as a result of any checks triggered by notices, of breaches of planning control can be easier to fix.

Option 3

13.11 Developers would be required to supply basic information – contact details, site address, etc. The benefit to developers, compared to option 2, would be that the information would be easily available and there would be very little cost, in relation to the costs of development in submitting the NID. Planning authorities would benefit, as with option 2, in that they would be made aware of development that was currently active in their area.

Costs

Option 1

13.12 There would be no costs in implementing option 1 as no additional work would be required. However, as previously noted, there is a commitment to implementing the measures of the 2006 Act.

Option 2

13.13 There will be costs incurred by developers in that they would be required to prepare and submit NIDs. The impact of these costs would vary depending on the amount of information to be submitted, and for a major development involving a large number of subcontractors there could be significant work involved in preparing the NID. There would also be potential for significant costs for planning authorities in verifying whether any information supplied was correct and complete.

13.14 There would be a further cost involved for any developer who was required, by the nature of the development, to display an on-site notice. We believe that, given we propose the notices would be displayed in respect of national, major or Schedule 3 development, the costs involved would be negligible in comparison to the overall cost of the development.

13.15 There may additionally be some increased costs to planning authorities associated with the investigation of allegations of breaches arising from increased public awareness of development in their area and any subsequent enforcement action. It would be difficult to quantify these costs as enforcement action is taken at the discretion of the planning authority, which is responsible for considering the appropriate action (and has the option to take no action if they consider the breach to be minor). It is also the case that while there may be an increased incidence of reporting a breach, any particular breach would only be investigated once, regardless of the number of people reporting it.

Option 3

13.16. The comments about costs made in respect of option 2 above would broadly be applicable to option 3. There would however be reduced costs associated with NIDs (compared to option 2) in implementing option 3. Developers would not be required to undertake data collection in respect of previous breaches, saving time and money. Likewise, planning authorities would not require to allocate resources to checking the enforcement information submitted.

13.17 In light of the issues raised above, the Government is proposing to take forward Option 3.

14. Small/micro firms impact test

14.1 Most small and micro businesses will only occasionally deal with the planning system, and all small businesses should benefit from our proposals to improve efficiency in the system. However, certain aspects of reform will have a positive impact on small and micro businesses. For example, neighbour notification requirements are to be removed from small business – a move supported by the Federation of Small Businesses.

14.2 Concerns expressed by the Federation of Small Businesses were considered in finalising proposals. Whilst being generally supportive, the main concern related to the impact on small firms of the requirements for design and access statements and on time periods for decisions. In response, the Scottish Government will introduce Option 2 on design and access statements and has looked to introduce exemptions to the requirement to provide a statement for minor applications relating to alterations and extensions of existing buildings under Option 2.

15. Legal Aid impact test

15.1 These Regulations do not create new rights or responsibilities that could give rise to increased use of legal processes. The regulations will not impact on an individual's right of access to justice through the availability of legal aid.

16. "Test run" of business forms

16.1 The Government is proposing to reduce the number of forms required to one and to simplify its contents. Therefore, as no new forms are being introduced, no 'test run' of business forms is considered necessary in relation to this proposal.

17. Competition assessment

17.1 The regulations relate to all applications for planning permission. We do not believe these regulations will distort or restrict competition between firms or suppliers selling the same or similar products or services.

18. Enforcement, sanctions and monitoring

18.1 A number of the proposals being brought forward are administrative in nature and therefore do not attract any statutory sanction.

18.2 The proposals to be taken forward will, where appropriate, be enforced through the statutory planning system. Carrying out development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control. The planning system has a wide range of statutory enforcement powers where there is a breach of such control.

19. Implementation and delivery plan

Implementation of the Regulations

19.1 The Regulations will be laid before Parliament in December 2008 with a coming into force date of either 6 April or 3 August 2009, depending on the provision. For example, elements relating to pre-application consultation are required to come into force in advance of most of the main provisions so that those applications requiring it will have had the opportunity to complete PAC prior to the new development management system coming into force.

Guidance for businesses and enforcers

19.2 The Regulations are accompanied by a draft Circular which will provide a statement of Scottish Government policy and contain guidance on policy implementation through these legislative and procedural changes.

19.3 A draft Circular will be available in advance and this document will be finalised in line with the coming into force of the Regulations and is designed for use by both regulators and businesses.

20. **Post-implementation review**

20.1 Should the status quo be retained the current provisions will remain in place but would not be subject to review in the short-term.

20.2 The intention is to review the policy after its first year of operation to ensure it is delivering the intended benefits, is fostering good partnership working, and no administrative or legal barriers are reducing the potential of its impact. This review will take the form of a targeted consultation with those using the policy.

21. Summary and recommendation

21.1 The Regulations will ensure that there are robust and workable statutory controls for the determination of applications for planning permission.

21.2 In view of the above, it is recommended that the Regulations are introduced into Scottish law.

22. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed

…….

Date

…….

Stewart Stevenson MSP
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